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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM BAMBERG COUNTY
In The Court of Common Pleas

Doyet A. Early, III, Circuit Court Judge

Case No. 2011-CP-05-00160

Dr. Robert W. Denton and Dr. John P. May,
d/b/a Edusystems, a general partnership,

Appellants,

v.

Denmark Technical College and
South Carolina State Board for Technical
and Comprehensive Education,

Respondents,

v.

Dr. John K. Waddell,

Third-Party Defendant.

RECORD ON APPEAL

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STATE OF SOUTH CAROLINA
COUNTY OF BAMBERG

IN THE COURT OF COMMON PLEAS
SECOND JUDICIAL CIRCUIT

C.A. No. 2011-CP-05-00160

Dr. Robert W. Denton and Dr. John May,
D/B/A Edusystems, a general partnership,

Plaintiffs,

v.

Denmark Technical College,

Defendant, Counterclaim Plaintiff
and Third-Party Plaintiff,

v.

Dr. John K. Waddell,

Third-Party Defendant.

ORDER

INTRODUCTION

This matter is before the Court on cross motions for summary judgment filed by Plaintiffs, Dr. Robert W. Denton and Dr. John May, D/B/A Edusystems, a general partnership (collectively "Plaintiffs" or "Edusystems"), and Defendant/Counterclaimant, Denmark Technical College ("DTC" or "the College"). A hearing on the motions was conducted on November 21, 2011. Prior to the hearing, the parties submitted affidavits and memoranda in support of their respective motions. Having considered the written submissions and having heard from counsel at the motions' hearing, for the following reasons the Court hereby denies Plaintiffs' summary judgment motion and grants DTC's motion for summary judgment as to the Plaintiffs' Complaint.

PROCEDURAL HISTORY; FACTS

Plaintiffs filed this action, sounding in contract, against DTC alleging that the College breached a consulting agreement with Plaintiffs by terminating its relationship with

Edusystems and refusing payment of Plaintiffs' invoices for the balance of the contract, in the amount of \$42,000. DTC filed a Counterclaim against Plaintiffs seeking recovery of consulting fees paid to Edusystems totaling \$130,000. The College also filed a Third-Party Complaint against Dr. John K. Waddell, the former President of DTC, who executed the agreement in question on behalf of the College.

Plaintiffs' claim is based on a letter agreement, which Plaintiffs allege is a valid, "sole source" contract between Edusystems and DTC for educational consulting services. The letter agreement was prepared by Edusystems and dated May 1, 2008, but was not signed by Plaintiffs Denton and May on behalf of Edusystems, and Dr. Waddell on behalf of the College, until October 13, 2008. Affidavit of Dr. Walt Tobin ¶s 6-7 & Exh. B. The agreement covers the 12-month period from October 1, 2008, to September 30, 2009, and calls for a professional fee to be paid to Edusystems of \$10,500 per month, or \$126,000 over the term of the agreement. The contract states that Edusystems will provide consulting services in what is described as "four segments": Strategic Initiatives; Nursing and Allied Health; Review and Analysis of Opportunities for Academic Reform and Advancement; and Identifying Existing Workforce Development Efforts. Such services, DTC maintains, are ordinary and standard.

In its Answer and Counterclaim, DTC contends that Plaintiffs, acting in concert with Waddell, fraudulently and in bad faith entered into the agreement, in knowing disregard of State and College procurement requirements. Those requirements, according to DTC, mandated that the services contemplated by Plaintiffs' agreement be secured through a competitive process, not as a sole source, and that, given the dollar amount of the contract (above \$50,000), it be certified at the State level. For these reasons, DTC maintains that the contract constitutes an unauthorized procurement and that no further payments may be made under the agreement.

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Following Waddell being relieved of his duties as President, and with questions having been raised regarding the relationship between Plaintiffs and the College, the Interim President, Dr. Walt Tobin, reviewed documentation related to the hiring of Edusystems and the nature and value of its services. After Dr. Tobin discussed the matter with the College's governing body, the Denmark Technical College Area Commission, the decision was made on July 13, 2009, to terminate the relationship with Plaintiffs because of serious questions related to the procurement of the contract as well as the services provided. At the time of the termination, Plaintiffs had been paid their monthly consulting fee of \$10,500 through May, 2009. In this action, Plaintiffs seek to recover the unpaid fees for the balance of the contract, June – September 2009, totaling \$42,000.

DECISION

Under South Carolina Rule of Civil Procedure 56, summary judgment is appropriate when, based on the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, there is no genuine issue as to any material fact and the moving party is entitled to a judgment as a matter of law. It is the determination of the Court that, as to the claims of Plaintiffs' Complaint, DTC is entitled to summary judgment.¹

Initially, the Court finds that there are no genuine issues of material fact and that it may conclude, as a matter of law, that the agreement upon which Plaintiffs sue resulted from

¹ The Court enters summary judgment in DTC's favor only as to the claims of the Complaint, and not as to the College's Counterclaim. DTC's summary judgment motion is not directed to its Counterclaim. Plaintiffs' amended motion for summary judgment, which is directed to the Counterclaim as well as their Complaint, was not filed on a timely basis prior to the hearing in this matter. Even if the Court were to consider a summary judgment motion by Plaintiffs directed to the Counterclaim, issues of fact relating to Plaintiffs' performance are raised under the pleadings and in the Tobin Affidavit which make any judgment, as a matter of law, regarding the Counterclaim inappropriate at this stage of the proceedings.

DTC

an unauthorized procurement, for two reasons. First the agreement cannot be considered a legitimate sole source contract. Second, the agreement did not receive certification at the State level, which is required for all contracts above \$50,000.

The South Carolina Consolidated Procurement Code, to which the College must adhere, "applies to every procurement or expenditure of funds by this State under contract acting through a governmental body . . . irrespective of the source of funds, including federal assistance monies" S.C. Code Ann. §11-35-40(2). The statute goes on to provide: "Where a procurement involves the expenditure of federal assistance, grant, or contract funds, the governmental body shall also comply with federal laws (including authorized regulations) as are mandatorily applicable and which are not reflected in this code." §11-35-40(3). In other words, where federal funds are used to pay for a contract, the more restrictive requirements (federal or state) apply. It is clear, therefore, that even if the contract on which Plaintiffs sue was intended to be paid, or in fact was paid, with the use of federal grant monies, the procurement requirements of the State and the College were applicable.

Sole Source Procurement

It is undisputed that the agreement upon which Plaintiffs sue was procured on a noncompetitive, no-bid basis. Plaintiffs attempt to validate the agreement as a "sole source" contract. Sole source contracts are a limited exception to the competitive processes required under public procurement codes. The S.C. Consolidated Procurement Code and the College's own purchasing policies and procedures allow sole source procurement but only "when a requirement is available from only one Supplier" or "[w]here the item is one of a kind." Tobin Affidavit, Exh. E (p. 7); State Procurement Code, S.C. Code Ann. §11-35-1560. Information provided by DTC in support of its motion indicates rather clearly that the consulting services

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contemplated by Plaintiffs' agreement are neither unique nor available from only one source of supply. Tobin Affidavit ¶ 12. Further, the documentation prepared contemporaneous with the formation of the contract, apparently by Waddell himself, does not support the hiring of Edusystems through a sole source procurement. The most that is claimed in that documentation is that Plaintiffs are a "professional firm that specializes in developing and implementing high quality products and services. The firm assists with comprehensive and strategic planning to exploit the unique strengths and program opportunities for institutions." Tobin Affidavit, Exh. C (p. 3).

Plaintiffs, in fact, offer no argument indicating that their services are unique and available only by contracting with them. Rather, Plaintiffs point to a provision of the College's purchasing policies in support of the contention that determination as to the validity of a sole source procurement rests solely within the discretion of the College President. Tobin Affidavit, Exh. E (p. 7) ("To obtain approval for a sole source procurement, . . . [a sole source procurement form must] be forwarded to the college president for final determination and approval."). The Court, however, does not read this provision to mean that the College President, in his discretion, can approve a sole source requirement which does not meet State and College requirements for such a procurement.

In sum, it appears clear that, given the nature of the services provided under the agreement, Plaintiffs' contract cannot be validated as a sole source procurement. It further appears that, even if circumstances existed regarding the nature of the services provided which would otherwise justify sole source, the documentation supporting a sole source procurement, as prepared by Waddell, is sufficiently incomplete and lacking in critical information to validate a sole source contract. Tobin Affidavit ¶s 8, 12; Exh. C.

Certification Of Procurements Above \$50,000

It further appears clear to the Court that the procurement of Plaintiffs' services failed to comply with the requirement of the State Code and College policies that procurements above \$50,000, including procurements in the area of consultant services, be submitted to the Materials Management Officer of the Budget and Control Board for certification. Tobin Affidavit ¶ 13 & Exh. E (p. 8, 10); State Reg. 19-445.2020. Certification is a process whereby the Budget and Control Board grants an agency procurement authority for contracts with an actual or potential value above \$50,000. The \$50,000 limit applies to the total potential commitment of a purchasing transaction. Plaintiffs' agreement with the College calls for payment of fees totaling \$126,000 over a one-year period. There is no dispute of fact that the contract was not submitted by Waddell or anyone else to the Budget and Control Board for certification. Therefore, separate and apart from the failure to satisfy sole source requirements, the contract on which Plaintiffs sue violates the certification requirement of the State Code and the College's purchasing policies.

Consequences Of An Unauthorized Procurement

The question, accordingly, becomes – what are the legal consequences for the failure of a State employee (Waddell), acting in concert with Plaintiffs, to follow State and College procurement requirements? Plaintiffs maintain that the failure to secure their services through proper procurement procedures does not prevent them from recovering the unpaid fees for the final four months of the agreement, June – September 2009, totaling \$42,000.² Citing

² It appears from the Complaint, paragraph 12, that Edusystems rendered no services in June and July 2009 but did perform services in August and September. DTC denies the allegation that Plaintiffs were requested to, or did perform, services in August and September. Answer ¶ 12; Tobin Affidavit ¶ 17. Because the Court rules in the College's favor on other grounds, it need

Langdale v. Harris Carpets, 717 S.E.2d 80 (Ct. App. 2011), Plaintiffs appear to argue that an agency relationship existed between them, as third parties, and Waddell, as President of the College. Principles of agency or parent authority, however, are unavailing in public contracting. The actions, even of one who is an agent of the governmental entity, but who acts outside his authority by entering into a contract which has not been properly procured, cannot create a right in the contracting party to recover under an unauthorized procurement. In Ahrens v. South Carolina Retirement Sys., 392 S.C. 340, 709 S.E.2d 54 (2011), our Supreme Court stated:

In determining whether an agent of the State acted within his authority, the law is clear that "[a] public officer derives his authority from statutory enactment, and all persons are in law held to have notice of the extent of his powers, and therefore, if the matter is not really within the scope of his authority, they deal with the officer at their peril."

709 S.E.2d at 61 (emphasis added; citation omitted). Similarly, as our Court of Appeals stated in Service Mgmt., Inc. v. State HHS Fin. Comm'n., 298 S.C. 234, 379 S.E.2d 442, 444 (Ct. App. 1989), "parties entering into agreements with the state assume the risk of ascertaining that he who purports to act for the state stays within the bounds of his authority." Further, as the Court noted, "[a] private party has no right to public funds received as a result of the unauthorized conduct of a government employee." Id. (emphasis added). Moreover, even though DTC paid Plaintiffs' fees for many months under the contract, neither estoppel nor waiver are available against DTC. See Ahrens, 709 S.E.2d at 61 ("estoppel will not lie against a governmental body for the unauthorized acts of its officers and agents"); Service Management, 379 S.E.2d at 445 ("the unauthorized conduct of state employees may not be construed as a waiver on the part of the State").

not resolve the question whether Plaintiffs might otherwise be entitled to be paid for services which either were not rendered or not requested.

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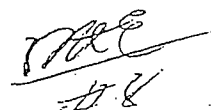
State Regulation 19-445.2015, dealing with unauthorized procurements, essentially codifies, at least in part, the common law principle that a contract issued in violation of public procurement requirements is null and void.³ Under the regulation, in the case of an unauthorized award of a contract, or where the contract award is otherwise in violation of law, the appropriate official of the governmental entity may terminate the contract. Where the contract has been procured fraudulently or in bad faith, the contract is voided, and "[n]o further payments shall be made under the contract" S.C. Code Regs. 19-445.2015.A, B.

Conclusion

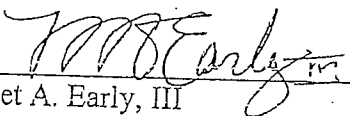
Based on the information and materials submitted by the parties, the Court believes that no reasonable juror could reach any other finding but that the contract on which Plaintiffs sue was procured in violation of State and local procurement requirements. "Summary judgment is appropriate in those cases in which plain, palpable and undisputable facts exist in which reasonable minds cannot differ. It is not sufficient that one create an inference which is not reasonable or an issue of fact that is not genuine." Shuler v. Tuomey Regional Med. Ctr., 313 S.C. 225, 437 S.E.2d 128, 130 (Ct. App. 1993). There being no genuine issue of material fact, the Court may rule, as a matter of law, under common law precedent and Regulation 19-445-2015, that Plaintiffs cannot recover for unpaid fees under an unauthorized procurement or award of contract. For these reasons, the Court must deny Plaintiffs' summary judgment motion and grant DTC's motion for summary judgment as to the Complaint. The College's Counterclaim may be addressed through further proceedings.

SIGNATURE BLOCK ON NEXT PAGE

³ Regulation 19-445.2015 is specifically referred to, and incorporated by reference, in DTC's purchasing policies under the heading "Unauthorized Purchases." Tobin Affidavit, Exh. E (p. 2).



AND IT IS SO ORDERED this 9 day of December, 2011.


Doyet A. Early, III
Circuit Court Judge
Second Judicial Circuit

Bamberg, South Carolina

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COUNTY OF BAMBERG

Case No.: 2011-CP-05-00160

Dr. Robert W. Denton and
Dr. John May,
D/B/A Edusystems, a general partnership

Versus

Denmark Technical College

Plaintiffs

Defendant

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CHECK ONE:

- ☐ JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and the verdict has been rendered.
- ☒ DECISION BY COURT. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ ACTION DISMISSED (CHECK REASON): ☐ Rule 12(b), SCRCPP; ☐ Rule 41(a), SCRCPP (Vol. nonsuit)
☐ Rule 43(k), SCRCPP(Settled); ☐ Other -
- ☐ ACTION STRICKEN (CHECK REASON): ☐ Rule 40(j), SCRCPP; ☐ Bankruptcy; ☐ Binding Arbitration,
Subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other:

IT IS ORDERED AND ADJUDGED: ☐ See attached order; ☒ Statement of Judgment by Court

After carefully reviewing all evidence before me and my prior order in the above-referenced matter, the Plaintiffs' Motion Pursuant to Rule 59(e), SCRCPP, to alter or amend the Order Granting Summary Judgment is hereby DENIED.

ated at Bamberg, South Carolina, Date JAN 17, 2012 Judge W. B. Early

his judgment was entered on the _____ Day of _____, 20____, and a copy mailed
is 18 Day of JAN, 2012, to attorneys of record or to parties as follows:

Attorney(s) for Plaintiff
m Quinn

Attorney for Defendant
David Duff

CRP Form 4(Rev. 2/96)

Clerk of Court

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SC Court of Appeals

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)
Dr. Robert W. Denton and)
Dr. John P. May,)
D/B/A Edusystems, a general partnership,)
Plaintiffs,)
v.)
Denmark Technical College and)
South Carolina State Board for Technical)
and Comprehensive Education,)
Defendants.)

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

Case No.:

COMPLAINT
(Non-Jury)

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C.C.P. & U.S.

Now comes the Plaintiffs, by and through counsel, and for their complaint against Defendant stated as follows:

PARTIES AND JURISDICTION

1. Plaintiff, Dr. Robert W. Denton ("Dr. Denton") is a citizen and resident of Lexington County, South Carolina and is general partner in the partnership, Edusystems.
2. Plaintiff, Dr. John P. May ("Dr. May") is a citizen and resident of Lexington County, South Carolina, and is general partner in the partnership, Edusystems.
3. Plaintiff, Edusystems is a general partnership, which provides consulting services to educational institutions. Edusystems conducts business throughout the State of South Carolina.
4. Defendant, Denmark Technical College ("DTC") is an institution that provides post-secondary education in Bamberg County, Barnwell County and Allendale County, South Carolina and, by way of legislated mandate, serves students

throughout the State of South Carolina.

5. Defendant, South Carolina State Board for Technical and Comprehensive Education ("Board") operates the South Carolina Technical Education System, including Denmark Technical College. The Board is responsible for the state-level development, implementation and coordination of post-secondary occupational and technical training and education. The Board is located in Richland County, South Carolina.
6. Venue is proper in this forum as one or more of the Defendants conducts operations in Richland County, South Carolina.

FACTS

7. On or about May 1, 2008, Edusystems and DTC entered into two valid contracts for service.
8. The first contract stated that Edusystems was to perform consulting services for DTC from the period of May 15, 2008 through September 30, 2008. DTC agreed to pay Edusystems \$10,500.00 per month for their services. The contract was approved for payment from funds remaining in unexpired Title III grants of that current or prior federal fiscal year.
9. Edusystems provided and completed services to DTC under first contract period. DTC made three payments from two invoices. The first invoice was for the time period May 1, 2008 through June 30, 2008, for an amount of \$15,750.00. The check was not issued until September 19, 2008. The second invoice was for the

time period of July, 1 2008 through September 30, 2008, for the amount of \$31,500.00. This amount was paid with two checks both issued on November 5, 2008. One check was for \$12,500.00 and the other for \$19,000.00.

10. The second contract stated that Edusystems was to perform consulting services for DTC from the period of October 1, 2008 through September 30, 2009. The contract specified that payments were to be made monthly. This contract was to be paid by new Title III funds for that federal fiscal year.
11. Edusystems performed under the second contract. However, DTC failed to pay Edusystems in a systematic and timely manner.
12. DTC stopped paying Edusystems after May 2009. Edusystems, pursuant to the contract, remained on retainer and were available and willing to provide services. However, DTC chose not to use Edusystems services in June and July 2009, but did utilize Edusystems services during August and September 2009.
13. Edusystems continuously attempted to collect the money DTC owes to no avail.
14. As a result, DTC has failed to pay Edusystems for their retained services for the months of June through September 2009. DTC owes Edusystems \$42,000.00.

FOR A FIRST CAUSE OF ACTION AS TO DTC

(Breach of Contract)

15. Plaintiff repeats and re-alleges the allegations of the preceding paragraphs as if repeated verbatim.
16. Edusystems and DTC entered a valid contract where DTC retained Edusystems to perform consulting services for \$10,500.00 per month for the period of October

2008 through September 2009.

17. Edusystems performed the consulting services under the contract.
18. DTC failed to pay Edusystems for the months of June through September 2009.

FOR A SECOND CAUSE OF ACTION AS TO DTC
(Unjust Enrichment)

19. Plaintiff repeats and re-alleges the allegations of the preceding paragraphs as if repeated verbatim.
20. Edusystems conferred a benefit on DTC by providing consulting unto DTC for the contract period of October 2008 through September 2009.
21. DTC realized the benefit by keeping Edusystems on retainer and by accepting Edusystems' consulting services.
22. DTC accepted four months of Edusystems' services without compensating Edusystems.

FOR A FOURTH CAUSE OF ACTION AS TO THE BOARD
(Vicarious Liability)

23. Plaintiff repeats and re-alleges the allegations of the preceding paragraphs as if repeated verbatim.
24. The Board is responsible for the state-level development, implementation and coordination of post-secondary occupational and technical training and education.
25. DTC, under the supervision of the Board, entered into a valid a contract with Edusystems to provide consulting services for DTC. The contract was approved to receive Title III grant funds. However, DTC failed to comply with the terms of the contract.

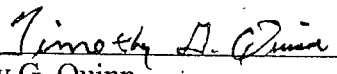
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26. As a result, the Board is vicariously liable for DTC's act, or failure to act.

WHEREFORE, Plaintiffs pray that the Court issue an Order granting judgment for Plaintiffs against Defendants for the following:

- a. Grant the Plaintiffs judgment on their causes of action against the Defendants;
- b. An award for actual damages;
- c. Award the Plaintiff pre-judgment and post-judgment interest; and
- d. Any other relief that this Court deems to be appropriate.

Respectfully submitted,


Timothy G. Quinn
Law Offices of Quinn & Quinn, P.A.
2309 Devine Street
P.O. Drawer 12589
Columbia, South Carolina 29211
(803) 771-0936
Fax (803) 254-7751
Attorney for Plaintiffs

March ²⁶ 2010
Columbia, South Carolina

Exhibit A

EDUSYSTEMS

P. O. Box 3017

West Columbia, S. C. 29271

Email Drrwdenton@yahoo.com

Phone (803)-955-3606

May 1, 2008

Dr. John K. Waddell, President

Denmark Technical College

500 Solomon Blatt Boulevard

Denmark, South Carolina 29042-0327

Dear Dr. Waddell:

EDUSYSTEMS is a professional firm that specializes in developing and implementing high quality college and university products and services. The firm helps strategically position institutions to exploit their unique strengths and programming opportunities. The core competency of EDUSYSTEMS is to provide high quality, long-term, entrepreneurial oriented, and high profile program and service concepts. The contract will begin May 15, 008 and conclude September 30, 2008.

The EDUSYSTEMS proposal consists of three segments. The first segment will focus on the Nursing and Allied Health Program by beginning the implementation of the recommendations set forth in the April 16, 2008 EDUSYSTEMS report. Included are curriculum analysis based on the student success with the NCLEX-PN exam; beginning the State Board of Nursing accreditation document; initiating searches for appropriate credit allied health programs; and preparing students for the NCLEX-PN EXAM. The second segment of the proposal is to examine the feasibility of developing an agriculture/agribusiness degree program. The third segment will begin the analysis of the STAR Program for review by the Southern Association of Colleges and Schools (SACS). All three segments will require the development of faculty and administrator task forces.

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Segment 1: Begin Implementation of Nursing and Allied Health Recommendations:

- Begin guiding Nursing and Allied Health faculty with developing the State Board of Nursing accreditation document
- Assess the August 2008 NCLEX-PN exam results and begin guiding nursing curriculum analysis and improvement initiatives;
- Guide nursing faculty with securing and implementing a post graduate NCLEX-PN exam review initiative.

Segment Two: Begin Feasibility Analysis for Agriculture/Agribusiness Program:

- Develop and facilitate interdepartmental and cross departmental task force comprised of faculty and administrators;
- Guide the task force in identifying similar programs in two year colleges;
- Begin benchmarking existing curriculum and campus resources to determine strengths and weaknesses currently present that can help or hinder the development of an Agriculture/Agribusiness;
- Create and involve a responsive advisory board;

Segment Three: Begin Analysis of STAR Program for SACS Review:

- Develop and facilitate of interdepartmental and cross departmental task force; comprised of faculty and administrators to critically examine the STAR Program;
- Review existing SACS recommendations for the STAR Program;
- Examine current outcome assessment mechanisms and current level/quality of data generation;

PAYMENT SCHEDULE

The program is based on a four month and two week timeframe; from May 15, 2008 to September 30, 2008.

1. Professional Fee Per Month - \$10,500.00
2. Specialty Consultants as Needed - up to \$6,000.00

ACCEPTED BY:

Dr. John K. Waddell, President

Denmark Technical College

Date

Dr. R. W. Denton, EDUSYSTEMS

Date

Dr. John P. May, EDUSYSTEMS

Date

00 21

Exhibit B

EDUSYSTEMS

P. O. Box 3017

West Columbia, S. C. 29271

Phone (803)-955-3606

Email Drrwdenton@yahoo.com

May 1, 2008

Dr. John K. Waddell, President

Denmark Technical College

500 Solomon Blatt Boulevard

Denmark, South Carolina 29042-0327

Dear Dr. Waddell:

EDUSYSTEMS is a professional firm that specializes in developing and implementing high quality college and university products and services. The firm helps strategically position institutions to exploit their unique strengths and programming opportunities. The core competency of EDUSYSTEMS is to provide high quality, long-term, entrepreneurial oriented, and high profile program and service concepts. The contract is intended to be covered by Title III funds and will begin October 1, 2008 and conclude September 30, 2009.

The EDUSYSTEMS proposal consists of four segments. The first segment of the proposal involves consulting directly with the President. The segment also encompasses EDUSYSTEMS guiding the top leadership of the institution in strategic initiative recognition and implementation. The second segment focuses on the Nursing and Allied Health Program and includes developing the State Board of Nursing approval document and implementing the recent EDUSYSTEMS recommendations. The third segment of the proposal is to establish an effective baseline in order to ensure the integrity of future academic enhancement efforts. The baseline is intended to be a living document that can expand to encompass future areas for performance enhancement as the institution undertakes holistic academic reform. The fourth segment is to assure that existing workforce development efforts are accurately and completely recorded and reported. Mindful that accrediting bodies consider that curricular related issues and changes reside in the collective actions of the faculty, EDUSYSTEMS will undertake critical

portions of the proposal by facilitating newly formed inter and cross departmental faculty and staff task forces.

Segment One: Strategic Initiatives:

- Consult directly with the President on mission critical issues such as:
 1. Analysis of current tuition and make recommendations for increasing or retaining the current fee;
 2. Analysis of selected programs of study to determine financial viability of each and where indicated recommend constructing and charging a laboratory or clinical fee to supplement tuition;
- Guide top leadership with identifying, addressing, and implementing strategic initiatives;
- Assist with the development and implementation of a partnership with Denmark Technical College and Medical University of South Carolina that will:
 1. Assist entities in the service area with grant writing for allied health services;
 2. Provide students at the College and from the service area with obtaining higher degree pathways in health related disciplines;
 3. Develop health related infrastructure in the service area;
 4. Provide rural health initiatives.
- Guide top leadership of the institution with maintaining progress toward satisfying Southern Association of Colleges and Schools (SACS) requirements in areas such as:
 1. STAR Program;
 2. Institutional and major programs' mission statement congruence;
 3. Currency of progress with required SACS actions.

Segment Two: Nursing and Allied Health:

- Guide Nursing and Allied Health faculty with developing the State Board of Nursing approval/accreditation document
- Assess the August 2008 NCLEX-PN exam results and begin guiding nursing curriculum analysis and improvement initiatives;
- Guide nursing faculty with securing and implementing a post graduate NCLEX-PN exam review initiative;
- Determine feasibility of establishing a two year Registered Nurse program.

Segment Three: Review and Analysis of Opportunities for Academic Reform and Advancement

- Begin initial review of individual programs of study progress with obtaining, maintaining, and/or meeting discipline specific/professional specific accreditation;

- Review, analyze, and assure the college parallel/transfer program is properly aligned with existing South Carolina State University articulation agreements and the new and University of South Carolina Bridge Program;
- Determine feasibility of developing new or modifying existing credit programs in hospitality management, agriculture/agribusiness, various health areas, and other technically based areas of workforce development need.
- Develop and facilitate of interdepartmental and cross departmental General Education/Transitional Studies Task Force comprised of faculty and administrators;
- Guide the General Education/Transitional Studies Task Force in critically analyzing, adopting, and/or developing a mission statement for the General Education Core. Assure that this mission statement is properly aligned with the Institution's mission and those of other departments;
- Review and analyze the General Education/Transitional Studies core for currency, consistency, and flexibility;
- Benchmark the core requirements in the various programs of study to those of aspirant institutions;

Segment Four: Identifying Existing Workforce Development Efforts

- Review existing non-credit programs and public service events for proper capture of institutional credit;
- Identify workforce development activities not currently reported;
- Recommend reporting/recording procedures to accurately reflect total institutional efforts;
- Establish a mechanism for investigating and determining workforce development at needs at Savannah River Site;
- Establish new or improve existing mechanisms (both on and off campus) for improving business relations by determining new areas that require workforce development (i.e., Duke Power/SCANA lineman raining and technically related workforce development training).

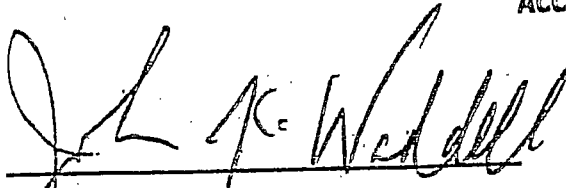
PAYMENT SCHEDULE

The program is based on a twelve month timeframe; from October 1, 2008 to September 30, 2009.

1. Professional Fee Per Month - \$10,500.00
2. Yearly Specialty Consultants as Needed - up to \$16,000.00

Payments will be issued on a monthly basis.

ACCEPTED BY:



Dr. John K. Waddell, President
Denmark Technical College

10-13-08

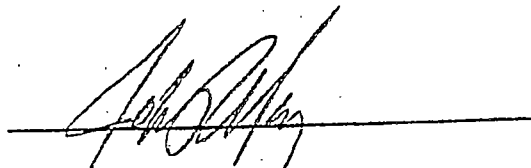
Date



Dr. R. W. Denton, EDUSYSTEMS

10-13-08

Date



Dr. John P. May, EDUSYSTEMS

10-13-08

Date

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

Dr. Robert W. Denton and
Dr. John May,
D/B/A Edusystems, a general partnership,

Plaintiffs,

v.

Denmark Technical College and South
Carolina State Board for Technical and
Comprehensive Education,

Defendants.

COPY
IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

C.A. No. 2010-CP-40-02092

**ANSWER AND AFFIRMATIVE
DEFENSES; AND COUNTERCLAIM OF
DENMARK TECHNICAL COLLEGE**

Defendant Denmark Technical College (hereinafter "DTC" or "the College") by and through its undersigned attorney, hereby responds to the Complaint of Dr. Robert W. Denton and Dr. John May, D/B/A Edusystems, a general partnership, (hereinafter "Plaintiffs" or "Edusystems"), in accordance with the numbered paragraphs thereof, as follows:

1. The allegations of paragraph 1 are admitted on information and belief.
2. Admitted on information and belief.
3. On information and belief, DTC admits that Edusystems is a general partnership. The remaining allegations of paragraph 3 are denied.
4. DTC admits only that it is an institution that provides post-secondary education in the counties of Bamberg and Barnwell. DTC denies the remaining allegations of paragraph 4.
5. Concerning the allegations of the first sentence of paragraph 5, DTC denies any implication that Defendant South Carolina State Board for Technical and Comprehensive Education ("Board") "operates" the College. The allegations of the second

sentence of paragraph 5 purport to characterize the terms of a statutory provision (§ 59-53-50(1)), which speak for themselves, and therefore no further response is required. The allegations of the third sentence of paragraph 5 asserting that the Board is located in Richland County are denied.

6. Denied. Venue is proper in Bamberg County.

7. Denied.

8. The allegations of the first two sentences of paragraph 8 refer to a written document, the terms of which speak for themselves, and no further response is required. However, DTC denies any implication that the alleged contract or contracts are valid or enforceable. DTC denies remaining allegations of paragraph 8.

9. The allegations of the first sentence of paragraph 9 are denied. The remaining allegations of paragraph 9 refer to written documents, the terms of which speak for themselves, and no further response is required.

10. The allegations of the first two sentences of paragraph 10 refer to written documents, the terms of which speak for themselves, and no further response is required. The allegations of the third sentence of paragraph 10 are denied.

11. Denied.

12. DTC admits the allegations of the first sentence of paragraph 12. The remaining allegations of paragraph 12 are denied.

13. Denied.

14. Denied.

15. DTC hereby incorporates by reference its answers to paragraphs 1-14 of the Complaint.

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16. The allegations of paragraph 16 purport to characterize a written document, the terms of which speak for themselves, and no further response is required. However, DTC denies that the alleged contract is valid.

17. Denied.

18. Denied as stated. DTC decided not to pay Edusystems for the period alleged because Edusystems either performed no services or performed no services of value, as required by the alleged contract.

19. DTC hereby incorporates by reference its answers to paragraphs 1-19 of the Complaint.

20. Denied.

21. Denied.

22. Denied.

23. DTC hereby incorporates by reference its answers to paragraphs 1-22 of the Complaint.

24. The allegations of paragraph 24 purport to characterize the provisions of a statute (§ 59-53-50(1)), the terms of which speak for themselves, and no further response is required.

25. Denied.

26. Denied.

PLAINTIFFS' PRAYER FOR RELIEF

The allegations set forth in Plaintiffs' prayer constitute a demand for relief, to which no responsive pleading is required. To the extent a responsive pleading is required, DTC denies that Plaintiffs are entitled to the relief they seek.

AFFIRMATIVE DEFENSES

FIRST DEFENSE

The Complaint fails, in whole or in part, to state facts sufficient to constitute a cause of action.

SECOND DEFENSE

The contracts relied upon were procured in violation of State procurement requirements, and without authorization and approval by DTC's governing board, and, therefore, are invalid, void, and/or voidable.

THIRD DEFENSE

The alleged contracts were obtained by Plaintiffs through their fraudulent and conspiratorial acts.

FOURTH DEFENSE

Plaintiffs' claims are barred by the doctrine of unclean hands.

FIFTH DEFENSE

Plaintiffs' claims are barred by a failure of consideration.

SIXTH DEFENSE

Plaintiffs' breach of contract operates as a discharge of Defendant's remaining obligation.

COUNTERCLAIM

Defendant/Counterclaimant Denmark Technical College ("DTC" or "the College") alleges the following in its Counterclaim against Plaintiffs/Counterclaim Defendants, Dr. Robert W. Denton and Dr. John May, D/B/A Edusystems, a general partnership.

A. DTC is a public, post-secondary, two-year educational institution, located in Bamberg County.

B. Plaintiffs/Counterclaim Defendants have done business with DTC in Bamberg County.

C. Venue for Plaintiffs/Counterclaim Defendants' action and this Counterclaim is proper in Bamberg County.

D. Counterclaim/Defendants Denton and May (sometimes hereinafter "Denton & May"), by and between themselves and Dr. John Waddell, DTC's former President, all of whom have long-term, prior relationships, combined and conspired to cause DTC to enter into an agreement or agreements with Denton & May for the provision of consulting services for the sole benefit and enrichment of Counterclaim/Defendants and Waddell, without compliance with State procurement requirements or approval and authorization of DTC's governing body, the Area Commission for DTC.

E. On October 13, 2008, Waddell, purportedly on behalf of DTC, signed two documents that purport to be contracts for services under which Denton & May sue. Copies of the alleged agreements are attached hereto as **Exhibits A and B**. The first alleged contract retroactively covers the period May 15 – September 30, 2008. The second alleged contract is for the period October 1, 2008 – September 30, 2009. Both alleged agreements call for payment by DTC to Denton & May of a "professional fee" per month of \$10,500.00.

F. With the full knowledge and direct involvement and participation of Waddell, Denton & May knowingly and intentionally failed wholly or substantially to perform or complete the consulting services contracted for.

G. Despite their total or near total failure to perform, as part of the conspiracy between and among Denton & May and Waddell, Waddell issued or caused to be issued, in violation of normal and required pay practices, Direct Expenditure Vouchers (D.E.V.s), allowing and requiring Counterclaim/Defendants to be paid for no services rendered or none of value. Pursuant to said D.E.V.s, Denton & May were paid \$130,000.00 during the periods in question, thorough May 2009.

H. Upon the suspension and subsequent termination on August 3, 2009, of Waddell as President of the College, the Interim President of DTC directed Counterclaim/Defendants to stop all work under the alleged contract. At the direction of the Interim President, Denton & May have not rendered any purported services under the contract since mid-July 2009. DTC has refused repeated demands by Denton & May for payment through September 2009.

I. DTC terminated what relationship existed with Counterclaim/Defendants as of mid-July 2009 when Denton & May were unable to provide a satisfactory explanation regarding the services they had rendered and what had been achieved under the alleged agreements.

FIRST CAUSE OF ACTION (CIVIL CONSPIRACY)

J. DTC realleges and incorporates by reference all preceding allegations of this Counterclaim as if fully set forth here.

K. Denton & May by and between themselves and Waddell combined and conspired for the purpose of taking money from DTC and converting it to their own use, thereby financially injuring the College, in the following particulars, among others: failing to disclose prior, long-term relationships between the co-conspirators; procuring and entering into contracts

for services with knowing and intentional failure to comply with State procurement requirements; knowing and conscious failure to seek approval and authorization of said contracts with the Area Commission of DTC; entering into said agreements knowing that services of value would not be rendered and contract objectives not accomplished, in exchange for "professional fees" totaling \$130,000.

L. At all times material, Denton & May knew or should have known that their actions, in conspiracy with Waddell, would cause financial damage to DTC through the unjustified payment of professional fees that were never earned.

M. As a proximate result of Counterclaim/Defendants' and Waddell's conspiracy against DTC, the College has incurred special damages including but not limited to the following: loss of monies dedicated to the operation of the College and its educational programs; loss of accomplishment of educational projects and goals as contracted for; such other damages as may be proved at trial.

N. DTC is entitled to an appropriate award of punitive damages due to the conspiracy undertaken by Counterclaim/Defendants and Waddell.

SECOND CAUSE OF ACTION (BREACH OF CONTRACT)

O. DTC realleges and incorporates by reference all preceding allegations of this Counterclaim as if fully set forth here.

P. The acts of Denton & May as set forth above constitute a breach of its agreements with DTC, including a breach of the implied covenant of good faith and fair dealing which is implicit in all contracts in South Carolina.

Q. As a direct and proximate result of the acts and omissions of Denton & May, they are liable to DTC for actual damages in the amount of \$130,000, plus incidental and consequential damages, including costs, interest, and attorney's fees.

THIRD CAUSE OF ACTION (BREACH OF CONTRACT ACCOMPANIED BY A FRAUDULENT ACT)

R. DTC realleges and incorporates by reference all preceding allegations of this Counterclaim as if fully set forth here.

S. In addition to and accompanying their breach of consulting agreements, by and through the acts and omissions set forth above, including, but not limited to the false and improper procurement of said contracts with the intention of never rendering services of value, Denton & May and Waddell committed fraudulent acts.

T. As a direct and proximate result of this breach of agreement accompanied by fraudulent acts, DTC has suffered and continues to suffer direct and actual damages, consequential damages, and incidental damages in an amount to be determined by the Court and jury. In addition, DTC is entitled to an award of punitive damages against Denton & May.

FOURTH CAUSE OF ACTION (UNJUST ENRICHMENT)

U. DTC realleges and incorporates by reference all preceding allegations of this Counterclaim as if fully set forth here.

V. Denton & May have been enriched at the expense of DTC and have equitable obligations to make restitution to the College in an amount equal to the unjust enrichment of Denton & May.

FIFTH CAUSE OF ACTION (UNFAIR AND DECEPTIVE TRADE PRACTICES)

W. DTC realleges and incorporates by reference all preceding allegations of this Counterclaim as if fully set forth here.

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X. The acts and omissions of Denton & May as set forth above constitute unfair and deceptive acts or practices in trade or commerce, which are prohibited by the provisions of the South Carolina Unfair Trade Practices Act, S.C. Code Ann. § 39-5-10 *et. seq.*

Y. Denton & May's conduct of unfair deceptive acts and practices has had an adverse effect on the public interest and/or the potential for repetition in that Counterclaim/Defendants are in the business of providing consulting services to public educational institutions and the citizens of the State of South Carolina.

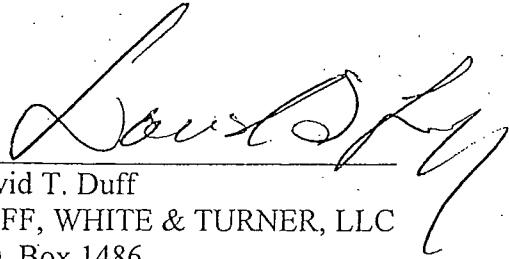
Z. It is adverse to the public policy of the State of South Carolina to permit Denton & May to continue this conduct, and such acts constitute unfair methods of competition or deceptive acts or practices in the conduct of trade or commerce.

AA. As a direct and proximate result of the willful, deceptive and unfair trade practices of Denton & May, DTC has suffered actual damages and is entitled to an award of actual and treble damages, attorney's fees, and the costs of this action.

Wherefore, Defendant/Counterclaimant Denmark Technical College prays for judgment against Counterclaim/Defendants, Dr. Robert W. Denton and Dr. John May, D/B/A Edusystems, a general partnership, for actual damages of \$130,000.00, plus incidental and consequential damages, treble damages, and attorney's fees on the unfair trade practices cause of action, together with the costs of this action, interest, and for such other and further relief as this Court deems just and proper.

[SIGNATURE BLOCK ON NEXT PAGE]

By:



David T. Duff
DUFF, WHITE & TURNER, LLC
P.O. Box 1486
Columbia, SC 29202
Telephone: 803-790-0603
Facsimile: 803-790-0605

Thornwell F. Sowell
Robert E. Tyson, Jr.
SOWELL GRAY, STEPP & LAFFITTE, LLC
P.O. Box 11449
Columbia, SC 29211
Telephone: 803-929-1400
Facsimile: 803-929-0300

Attorneys for Defendant Denmark Technical
College

May 20, 2010
Columbia, South Carolina

00 36

EXHIBIT A

Segment 1: Begin Implementation of Nursing and Allied Health Recommendations:

- Begin guiding Nursing and Allied Health faculty with developing the State Board of Nursing accreditation document
- Assess the August 2008 NCLEX-PN exam results and begin guiding nursing curriculum analysis and improvement initiatives;
- Guide nursing faculty with securing and implementing a post graduate NCLEX-PN exam review initiative.

Segment Two: Begin Feasibility Analysis for Agriculture/Agribusiness Program:

- Develop and facilitate interdepartmental and cross departmental task force comprised of faculty and administrators;
- Guide the task force in identifying similar programs in two year colleges;
- Begin benchmarking existing curriculum and campus resources to determine strengths and weaknesses currently present that can help or hinder the development of an Agriculture/Agribusiness;
- Create and involve a responsive advisory board;

Segment Three: Begin Analysis of STAR Program for SACS Review:

- Develop and facilitate of interdepartmental and cross departmental task force; comprised of faculty and administrators to critically examine the STAR Program;
- Review existing SACS recommendations for the STAR Program;
- Examine current outcome assessment mechanisms and current level/quality of data generation;

PAYMENT SCHEDULE

The program is based on a four month and two week timeframe; from May 15, 2008 to September 30, 2008.

1. Professional Fee Per Month - \$10,500.00
2. Specialty Consultants as Needed – up to \$6,000.00

ACCEPTED BY:

Dr. John K. Waddell, President

Denmark Technical College

Date

Dr. R. W. Denton, EDUSYSTEMS

Date

Dr. John P. May, EDUSYSTEMS

Date

00 39

EXHIBIT B

EDUSYSTEMS**P. O. Box 3017****West Columbia, S. C. 29271****Phone (803)-955-3606****Email Drrwdenton@yahoo.com****May 1, 2008****Dr. John K. Waddell, President****Denmark Technical College****500 Solomon Blatt Boulevard****Denmark, South Carolina 29042-0327****Dear Dr. Waddell:**

EDUSYSTEMS is a professional firm that specializes in developing and implementing high quality college and university products and services. The firm helps strategically position institutions to exploit their unique strengths and programming opportunities. The core competency of EDUSYSTEMS is to provide high quality, long-term, entrepreneurial oriented, and high profile program and service concepts. The contract is intended to be covered by Title III funds and will begin October 1, 2008 and conclude September 30, 2009.

The EDUSYSTEMS proposal consists of four segments. The first segment of the proposal involves consulting directly with the President. The segment also encompasses EDUSYSTEMS guiding the top leadership of the institution in strategic initiative recognition and implementation. The second segment focuses on the Nursing and Allied Health Program and includes developing the State Board of Nursing approval document and implementing the recent EDUSYSTEMS recommendations. The third segment of the proposal is to establish an effective baseline in order to ensure the integrity of future academic enhancement efforts. The baseline is intended to be a living document that can expand to encompass future areas for performance enhancement as the institution undertakes holistic academic reform. The fourth segment is to assure that existing workforce development efforts are accurately and completely recorded and reported. Mindful that accrediting bodies consider that curricular related issues and changes reside in the collective actions of the faculty, EDUSYSTEMS will undertake critical

portions of the proposal by facilitating newly formed inter and cross departmental faculty and staff task forces.

Segment One: Strategic Initiatives:

- Consult directly with the President on mission critical issues such as:
 1. Analysis of current tuition and make recommendations for increasing or retaining the current fee;
 2. Analysis of selected programs of study to determine financial viability of each and where indicated recommend constructing and charging a laboratory or clinical fee to supplement tuition;
- Guide top leadership with identifying, addressing, and implementing strategic initiatives;
- Assist with the development and implementation of a partnership with Denmark Technical College and Medical University of South Carolina that will:
 1. Assist entities in the service area with grant writing for allied health services;
 2. Provide students at the College and from the service area with obtaining higher degree pathways in health related disciplines;
 3. Develop health related infrastructure in the service area;
 4. Provide rural health initiatives.
- Guide top leadership of the institution with maintaining progress toward satisfying Southern Association of Colleges and Schools (SACS) requirements in areas such as:
 1. STAR Program;
 2. Institutional and major programs' mission statement congruence;
 3. Currency of progress with required SACS actions.

Segment Two: Nursing and Allied Health:

- Guide Nursing and Allied Health faculty with developing the State Board of Nursing approval/accreditation document
- Assess the August 2008 NCLEX-PN exam results and begin guiding nursing curriculum analysis and improvement initiatives;
- Guide nursing faculty with securing and implementing a post graduate NCLEX-PN exam review initiative;
- Determine feasibility of establishing a two year Registered Nurse program.

Segment Three: Review and Analysis of Opportunities for Academic Reform and Advancement

- Begin initial review of individual programs of study progress with obtaining, maintaining, and/or meeting discipline specific/professional specific accreditation;

- Review, analyze, and assure the college parallel/transfer program is properly aligned with existing South Carolina State University articulation agreements and the new and University of South Carolina Bridge Program;
- Determine feasibility of developing new or modifying existing credit programs in hospitality management, agriculture/agribusiness, various health areas, and other technically based areas of workforce development need.
- Develop and facilitate of interdepartmental and cross departmental General Education/Transitional Studies Task Force comprised of faculty and administrators;
- Guide the General Education/Transitional Studies Task Force in critically analyzing, adopting, and/or developing a mission statement for the General Education Core. Assure that this mission statement is properly aligned with the Institution's mission and those of other departments;
- Review and analyze the General Education/Transitional Studies core for currency, consistency, and flexibility;
- Benchmark the core requirements in the various programs of study to those of aspirant institutions;

Segment Four: Identifying Existing Workforce Development Efforts

- Review existing non-credit programs and public service events for proper capture of institutional credit;
- Identify workforce development activities not currently reported;
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- Establish a mechanism for investigating and determining workforce development at needs at Savannah River Site;
- Establish new or improve existing mechanisms (both on and off campus) for improving business relations by determining new areas that require workforce development (i.e., Duke Power/SCANA lineman raining and technically related workforce development training).

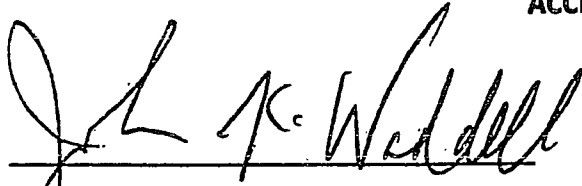
PAYMENT SCHEDULE

The program is based on a twelve month timeframe; from October 1, 2008 to September 30, 2009.

1. Professional Fee Per Month - \$10,500.00
2. Yearly Specialty Consultants as Needed – up to \$16,000.00

Payments will be issued on a monthly basis.

ACCEPTED BY:



Dr. John K. Waddell, President
Denmark Technical College

10-13-08

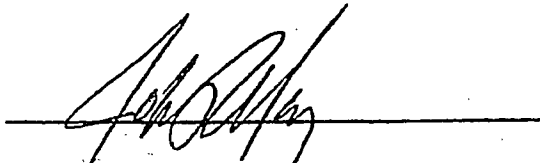
Date



Dr. R. W. Denton, EDUSYSTEMS

10-13-08

Date



Dr. John P. May, EDUSYSTEMS

10-13-08

Date

00 44

STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

Dr. Robert W. Denton and)
Dr. John P. May,)
D/B/A Edusystems, a general partnership,)

Plaintiffs,)

v.)

Denmark Technical College and)
South Carolina State Board for Technical)
and Comprehensive Education,)

Defendants.)

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

Case No.: 2010-CP-40-02092

PLAINTIFFS' REPLY TO DEFENDANT,
DENMARK TECHNICAL COLLEGE,
COUNTERCLAIM

2010 JUL 28 PM 4:39
JEANE C. W. MURPHY
& G.S.

FILED

Plaintiffs/Counterclaim Defendants ("Edusystems") by and through their undersigned attorney, hereby respond to the Counterclaim of Denmark Technical College ("DTC"):

1. The allegations of paragraph A are admitted in that DTC is a public, post-secondary, two year educational institution, located in Bamberg County.
Edusystems denies that DTC's operations are limited to Bamberg County.
2. Paragraph B is denied, in that the Plaintiffs have done business with the Defendant in multiple counties, if not statewide, and the Plaintiffs' efforts have benefit the Defendant statewide and even nationally.
3. Paragraph C is denied as written. Venue is proper in Richland County.
4. Paragraph D is denied as written.
5. Paragraph E is denied as written. The contracts between Plaintiffs and Defendants speak for themselves.
6. Paragraph F is denied as written.
7. Paragraph G is denied as written and the Plaintiffs reiterate their Complaint.

8. The allegations of the first two sentences of paragraph H are denied. The allegations of the third sentence of paragraph H are admitted.
9. The allegations of paragraph I are denied.
10. The Plaintiffs/Counterclaim Defendants incorporate by reference their answers to paragraphs A-J of the Counterclaim.
11. The allegations of paragraphs K; L, M and N are denied.
12. The Plaintiffs/Counterclaim Defendants incorporate by reference their answers to paragraphs A-O of the Counterclaim.
13. The allegations of paragraphs P and Q are denied.
14. The Plaintiffs/Counterclaim Defendants incorporate by reference their answers to paragraphs A-R of the Counterclaim.
15. The allegations of paragraphs S and T are denied.
16. The Plaintiffs/Counterclaim Defendants incorporate by reference their answers to paragraphs A-U of the Counterclaim.
17. The allegations of paragraph V are denied.
18. The Plaintiffs/Counterclaim Defendants incorporate by reference their answers to paragraphs A-W of the Counterclaim.
19. The allegations of paragraphs X, Y, Z and AA are denied.

DEFENDANT/COUNTERCLAIM PLAINTIFF'S PRAYER FOR RELIEF

The allegations set forth in Defendant/Counterclaim Plaintiff's prayer constitute a demand for relief, to which no responsive pleading is required. To the extent a responsive pleading is required, Plaintiffs/Counterclaim Defendants deny that Defendant/Counterclaim Plaintiffs are entitled to the relief it seeks.

AFFIRMATIVE DEFENSES

FIRST DEFENSE

(Failure to State a Claim)

The Counterclaim fails, in whole or in part, to state facts sufficient to constitute a cause of action.

SECOND DEFENSE

(Actual or Apparent Authority)

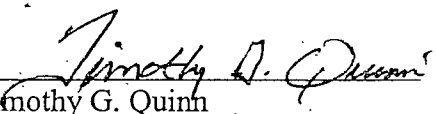
Dr. Waddell, as president of DTC, had actual or apparent authority to enter into contracts on behalf of DTC. Edusystems is not responsible for any alleged errors in procurement or accounting made by DTC.

THIRD DEFENSE

(Bidding Procurement Not Required)

Prior to the Plaintiffs' entering into the contracts with the Defendants, Plaintiffs were assured that the Defendants would properly handle funding for such contracts.

Respectfully submitted,



Timothy G. Quinn
William M. Saltzman
Law Offices of Quinn & Quinn
2309 Devine Street
P.O. Drawer 12589
Columbia, South Carolina 29211
(803) 771-0936
Fax (803) 254-7751
Attorneys for Plaintiffs

June 18, 2010
Columbia, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

Dr. Robert W. Denton and Dr. John May,
D/B/A Edusystems, a general partnership,

Plaintiffs and Counterclaim Defendants,
v.

South Carolina State Board for Technical and
Comprehensive Education,

Defendant,
and Denmark Technical College,

Defendant, Counterclaim Plaintiff
and Third-Party Plaintiff,

v.

Dr. John K. Waddell,

Third-Party Defendant.

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

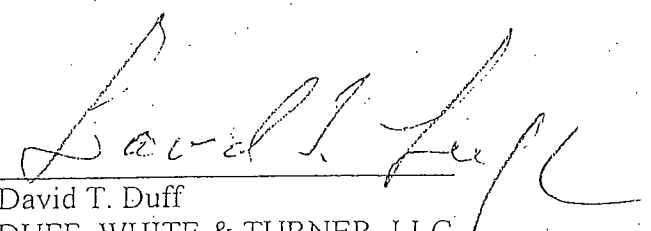
C.A. No. 2010-CP-40-02092

SUMMONS

TO THE THIRD-PARTY DEFENDANT DR. JOHN K. WADDELL, ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Third-Party Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your answer to said Third-Party Complaint on the Third-Party Plaintiff, Denmark Technical College (hereinafter "DTC"), at the offices of DTC's attorneys, 3700 Forest Drive, Suite 404, P.O. Box 1486, Columbia, SC, 29202, within thirty (30) days after the service hereof, exclusive of the day of such service, and if you fail to answer the Third-Party Complaint within the time aforesaid, judgment by default will be rendered against you for the relief demanded in the Third-Party Complaint.

(SIGNATURE BLOCK ON NEXT PAGE)

By: 

David T. Duff
DUFF, WHITE & TURNER, LLC
P.O. Box 1486
Columbia, SC 29202
Telephone: 803-790-0603
Facsimile: 803-790-0605

Thornwell F. Sowell
Robert E. Tyson, Jr.
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Telephone: 803-929-1400
Facsimile: 803-929-0300

Attorneys for Defendant/Third-Party Plaintiff
Denmark Technical College

January 4, 2011
Columbia, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

Dr. Robert W. Denton and Dr. John May,
D/B/A Edusystems, a general partnership,

Plaintiffs and Counterclaim Defendants,
v.

South Carolina State Board for Technical and
Comprehensive Education,

Defendant,
and Denmark Technical College,

Defendant, Counterclaim Plaintiff
and Third-Party Plaintiff,

v.

Dr. John K. Waddell,

Third-Party Defendant.

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

C.A. No. 2010-CP-40-02092

THIRD-PARTY COMPLAINT

Pursuant to Rule 14(a), SCRCP, Defendant and Third-Party Plaintiff, Denmark Technical College ("DTC" or "the College"), by and through its undersigned counsel, hereby complains against the Third-Party Defendant, Dr. John K. Waddell ("Waddell"), alleging that Waddell is liable to DTC for all of the claims made against DTC by Plaintiffs Dr. Robert W. Denton and Dr. John May ("Denton & May"), D/B/A Edusystems, a general partnership, as follows:

1. Defendant and Third-Party Plaintiff DTC is a public, post-secondary, two year education institution, located in Denmark, South Carolina.
2. Upon information and belief, Waddell is a resident of Lexington County, South Carolina, residing at 406 Hempsted Road, Columbia, SC, 29210.

3. Venue is proper in Bamberg County as DTC is located in Bamberg County and Waddell, as the College's former President, and Denton & May have done business with DTC in Bamberg County.

4. Waddell, by and between himself, and Denton & May, all of whom have long-term, prior relationships, combined and conspired to cause DTC to enter into an agreement or agreements with Denton & May for the provision of consulting services for the sole benefit and enrichment of Denton & May and Waddell, without compliance with State procurement requirements or approval and authorization of DTC's governing body, the Area Commission for DTC.

5. On October 13, 2008, Waddell, purportedly on behalf of DTC, signed one document that purports to be a contract for services under which Denton & May sue DTC and the South Carolina State Board for Technical and Comprehensive Education. Denton & May also sue under an unsigned document dated May 1, 2008, that purports to be a contract for services. Copies of the alleged agreements are attached hereto as **Exhibits A and B**. The first alleged contract retroactively covers the period May 15 – September 30, 2008. The second alleged contract is for the period October 1, 2008 – September 30, 2009. Both alleged agreements call for payment by DTC to Denton & May of a "professional fee" per month of \$10,500.00

6. Waddell knowingly made false representations to DTC's agents and employees that Denton & May would perform consultant services for various departments to enhance or support the College's programmatic activities.

7. With the full knowledge and direct participation of Waddell, Denton & May knowingly and intentionally failed wholly or substantially to perform or complete the consulting services contracted for.

8. Despite their total or near total failure to perform, as part of the conspiracy between and among Denton & May and Waddell, Waddell issued or caused to be issued, in violation of normal and required pay practices, Direct Expenditure Vouchers (D.E.Vs), allowing and requiring Denton & May to be paid for no services rendered or none of value. Pursuant to said D.E.Vs, Denton & May were paid \$130,000.00 during the periods in question, through May 2009.

9. Upon the suspension and subsequent termination on August 3, 2009, of Waddell as President of the College, the Interim President of DTC directed Denton & May to stop all work under the alleged contract. At the direction of the Interim President, Denton & May have not rendered any purported services under the contract since mid-July 2009. DTC has refused demands by Denton & May for payment through September 2009.

10. DTC terminated what relationship existed with Denton & May when they were unable to provide a satisfactory explanation regarding the services they had rendered and what had been achieved under the alleged agreements.

FOR A FIRST CAUSE OF ACTION
(Civil Conspiracy)

11. DTC realleges and incorporates by reference all preceding allegations of this Third-Party Complaint as if fully set forth herein.

12. Waddell, by and between himself, and Denton & May combined and conspired for the purpose of taking money from DTC and converting it to their own use, thereby financially injuring the College, in the following particulars, among others: failure to disclose prior, long-term relationships between the co-conspirators; procuring and entering into contracts for services with knowing and intentional failure to comply with State procurement requirements; knowing and conscious failure to seek approval and authorization of said contracts with the Area

Commission of DTC; entering into said agreements knowing that services of value would not be rendered and contract objectives not accomplished, in exchange for "professional fees" totaling \$130,000.00.

13. At all times material, Waddell knew or should have known that his actions, in conspiracy with Denton & May, would cause financial damage to DTC through the unjustified payment of professional fees that were never earned.

14. As a proximate result of Waddell's and Denton & May's conspiracy against DTC, the College has incurred special damages including but not limited to the following: loss of monies dedicated to the operation of the College and its educational program; loss of accomplishment of educational projects and goals as contracted for; and such damages as may be proved at trial.

15. DTC is entitled to an appropriate award of punitive damages due to the conspiracy undertaken by Waddell and Denton & May.

FOR A SECOND CAUSE OF ACTION
(CONSTRUCTIVE FRAUD and/or FRAUD)

16. DTC realleges and incorporates by reference all preceding allegations of this Third-Party Complaint as if fully set forth herein.

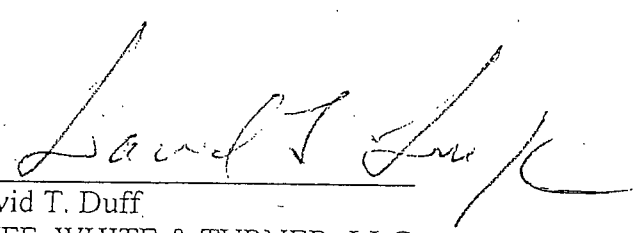
17. Waddell made false representations of material fact to DTC's agents and employees regarding consulting services to be performed by Denton & May.

18. Waddell knew or should have known that the representations which were made to DTC's agents and employees were false, and he intended that his representations be acted upon.

19. DTC was unaware of the falsity of the representations and at the time the representations were made, DTC was unable to discover the falsity of the representations made by Waddell.

20. DTC had a right to rely and did rely on the representations made by Waddell.
21. As a result of Waddell's constructive fraud and/or fraud, DTC has lost \$130,000.00.
22. As a direct and proximate result of Waddell's willful and wanton acts, and without contributing thereto, DTC has suffered actual and punitive damages.

WHEREFORE, Defendant and Third-Party Plaintiff Denmark Technical College prays for judgment against Third-Party Defendant Dr. John K. Waddell for actual damages of \$130,000.00, together with the cost of this action, interest and for such other and future relief as this Court deems just and proper.

By: 

David T. Duff
DUFF, WHITE & TURNER, LLC
P.O. Box 1486
Columbia, SC 29202
Telephone: 803-790-0603
Facsimile: 803-790-0605

Thornwell F. Sowell
Robert E. Tyson, Jr.
SOWELL GRAY, STEPP & LAFFITTE, LLC
P.O. Box 11449
Columbia, SC 29211
Telephone: 803-929-1400
Facsimile: 803-929-0300

Attorneys for Defendant/Third-Party Plaintiff
Denmark Technical College

January 4, 2011
Columbia, South Carolina

Exhibit A

EDUSYSTEMS

P. O. Box 3017

West Columbia, S. C. 29271

Email Drrwdenton@yahoo.com

Phone (803)-955-3606

May 1, 2008

Dr. John K. Waddell, President

Denmark Technical College

500 Solomon Blatt Boulevard

Denmark, South Carolina 29042-0327

Dear Dr. Waddell:

EDUSYSTEMS is a professional firm that specializes in developing and implementing high quality college and university products and services. The firm helps strategically position institutions to exploit their unique strengths and programming opportunities. The core competency of EDUSYSTEMS is to provide high quality, long-term, entrepreneurial oriented, and high profile program and service concepts. The contract will begin May 15, 008 and conclude September 30, 2008.

The EDUSYSTEMS proposal consists of three segments. The first segment will focus on the Nursing and Allied Health Program by beginning the implementation of the recommendations set forth in the April 16, 2008 EDUSYSTEMS report. Included are curriculum analysis based on the student success with the NCLEX-PN exam; beginning the State Board of Nursing accreditation document; initiating searches for appropriate credit allied health programs; and preparing students for the NCLEX-PN EXAM. The second segment of the proposal is to examine the feasibility of developing an agriculture/agribusiness degree program. The third segment will begin the analysis of the STAR Program for review by the Southern Association of Colleges and Schools (SACS). All three segments will require the development of faculty and administrator task forces.

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Segment 1: Begin Implementation of Nursing and Allied Health Recommendations:

- Begin guiding Nursing and Allied Health faculty with developing the State Board of Nursing accreditation document
- Assess the August 2008 NCLEX-PN exam results and begin guiding nursing curriculum analysis and improvement initiatives;
- Guide nursing faculty with securing and implementing a post graduate NCLEX-PN exam review initiative.

Segment Two: Begin Feasibility Analysis for Agriculture/Agribusiness Program:

- Develop and facilitate interdepartmental and cross departmental task force comprised of faculty and administrators;
- Guide the task force in identifying similar programs in two year colleges;
- Begin benchmarking existing curriculum and campus resources to determine strengths and weaknesses currently present that can help or hinder the development of an Agriculture/Agribusiness;
- Create and involve a responsive advisory board;

Segment Three: Begin Analysis of STAR Program for SACS Review:

- Develop and facilitate of interdepartmental and cross departmental task force; comprised of faculty and administrators to critically examine the STAR Program;
- Review existing SACS recommendations for the STAR Program;
- Examine current outcome assessment mechanisms and current level/quality of data generation;

PAYMENT SCHEDULE

The program is based on a four month and two week timeframe; from May 15, 2008 to September 30, 2008.

1. Professional Fee Per Month - \$10,500.00
2. Specialty Consultants as Needed - up to \$6,000.00

ACCEPTED BY:

Dr. John K. Waddell, President

Denmark Technical College

Date

Dr. R. W. Denton, EDUSYSTEMS

Date

Dr. John P. May, EDUSYSTEMS

Date

00 58

Exhibit B

EDUSYSTEMS

P. O. Box 3017

West Columbia, S. C. 29271

Phone (803)-955-3606

Email Drwrdenton@yahoo.com

May 1, 2008

Dr. John K. Waddell, President

Denmark Technical College

500 Solomon Blatt Boulevard

Denmark, South Carolina 29042-0327

Dear Dr. Waddell:

EDUSYSTEMS is a professional firm that specializes in developing and implementing high quality college and university products and services. The firm helps strategically position institutions to exploit their unique strengths and programming opportunities. The core competency of EDUSYSTEMS is to provide high quality, long-term, entrepreneurial oriented, and high profile program and service concepts. The contract is intended to be covered by Title III funds and will begin October 1, 2008 and conclude September 30, 2009.

The EDUSYSTEMS proposal consists of four segments. The first segment of the proposal involves consulting directly with the President. The segment also encompasses EDUSYSTEMS guiding the top leadership of the institution in strategic initiative recognition and implementation. The second segment focuses on the Nursing and Allied Health Program and includes developing the State Board of Nursing approval document and implementing the recent EDUSYSTEMS recommendations. The third segment of the proposal is to establish an effective baseline in order to ensure the integrity of future academic enhancement efforts. The baseline is intended to be a living document that can expand to encompass future areas for performance enhancement as the institution undertakes holistic academic reform. The fourth segment is to assure that existing workforce development efforts are accurately and completely recorded and reported. Mindful that accrediting bodies consider that curricular related issues and changes reside in the collective actions of the faculty, EDUSYSTEMS will undertake critical

portions of the proposal by facilitating newly formed inter and cross departmental faculty and staff task forces.

Segment One: Strategic Initiatives:

- Consult directly with the President on mission critical issues such as:
 1. Analysis of current tuition and make recommendations for increasing or retaining the current fee;
 2. Analysis of selected programs of study to determine financial viability of each and where indicated recommend constructing and charging a laboratory or clinical fee to supplement tuition;
- Guide top leadership with identifying, addressing, and implementing strategic initiatives;
- Assist with the development and implementation of a partnership with Denmark Technical College and Medical University of South Carolina that will:
 1. Assist entities in the service area with grant writing for allied health services;
 2. Provide students at the College and from the service area with obtaining higher degree pathways in health related disciplines;
 3. Develop health related infrastructure in the service area;
 4. Provide rural health initiatives.
- Guide top leadership of the institution with maintaining progress toward satisfying Southern Association of Colleges and Schools (SACS) requirements in areas such as:
 1. STAR Program;
 2. Institutional and major programs' mission statement congruence;
 3. Currency of progress with required SACS actions.

Segment Two: Nursing and Allied Health:

- Guide Nursing and Allied Health faculty with developing the State Board of Nursing approval/accreditation document
- Assess the August 2008 NCLEX-PN exam results and begin guiding nursing curriculum analysis and improvement initiatives;
- Guide nursing faculty with securing and implementing a post graduate NCLEX-PN exam review initiative;
- Determine feasibility of establishing a two year Registered Nurse program.

Segment Three: Review and Analysis of Opportunities for Academic Reform and Advancement

- Begin initial review of individual programs of study progress with obtaining, maintaining, and/or meeting discipline specific/professional specific accreditation;

- Review, analyze, and assure the college parallel/transfer program is properly aligned with existing South Carolina State University articulation agreements and the new and University of South Carolina Bridge Program;
- Determine feasibility of developing new or modifying existing credit programs in hospitality management, agriculture/agribusiness, various health areas, and other technically based areas of workforce development need.
- Develop and facilitate of interdepartmental and cross departmental General Education/Transitional Studies Task Force comprised of faculty and administrators;
- Guide the General Education/Transitional Studies Task Force in critically analyzing, adopting, and/or developing a mission statement for the General Education Core. Assure that this mission statement is properly aligned with the Institution's mission and those of other departments;
- Review and analyze the General Education/Transitional Studies core for currency, consistency, and flexibility;
- Benchmark the core requirements in the various programs of study to those of aspirant institutions;

Segment Four: Identifying Existing Workforce Development Efforts

- Review existing non-credit programs and public service events for proper capture of institutional credit;
- Identify workforce development activities not currently reported;
- Recommend reporting/recording procedures to accurately reflect total institutional efforts;
- Establish a mechanism for investigating and determining workforce development at needs at Savannah River Site;
- Establish new or improve existing mechanisms (both on and off campus) for improving business relations by determining new areas that require workforce development (i.e., Duke Power/SCANA lineman training and technically related workforce development training).

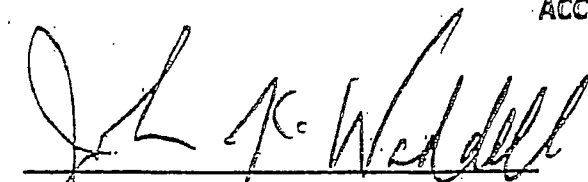
PAYMENT SCHEDULE

The program is based on a twelve month timeframe; from October 1, 2008 to September 30, 2009.

1. Professional Fee Per Month - \$10,500.00
2. Yearly Specialty Consultants as Needed - up to \$16,000.00

Payments will be issued on a monthly basis.

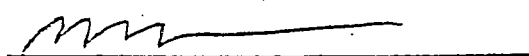
ACCEPTED BY:



Dr. John K. Waddell, President
Denmark Technical College

10-13-08

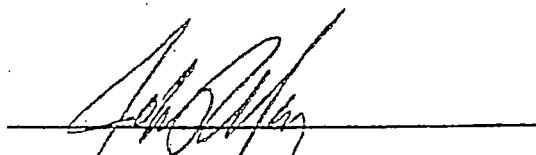
Date



Dr. R. W. Denton, EDUSYSTEMS

10-13-08

Date



Dr. John P. May, EDUSYSTEMS

10-13-08

Date

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STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS

Dr. Robert W. Denton and Dr. John May,
D/B/A Edusystems, a general partnership,

Case No.: 2010-CP-40-02092

Plaintiffs and Counterclaim Defendants,
v.

South Carolina State Board for Technical and
Comprehensive Education,

**THIRD-PARTY ANSWER OF
DR. JOHN K. WADDELL**

Defendant,

And Denmark Technical College,

Defendant, Counterclaim Plaintiff
And Third-Party Plaintiff,

v.

Dr. John K. Waddell,

Third-Party Defendant.

FILED
2011 FEB -3 PM 1:32
LEANNETTE W. McBRIDE
C.C.P. & G.S.
LEXINGTON COUNTY

Third-Party Defendant Dr. John K. Waddell ("Waddell"), by and through his undersigned counsel, answers the Third-Party Complaint of Denmark Technical College ("DTC") and states as follows:

FOR A FIRST DEFENSE

1. Waddell denies each and every allegation of DTC's Third-Party Complaint except as to those specific allegations admitted herein.
2. Waddell admits the allegations of Paragraph 1.
3. Answering Paragraph 2, Waddell denies he is a resident of Lexington County, South Carolina. The remaining allegations of Paragraph 2 are admitted.
4. Waddell admits the allegations of Paragraph 3.
5. The allegations of Paragraphs 4, 5, 6, 7, and 8 are denied.

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6. Answering Paragraph 9, Waddell is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 9, and therefore, they are denied.

7. Answering Paragraph 10, Waddell is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 10, and therefore, they are denied.

FIRST CAUSE OF ACTION
(Civil Conspiracy)

8. Answering the allegations of paragraph 11, Waddell realleges and incorporates his responses to Paragraphs 1 - 10 above as if repeated verbatim herein.

9. Waddell denies the allegations of Paragraphs 12, 13, 14, and 15.

SECOND CAUSE OF ACTION
(Constructive Fraud and/or Fraud)

10. Answering the allegations of paragraph 16, Waddell realleges and incorporates his responses to Paragraphs 1 - 15 above as if repeated verbatim herein.

11. Waddell denies the allegations of Paragraphs 17, 18, 19, 20, 21, and 22.

FOR A SECOND DEFENSE
(Failure to State a Claim)

12. The Third-Party Complaint fails to state facts sufficient to constitute any causes of action against Waddell; therefore, the Court should dismiss the Third-Party Complaint pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure.

FOR A THIRD DEFENSE
(Failure to Plead Fraud with Particularity)

13. The Third-Party Complaint fails to state the circumstances constituting fraud or mistake with particularity; therefore, the Court should strike the constructive fraud and/or fraud

claim from the Third-Party Complaint pursuant to Rule 9(b) of the South Carolina Rules of Civil Procedure.

FOR A FOURTH DEFENSE
(Failure to Adequately Plead Special Damages)

14. The Third-Party Complaint fails to adequately plead special damages for civil conspiracy; therefore the Court should strike the civil conspiracy claim from the Third-Party Complaint pursuant to Rule 9(g) of the South Carolina Rules of Civil Procedure.

FOR A FIFTH DEFENSE
(Reservation of Defenses)

15. DTC's claims are barred by any other matter constituting an avoidance or affirmative defense, and Waddell specifically reserves the right to amend his Third-Party Answer to assert such defense.

GRIFFIN LLC

BY:



James M. Griffin

jmg@jimgriffinlaw.com

Margaret N. Fox

mfox@jimgriffinlaw.com

Post Office Box 999

Columbia, SC 29209

T: (803) 744.0800

F: (803) 744.0805

ATTORNEYS FOR THIRD-PARTY
DEFENDANT WADDELL

Columbia, South Carolina
February 2, 2011

00 66

STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

Dr. Robert W. Denton and)
Dr. John P. May,)
D/B/A Edusystems, a general partnership,)

Plaintiffs,)

v.)

Denmark Technical College and)
South Carolina State Board for Technical)
and Comprehensive Education,)

Defendants.)

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

Case No.:2010-CP-40-02092

NOTICE AND MOTION FOR
SUMMARY JUDGMENT

FILED
2011 MAY -6 PM 4:14
J. L. HARRIS
& G.S.

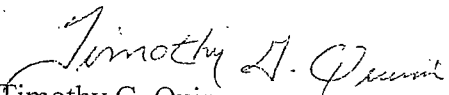
RICHLAND COUNTY
FILED

To: David Duff, Attorney for Denmark Technical College:

Please take notice that ten (10) days from the date of this notice, or as soon thereafter as the Court may schedule, the Plaintiffs intend to move for summary judgment in their favor.

Said motion is based upon the pleadings, various discovery documents, the affidavit attached hereto and subsequent affidavits as may be appropriate.

The undersigned certifies that consulting with opposing counsel would be of no avail.


Timothy G. Quinn
2309 Devine Street
Columbia, SC 29205
(803) 771-0936
Fax (803) 254-7751

May 5, 2011

00 67

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)
)

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

Case No.:2010-CP-40-02092

Dr. Robert W. Denton and)
Dr. John P. May,)
D/B/A Edusystems, a general partnership,)

Plaintiffs,)

v.)

Denmark Technical College and)
South Carolina State Board for Technical)
and Comprehensive Education,)

Defendants.)

AFFIDAVIT IN SUPPORT OF
MOTION FOR
SUMMARY JUDGMENT

2011 MAY -6 PM 4:14
J. A. C. C. P. & G. S.
W. H. MORRIS

RICHLAND COUNTY
FILED

Personally appeared before me, Dr. Robert W. Denton, who being duly sworn, deposes and says:

Following a career in higher education in which I became well versed in all aspects of the field, I was recommended by the Southern Association of Colleges & Schools to Allen University officials. Allen was undergoing its decennial affirmation of accreditation.

The then President of Allen, David Shannon asked me for my assistance and I contracted with Allen to work on this project. While I was involved with Allen, Dr. John Waddell was appointed President. When Allen was successfully in its accreditation efforts, my duties with Allen expanded into academics, administration and finance. At Allen University Dr. John May joined me due to his expertise in non-traditional studies and continuing education.

Together, Dr. May and I formed the Partnership Edusystems because of the realization that many smaller colleges had little or no experience in the workings of the national field of education.

Dr. Waddell subsequently became the President of St. Paul's college in Virginia and contracted with Edusystems as a consultant for the college. St. Paul's was facing similar issues

to those we had resolved at Allen and we were similarly successful there.

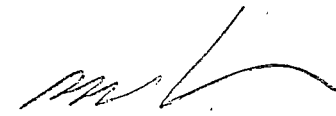
At a later point in time when Dr. Waddell became President of Paul Quinn college in Dallas, Texas he again sought our assistance.

Dr. Waddell became President of Denmark Technical College and realizing that Denmark was faced with issues we had previously resolved at his prior colleges. He contacted Edusystems, he explained his dilemma and we thought that we could be of assistance. We entered into two contracts with Denmark, both signed by Waddell as President of Denmark Technical College. The first contract was for the period May 15, 2008, through September 30, 2008 and the second segmented contract was for the period October 1, 2008 through September 30, 2009.

We completed the first contract and we began work on the second contract. Denmark paid Edusystems in full for the first contract and paid \$84,000.00 on the second contract, leaving a balance of \$42,000.00.

During our involvement with Denmark, either myself or Dr. May had several meetings with the President and the area commission. When Dr. Tobin was appointed interim President of Denmark in August of 2009, he continued our services until we asked for our compensation for June & July. He then stopped returning our calls or responding to our e-mails.

Denmark did not pay us for the months of June, July, August and September of 2009 and Edusystems is due the balance owed which is \$42,000.00.



Dr. R.W. Denton

Sworn to before me this 5th day of
May, 2011.

Laura McLaughlin
Notary Public for South Carolina

May 12, 2018

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STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

Dr. Robert W. Denton and)
Dr. John P. May,)
D/B/A Edusystems, a general partnership,)

Plaintiffs,)

v.)

Denmark Technical College and)
South Carolina State Board for Technical)
and Comprehensive Education,)

Defendants.)

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

Case No.:2010-CP-40-02092

SUPPLEMENT TO PLAINTIFF'S
MOTION FOR SUMMARY JUDGMENT

RECEIVED
2011 JUN 20 PM 4:10
C.C.P. & G.S.
JANET L. BRIDGE

By way of supplement to the Plaintiffs' Motion for Summary Judgment, the Plaintiffs' submit an excerpt from Denmark Technical College.

The Defendant has asserted that the President of Denmark Technical College had no authority to enter into the contract, which is the subject of this action, with the Plaintiffs.

The attached excerpt states that the College President grants final determination and approval for sole source procurement.

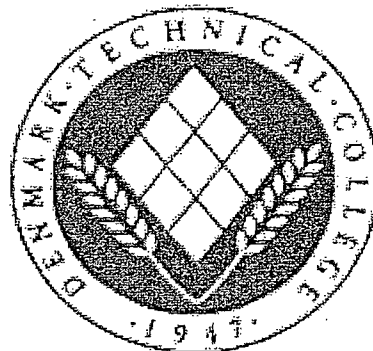
Notwithstanding that it was not the duty of the Plaintiffs to verify the President's authority prior to entering into a contract with Denmark Technical College, it is clear that the President has the final approval.

Respectfully Submitted,

Timothy G. Quinn
Timothy G. Quinn

6/20/11

DENMARK TECHNICAL COLLEGE



PURCHASING POLICIES AND PROCEDURES

(REVISED 8/2007)

1126 SOLOMON BLATT BOULEVARD
POST OFFICE BOX 327
DENMARK, SC 29042
TELEPHONE: (803) 793-5125

a decision in writing within ten days. The decision will state the reasons for the actions taken. a copy of the decision shall be mailed or furnished immediately to the Protestant and any other party intervening.

A decision shall be final and conclusive, unless fraudulent, or unless any person adversely affected by the decision requests a review, in writing, setting forth the grievance, to the procurement Review Panel, within ten days of the decision. The protester may also request an interview with the panel.

In the event a professor should have been awarded the contract under a solicitation but is not, then such party may apply to the Review Panel, the reimbursement of the actual costs, not to exceed five thousand dollars incurred in connection with the solicitation including bid preparation. Upon receipt of such application, the Review Panel may order the computation of a reasonable reimbursement amount and make such recommendations to the board as it deems equitable, including reimbursement of bid preparation costs, not to exceed five thousand dollars, and other relief.

Sole Source Procurement

In accordance with Section 11-35-1560 of the Consolidated Procurement Code, sole source procurement is permitted when a requirement is available from only one Supplier. The following are examples of circumstances which could necessitate sole source procurement:

1. Where the compatibility of equipment, accessories, or replacement parts is the primary consideration;
2. Where a sole supplier's item is needed for trial use or testing;
3. Where a sole supplier item is to be procured for resale;
4. Where public utility services are to be procured; and
5. Where the item is one of a kind.

* To obtain approval for a sole source procurement, the using department must complete a *AJustification for Sole Source Procurement* form to be forwarded to the college president for final determination and approval. These forms may be obtained from the Purchasing Department. (See attachment V.)

STATE OF SOUTH CAROLINA

COUNTY OF BAMBERG

Dr. Robert W. Denton and
Dr. John May,
D/B/A Edusystems, a general partnership,

Plaintiffs,

v.

Denmark Technical College,

Defendant, Counterclaim Plaintiff
and Third-Party Plaintiff,

v.

Dr. John K. Waddell,

Third-Party Defendant.

IN THE COURT OF COMMON PLEAS
SECOND JUDICIAL CIRCUIT

C.A. No. 2011-CP-05-00160

**DENMARK TECHNICAL COLLEGE'S
NOTICE OF MOTION AND MOTION
FOR SUMMARY JUDGMENT**

TO: TIMOTHY G. QUINN, ESQ., COUNSEL FOR PLAINTIFFS; MARGARET N. FOX, ESQ., COUNSEL FOR DR. JOHN K. WADDELL, THIRD-PARTY DEFENDANT

YOU WILL PLEASE TAKE NOTICE that, pursuant to Rule 56, SCRPC, Defendant Denmark Technical College ("the College" or "DTC"), by and through its undersigned counsel, will move before the Presiding Judge of the Second Judicial Circuit, on the 10th day after service hereof, or as soon thereafter as counsel may be heard, for an Order granting the College summary judgment as to all claims and causes of action in Plaintiffs' Complaint.

The basis for this Motion is that there are no genuine issues of material fact, and the Court should grant DTC judgment as a matter of law as to the Complaint, for the following reasons:

1. The alleged agreement between the parties, on which Plaintiffs seek to recover the contract balance of \$42,000 for consulting services, is dated May 1, 2008, but was

00 73

entered into between Plaintiffs and Defendant Waddell, the former President of DTC, on October 13, 2008.

2. That contract is void and/or voidable because it was entered upon in violation of State procurement requirements, to which DTC is subject, and in violation of the College's procurement policies. No competitive process whatsoever was followed. Plaintiffs, in bad faith and in conspiracy with Waddell, attempted after-the-fact to validate the contract as a "sole source" procurement even though Plaintiffs' services were in no way unique and were in no way available from only one source.

3. Furthermore, the contract upon which Plaintiffs rely, covering the period October 1, 2008, to September 30, 2009, called for payment for Plaintiffs' services of a monthly "professional fee" of \$10,500, or \$126,000 over the 12-month period. Such a contract, which constitutes a procurement in excess of \$50,000, required certification by the Materials Manager Office of the State Budget and Control Board. There is no dispute of fact that such certification was ever sought or granted.

4. Due to the contract having been terminated by DTC in July 2009, Plaintiffs performed no services in exchange for the unpaid contract balance they seek to recover.

5. Under State law, such unauthorized award of a contract, an award which is in violation of law, and entered into in bad faith, renders the contract null and void, and mandates that no further payments be made under the contract.

6. Accordingly, Plaintiffs cannot, as a matter of law, recover on their claims under the Complaint for the contract balance of \$42,000.

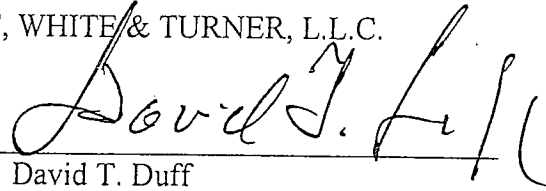
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This Motion is based upon the pleadings, papers, and records filed or to be filed in this action, together with the applicable statutory and case law of South Carolina, and a Memorandum of Law, which will be filed with the Court by November 16, 2011, as the Motion is scheduled to be heard on November 21, 2011.

Respectfully submitted,

DUFF, WHITE & TURNER, L.L.C.

By:


David T. Duff

P.O. Box 1486
Columbia, South Carolina 29202
Telephone: 803-790-0603
Facsimile: 803-790-0605

Robert E. Tyson, Jr.
SOWELL GRAY, STEPP & LAFFITTE,
LLC
P.O. Box 11449
Columbia, SC 29211
Telephone: 803-929-1400
Facsimile: 803-929-0300

Attorneys for Defendant Denmark Technical
College

October 26, 2011
Columbia, South Carolina

00 75

) IN THE COURT OF COMMON PLEAS
) SECOND JUDICIAL CIRCUIT

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The Defendant appears confused as to the task of a consultant. As appears in Dictionary.com, a consultant is "a professional who provides expert or professional advice in a particular area". Without dispute, the partners of Edusystems who have a combined experience of sixty years in higher education are experts in the field. The Defendant's confusion appears to be the difference between advice and implementation. A consultant advises, the recipient must implement. Edusystems clearly provided the advice and the failure to implement must lay on the Defendant; on circumstances beyond the Defendant's control such as financial exigencies and inaptitude.

Attached hereto is the Plaintiff's affidavit in narrative form which details their efforts in behalf of the Defendant. Considering the Plaintiff's affidavit and the volume of documents produced by them dispels the Defendant's defense as set forth in a body of its Answer.

The Defendant's second defense incorrectly asserts that the contracts in question were procured in violation of 1) State Procurement Requirements and 2) Without authorization and approval by Denmark Technical College's governing board and these are invalid, void and/or voidable.

- 1) Excerpts attached hereto are from the State Procurement Code. The Code clearly permits sole source contracts and even in the event contracts are procured in violation of the Code, they are neither invalid, void and/or voidable. (Exhibit C)
- 2) Even if the said contracts were entered into without authorization and approval by Denmark Tehnical College's governing board, they were entered into by the President in behalf of Denmark Technical College. (Exhibit D)

Our Appellate Court has held that even in the instances where the procuring parties have an agreement between themselves that these would be no agency relationship, such is not sufficient to prevent an agency relationship from being formed as to third parties. Langdate.v. Harris Carpets 4853 (S.C. Ct. App. 7-20-2011). In the instant matter Edusystems entered into a

contract with the President of Denmark Technical College to provide services for the benefit of Denmark Technical College. Denmark Technical College honored over seventy-five percent (75%) of the contract but without reason or excuse simply failed to honor the remaining twenty-four percent (24%). The Defendant asserts that the interim President (Dr. Walt Tubin) issued a direction to Edusystems to "stop all work". The alleged "stop all work" direction and the referred to emails from Dr. Tobin dated September 1, 2009 and September 24, 2009 are attached (Exhibit E). Neither of these emails contained any "stop work" direction and both were dated near the conclusion of the Edusystems contract.

The Defendant gave no reason or excuse for its failure to honor the remainder of its contract.

In summary there are no issues of fact as to the Plaintiff's right to prevail in this matter and summary judgment should be granted as to the Complaint.

Regarding the Defendant's Counterclaim, again these are solely issues of law. The Defendant's allegation all revolve around an alleged civil conspiracy between Edusystems and the President of Denmark Technical College, Dr. John K. Waddell.

Civil Conspiracy requires there to be "special damages" which is a unique feature of the tort of civil conspiracy. Dr. Joann Boyd-Scotland testifying pursuant to a 30(b)(6) notice answered the question as to damages by stating "First of all, the amount of monies that Denmark Technical Colleges paid." (Depo. Line 19, Page 69 and Depo Line 4, Page 70)(Exhibit F). She went no further as to damages.

The damages sought by the Defendant through its Counterclaim extend only to the amounts paid to Edusystems (see Defendant's prayer in its Counterclaim).

Our Courts have held that such damages must be others that the party seeks in its other causes of action. Todd v. South Carolina Farm Bureau Mutual Insurance Co., 276 S.C. at 292, 178 SE 2d 711 and Vaught v. Waites, 300 S.C. at 208, 387 SE 2d at 95.

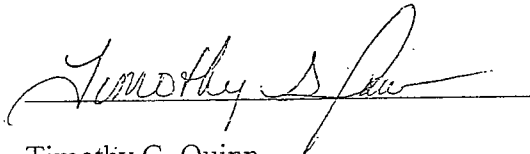
As such, the Defendant has failed to establish the essential element of "special damages" and must fail in the cause of action of "Civil Conspiracy".

Additional Exhibits:

Rule 30(b)(6) Notice of Deposition (Exhibit G)

Letter from Edusystems to Dr. Walt Tobin dated 9/10/09 (Exhibit H).

Wherefore, the Plaintiff moves for summary judgment by granting summary judgment in favor as to the Complaint and dismissing the Defendant's Counterclaim.

A handwritten signature in black ink, appearing to read "Timothy G. Quinn", is written over a horizontal line.

Timothy G. Quinn
2309 Devine Street
Columbia, SC 29205
803-771-0936
Fax 803-254-7751

November 14, 2011

AFFIDAVIT

Dr. R. W. Denton and Dr. John P. May together have more than sixty years experience in higher education including: executive vice president for business, finance, and treasurer; dean level academic management; non-credit program development and implementation leadership; fulltime faculty role; accreditation expertise (serving on Southern Association of Colleges and Schools – SACS – criteria review committee which recommended acceptances, denials, and adjustments for member institutions as well as multiple on-site review/evaluation teams); curricular design expertise; board level and faculty level governance; strategic planning and strategy implementation experience; expertise in planning and implementing retreats at the board, presidential, dean, and faculty levels.

It was not long in Dr. John K. Waddell's tenure at Denmark Technical College (DTC) before he discovered serious campus-wide deficiencies including fiscal affairs, administrative areas, and in academic programs. Dr. Waddell, having experienced great success with EDUSYSTEMS at earlier institutions, contacted us about consulting at DTC. We had previously formed a partnership called EDUSYSTEMS in the late 1990s. After certain negotiations EDUSYSTEMS agreed to assist Dr. Waddell at DTC to overcome serious deficiencies.

Before entering into long term contractual relationships with DTC, we insisted an external validation from the Department of Education Title III as to needed improvement for a developing institution and as an approved source of funding. Dr. Waddell had us draft for his action a sole source procurement document with accompanying information about EDUSYSTEMS for his approval. The document was forwarded along with information on EDUSYSTEMS to the business office. After this we were repeatedly told by the President and the Title III officer, Thersa Mack, that we were a sole source provider as written into the Title III grant.

While initially the tasks we were assigned were specific, as we progressed more problems were discovered and the fiscal climate of the state deteriorated. Because of these conditions Dr. Waddell changed the scope of our consulting services to meet these changing issues. These tasks included, but were not limited to, advising him with strategic initiatives to address developing financial exigencies and conducting various personnel assessment for reorganization and reduction in force scenarios. For example: Dr. Waddell gave us the Wesley Peachtree Staff Assessment on administrative personnel as well as antidotal information he had received on personnel. Multiple meetings and follow-up sessions coupled with Commission directives resulted in replacing three top level administrators and realignment/restructuring plans that would occur as budget cuts were announced. This would have included collapsing the STAR program into the academic development function of the College. This would have saved operating money by eliminating redundant services while retaining the most effective part of

the program as well as reducing the institution's exposure to loss of federal financial aid due to payment to unqualified students.

We discovered there were serious accreditation problems with certain programs. When the cosmetology diploma program did not receive reaffirmation of accreditation, EDUSYSTEMS directed change in the application and process and had it resubmitted. As of July 21, 2009, the cosmetology program accreditation had survived. In addition, problems were identified with the barbering diploma program and state licensing requirements which per the dean's request were to be addressed in summer 2009.

There were questions as to whether the College was meeting SACS accreditation standards with the Quality Enhancement Plan (QEP) STAR. Dr. Waddell told us he had been informed multiple times of misrepresentation of mission and accomplishments with STAR. We reported inaccurate activities and results were being reported. Based on our findings and the looming budget crisis, plans that were being developed to alter the STAR program by bringing it into the fabric of the College were delayed. Enrollment for spring 2008 was significantly higher than in spring 2007 due to our initial enrollment management recommendations and suggestions. In March 2008, the President had EDUSYSTEMS conduct a retreat for the administrative team of the College. Our involvement helped assure the retreat was professional, focused, and successful. Dr. Denton had conducted very successful board retreats for Dr. Waddell at previous colleges and we both had significant experience planning and participating in many board, executive level, dean level, and faculty retreats at the University of South Carolina.

It was discovered that federal funding was not being properly administered and we assembled and led both internal and external teams to properly charge funds for fiscal years 2007-2008 and 2008-2009. We also identified weaknesses in financial records for fiscal year 2007-2008 and correctly analyzed and adjusted the fund balance position for that fiscal year. We served as an important check and balance for initiatives from the business office and Wesly Peachtree Group. After termination of the Chief Financial Officer (CFO) and failed attempts to attract a qualified replacement, we successfully recruited a highly qualified and seasoned professional. Vince Whetsell, the new CFO, was to begin much needed reorganization and improvement beginning fiscal year 2009-2010 after the planned exit of the Wesly Peachtree Group. We identified a weakness in institutional reporting of workforce development efforts that had resulted in decreased formula funding and awareness. We recommended to the President a new reporting system for these activities.

Dr. Waddell shared with us plans to build a new multipurpose workforce development building to complement current efforts as well as to support the planned expansion and economic development of the Highway 78 corridor. These plans included building a hotel, restaurants, and entertainment outlets. Dr. Denton had previously created and directed the Faculty House

at the University of South Carolina. We were directed to investigate expanding the culinary program at the College so DTC would be ready to support these new economic initiatives. The economic upheaval in the state in fall 2008 precluded the expansion of the Highway 78 corridor, the construction of the new workforce development building and the impetus for altering the culinary program. We were aware that Dr. Waddell was working to establish a formal institutional relationship with the National Black Farmers Association (NBFA) and DTC. He saw this as a mutually beneficial relationship for many reasons, one of which would have been to launch an agricultural program at the College to meet the needs of farmers in the local service area. During discussions we advised Dr. Waddell on how to expand the College's mission by addressing service area agricultural economic needs by first offering various non-credit programs and then the eventual development of diploma and degree programs. The College intended to host a meeting of the NBFA which would have forged the relationship and began the development of the agricultural program. Unfortunately, the summer 2008 meeting was cancelled and by summer 2009 the desired institutional and association relationship had not been formalized. The development of the agricultural program, which depended on this unique relationship, was temporarily postponed. Both of these academic and workforce initiatives were viable but subject to economic and situational variables.

EDUSYSTEMS has previously had the online college catalog altered and partially updated for the nursing accreditation effort. In May 2009 Dr. Waddell directed us to resurrect the college catalog process which had been idle since summer 2008. By late June 2009 the majority of the non-academic program catalog copy had been painstakingly reviewed, entered into the software package Publisher, and in the hands of key administrative and academic leaders for their final review and editing. There is no doubt we were on track to a new catalog (printed and posted on-line) ready for fall 2009.

Soon after Dr. Waddell's arrival at DTC, he focused on the mandated yearly continuing education re-licensure requirement for cosmetologist. With an academic program in cosmetology the College would have been a natural site for attracting black cosmetologist. We recommended offering a quality continuing education re-licensure training program which would also provide a credit option that would increase FTE funding and potentially recruit new fulltime students. We conducted a thorough multi-step assessment of the re-licensure process in early 2008. Soon after, FTE funding was essentially frozen and the President decided to hold back on the initiative until funding was restored.

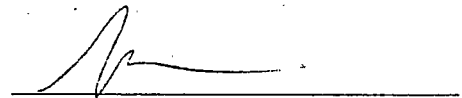
Upon Dr. Waddell's arrival the Practical Nursing program was under provisional status by the South Carolina Board of Nursing. We had experience success with Dr. Waddell in matters of program and institutional accreditation. He told us he feared success with official accreditation approval was far from certain. In February 2008 we began the process to assure the success of

the nursing program's accreditation approval. Our guidance and direction resulted in full approval of the DTC practical nursing program at the earliest possible date – May 2009. Without our involvement there is absolutely no way that the practical nursing program would have obtained State Board of Nursing full approval in May 2009.

After becoming aware of efforts by Commerce along with the tacit approval of State Tech to deprive DTC of workforce development mission, Dr. Waddell directed us to guide a strategy to prevent such. We developed a "white paper" on workforce mission and ability. We were successful in defending DTC's formally accepted workforce mission.

Every assignment we were given was accomplished and/or brought to a stage where final implementation was within reach or out of our control. Our expertise potentially saved the College's workforce development future and certainly saved thousands if not millions of dollars. Throughout our engagement along with Dr. Waddell we periodically met with the Commission Chair, Commissioners with and without quorum. We advised Dr. Waddell to also inform State Tech of all concerns and our activities on campus in order to utilize its support in the ongoing missions of DTC. We advised that this has resulted in more involvement by State Tec even to the extent of it sending staff to assist DTC.

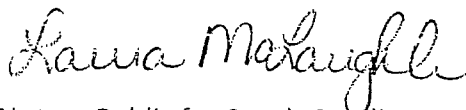
Based on the combined experience of the partners of Edusystems through our advice and suggestions DTC was given a road map to stability and success in the field of higher education.



Dr. R. W. Denton

Sworn to before me this 14th day

Of November, 2011.



Notary Public for South Carolina

My Commission Expires: May 12, 2018

EXHIBIT A

Segment 1: Begin Implementation of Nursing and Allied Health Recommendations:

- Begin guiding Nursing and Allied Health faculty with developing the State Board of Nursing accreditation document
- Assess the August 2008 NCLEX-PN exam results and begin guiding nursing curriculum analysis and improvement initiatives;
- Guide nursing faculty with securing and implementing a post graduate NCLEX-PN exam review initiative.

Segment Two: Begin Feasibility Analysis for Agriculture/Agribusiness Program:

- Develop and facilitate interdepartmental and cross departmental task force comprised of faculty and administrators;
- Guide the task force in identifying similar programs in two year colleges;
- Begin benchmarking existing curriculum and campus resources to determine strengths and weaknesses currently present that can help or hinder the development of an Agriculture/Agribusiness;
- Create and involve a responsive advisory board;

Segment Three: Begin Analysis of STAR Program for SACS Review:

- Develop and facilitate of interdepartmental and cross departmental task force; comprised of faculty and administrators to critically examine the STAR Program;
- Review existing SACS recommendations for the STAR Program;
- Examine current outcome assessment mechanisms and current level/quality of data generation;

PAYMENT SCHEDULE

The program is based on a four month and two week timeframe; from May 15, 2008 to September 30, 2008.

1. Professional Fee Per Month - \$10,500.00
2. Specialty Consultants as Needed – up to \$6,000.00

ACCEPTED BY:

Dr. John K. Waddell, President

Denmark Technical College

Date

Dr. R. W. Denton, EDUSYSTEMS

Date

Dr. John P. May, EDUSYSTEMS

Date

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EXHIBIT B

EDUSYSTEMS**P. O. Box 3017****West Columbia, S. C. 29271****Phone (803)-955-3606****Email Drrwdenton@yahoo.com****May 1, 2008****Dr. John K. Waddell, President****Denmark Technical College****500 Solomon Blatt Boulevard****Denmark, South Carolina 29042-0327****Dear Dr. Waddell:**

EDUSYSTEMS is a professional firm that specializes in developing and implementing high quality college and university products and services. The firm helps strategically position institutions to exploit their unique strengths and programming opportunities. The core competency of EDUSYSTEMS is to provide high quality, long-term, entrepreneurial oriented, and high profile program and service concepts. The contract is intended to be covered by Title III funds and will begin October 1, 2008 and conclude September 30, 2009.

The EDUSYSTEMS proposal consists of four segments. The first segment of the proposal involves consulting directly with the President. The segment also encompasses EDUSYSTEMS guiding the top leadership of the institution in strategic initiative recognition and implementation. The second segment focuses on the Nursing and Allied Health Program and includes developing the State Board of Nursing approval document and implementing the recent EDUSYSTEMS recommendations. The third segment of the proposal is to establish an effective baseline in order to ensure the integrity of future academic enhancement efforts. The baseline is intended to be a living document that can expand to encompass future areas for performance enhancement as the institution undertakes holistic academic reform. The fourth segment is to assure that existing workforce development efforts are accurately and completely recorded and reported. Mindful that accrediting bodies consider that curricular related issues and changes reside in the collective actions of the faculty, EDUSYSTEMS will undertake critical

portions of the proposal by facilitating newly formed inter and cross departmental faculty and staff task forces.

Segment One: Strategic Initiatives:

- Consult directly with the President on mission critical issues such as:
 1. Analysis of current tuition and make recommendations for increasing or retaining the current fee;
 2. Analysis of selected programs of study to determine financial viability of each and where indicated recommend constructing and charging a laboratory or clinical fee to supplement tuition;
- Guide top leadership with identifying, addressing, and implementing strategic initiatives;
- Assist with the development and implementation of a partnership with Denmark Technical College and Medical University of South Carolina that will:
 1. Assist entities in the service area with grant writing for allied health services;
 2. Provide students at the College and from the service area with obtaining higher degree pathways in health related disciplines;
 3. Develop health related infrastructure in the service area;
 4. Provide rural health initiatives.
- Guide top leadership of the institution with maintaining progress toward satisfying Southern Association of Colleges and Schools (SACS) requirements in areas such as:
 1. STAR Program;
 2. Institutional and major programs' mission statement congruence;
 3. Currency of progress with required SACS actions.

Segment Two: Nursing and Allied Health:

- Guide Nursing and Allied Health faculty with developing the State Board of Nursing approval/accreditation document
- Assess the August 2008 NCLEX-PN exam results and begin guiding nursing curriculum analysis and improvement initiatives;
- Guide nursing faculty with securing and implementing a post graduate NCLEX-PN exam review initiative;
- Determine feasibility of establishing a two year Registered Nurse program.

Segment Three: Review and Analysis of Opportunities for Academic Reform and Advancement

- Begin initial review of individual programs of study progress with obtaining, maintaining, and/or meeting discipline specific/professional specific accreditation;

- Review, analyze, and assure the college parallel/transfer program is properly aligned with existing South Carolina State University articulation agreements and the new and University of South Carolina Bridge Program;
- Determine feasibility of developing new or modifying existing credit programs in hospitality management, agriculture/agribusiness, various health areas, and other technically based areas of workforce development need.
- Develop and facilitate of interdepartmental and cross departmental General Education/Transitional Studies Task Force comprised of faculty and administrators;
- Guide the General Education/Transitional Studies Task Force in critically analyzing, adopting, and/or developing a mission statement for the General Education Core. Assure that this mission statement is properly aligned with the institution's mission and those of other departments;
- Review and analyze the General Education/Transitional Studies core for currency, consistency, and flexibility;
- Benchmark the core requirements in the various programs of study to those of aspirant institutions;

Segment Four: Identifying Existing Workforce Development Efforts

- Review existing non-credit programs and public service events for proper capture of institutional credit;
- Identify workforce development activities not currently reported;
- Recommend reporting/recording procedures to accurately reflect total institutional efforts;
- Establish a mechanism for investigating and determining workforce development at needs at Savannah River Site;
- Establish new or improve existing mechanisms (both on and off campus) for improving business relations by determining new areas that require workforce development (i.e., Duke Power/SCANA lineman raining and technically related workforce development training).

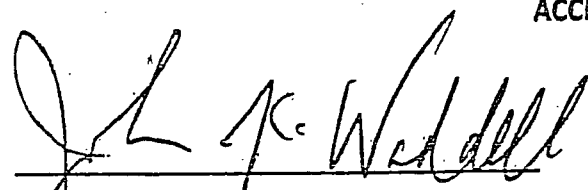
PAYMENT SCHEDULE

The program is based on a twelve month timeframe; from October 1, 2008 to September 30, 2009.

- 1. Professional Fee Per Month - \$10,500.00
- 2. Yearly Specialty Consultants as Needed – up to \$16,000.00

Payments will be issued on a monthly basis.

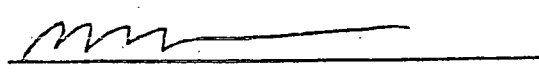
ACCEPTED BY:



Dr. John K. Waddell, President
Denmark Technical College

10-13-08

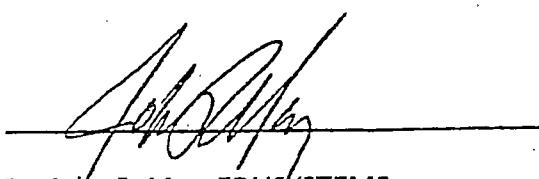
Date



Dr. R. W. Denton, EDUSYSTEMS

10-13-08

Date



Dr. John P. May, EDUSYSTEMS

10-13-08

Date

EXHIBIT C

bid exceeds available funds as certified by the appropriate fiscal officer, and it is determined in writing by the chief procurement officer, the head of a purchasing agency, or the designee of either officer above the level of procurement officer, that time or other circumstances will not permit the delay required to resolicit competitive sealed bids, a contract may be negotiated pursuant to this section, provided that:

- (1) each responsible bidder who submitted a bid under the original solicitation is notified of the determination and is given reasonable opportunity to negotiate;
- (2) the negotiated price is lower than the lowest rejected bid by any responsible and responsive bidder under the original solicitation;
- (3) the negotiated price is the lowest negotiated price offered by any responsible and responsive offeror.

SECTION 11-35-1550. Bid procedures on procurements up to fifty thousand dollars.

(1) Authority. The following small purchase procedures may be utilized only in conducting procurements for governmental bodies that are up to fifty thousand dollars in actual or potential value. A governmental body may conduct its own procurement up to fifty thousand dollars in actual or potential value, and a governmental body that has received procurement certification pursuant to Section 11-35-1210 to handle the type and estimated value of the procurement may conduct the procurement under its own authority in accordance with this code. Procurement requirements must not be artificially divided by governmental bodies so as to constitute a small purchase pursuant to this section.

(2) Competition and Price Reasonableness.

(a) Purchases not in excess of two thousand five hundred dollars. Small purchases not exceeding two thousand five hundred dollars may be accomplished without securing competitive quotations if the prices are considered reasonable. The purchasing office must annotate the purchase requisition: "Price is fair and reasonable" and sign. The purchases must be distributed equitably among qualified suppliers. When practical, a quotation must be solicited from other than the previous supplier before placing a repeat order. The administrative cost of verifying the reasonableness of the price of purchase "not in excess of" may more than offset potential savings in detecting instances of overpricing. Action to verify the reasonableness of the price need be taken only when the procurement officer of the governmental body suspects that the price may not be reasonable, comparison to previous price paid, or personal knowledge of the item involved.

(b) Purchases over two thousand five hundred dollars to ten thousand dollars. Solicitation of written quotes from a minimum of three qualified sources of supply must be made and documentation of the quotes attached to the purchase requisition for a small purchase over two thousand five hundred dollars but not in excess of ten thousand dollars. The award must be made to the lowest responsive and responsible sources.

(c) Purchases over ten thousand dollars up to fifty thousand dollars. Written solicitation of written quotes, bids, or proposals must be made for a small purchase over ten thousand dollars but not in excess of fifty thousand dollars. The procurement must be advertised at least once in the South Carolina Business Opportunities publication or through a means of central electronic advertising as approved by the designated board office. A copy of the written solicitation and written quotes must be attached to the purchase requisition. The award must be made to the lowest responsive and responsible source or, when a request for proposal process is used, the highest ranking offeror.

(3) All competitive procurements above ten thousand dollars must be advertised at least once in the South Carolina Business Opportunities publication or through a means of central electronic advertising as approved by the designated board office. Governmental bodies may charge vendors the cost incurred for copying and mailing bid or proposal documents requested in response to a procurement.

(4) The Division of Aeronautics of the Department of Commerce may act as its own purchasing agency for all procurements of maintenance services for aircraft and these procurements may be conducted pursuant to Section 11-35-1550(2)(b).



SECTION 11-35-1560. Sole source procurement.

(A) A contract may be awarded for a supply, service, information technology, or construction item without competition if, under regulations promulgated by the board, the chief procurement officer, the head of a purchasing agency, or a designee of either officer, above the level of the procurement officer,

determines in writing that there is only one source for the required supply, service, information technology, or construction item.

(B) These regulations must include the requirements contained in this paragraph. Written documentation must include the determination and basis for the proposed sole source procurement. A delegation of authority by either the chief procurement officer or the head of a governmental body with respect to sole source determinations must be submitted in writing to the Materials Management Officer. In cases of reasonable doubt, competition must be solicited. Any decision by a governmental body that a procurement be restricted to one potential vendor must be accompanied by an explanation as to why no other will be suitable or acceptable to meet the need.

(C) A violation of these regulations by a purchasing agency, upon recommendation of the designated board office with approval of the majority of the Budget and Control Board, must result in the temporary suspension, not to exceed one year, of the violating governmental body's ability to procure supplies, services, information technology, or construction items pursuant to this section.

SECTION 11-35-1570. Emergency procurements.

Notwithstanding any other provision of this code, the chief procurement officer, the head of a purchasing agency, or a designee of either officer may make or authorize others to make emergency procurements only when there exists an immediate threat to public health, welfare, critical economy and efficiency, or safety under emergency conditions as defined in regulations promulgated by the board; and provided, that such emergency procurements shall be made with as much competition as is practicable under the circumstances. A written determination of the basis for the emergency and for the selection of the particular contractor shall be included in the contract file.

SECTION 11-35-1575. Participation in auction or sale of supplies from bankruptcy.

A governmental body having knowledge of either an auction or a sale of supplies from a bankruptcy may elect to participate. The governmental body shall (a) survey the needed items being offered to ascertain their condition and usefulness, (b) determine a fair market value for new like items through informal quotes, (c) determine the fair market value from similar items considering age and useful life, and (d) estimated repair cost and delivery cost, if any, of the desired items. Using this information, the governmental body shall determine the maximum price that it can pay for each item desired. At the auction or sale, the governmental body shall not exceed the maximum price so determined.

SECTION 11-35-1580. Information technology procurements.

(1) Information Technology Management Office. The Information Technology Management Office shall be responsible for:

- (a) assessing the need for and use of information technology;
- (b) administering all procurement and contracting activities undertaken for governmental bodies involving information technology in accordance with this chapter;
- (c) providing for the disposal of all information technology property surplus to the needs of a using agency;
- (d) evaluating the use and management of information technology;
- (e) operating a comprehensive inventory and accounting reporting system for information technology;
- (f) developing policies and standards for the management of information technology in state government;
- (g) initiating a state plan for the management and use of information technology;
- (h) providing management and technical assistance to state agencies in using information technology; and
- (i) establishing a referral service for state agencies seeking technical assistance or information technology services.

METHODS OF SOURCE SELECTION

SECTION 11-35-1510. Methods of source selection.

Unless otherwise provided by law, all state contracts must be awarded by competitive sealed bidding, pursuant to Section 11-35-1520, except as provided in:

- (1) Section 11-35-1250 (Authority to Contract for Auditing Services);
- (2) Section 11-35-1260 (Authority to Contract for Legal Services);
- (3) Section 11-35-1525 (Fixed Priced Bidding);
- (4) Section 11-35-1528 (Competitive Best Value Bidding);
- (5) Section 11-35-1529 (Competitive Online Bidding);
- (6) Section 11-35-1530 (Competitive Sealed Proposals);
- (7) Section 11-35-1540 (Negotiations After Unsuccessful Competitive Sealed Bidding);
- (8) Section 11-35-1550 (Small Purchases);
- (9) Section 11-35-1560 (Sole Source Procurements);
- (10) Section 11-35-1570 (Emergency Procurements);
- (11) Section 11-35-1575 (Participation in Auction or Bankruptcy Sale);
- (12) (Reserved)
- (13) Section 11-35-3015 (Source Selection Methods Assigned to Project Delivery Methods);
- (14) Section 11-35-3220 (Architect Engineer, Construction Management and Land Surveying Services Procurement Procedures); and
- (15) Section 11-35-3230 (Exception for Small Architect-Engineer and Land Surveying Services Contracts).

SECTION 11-35-1520. Competitive sealed bidding.

- (1) Condition for Use. Contracts greater than fifty thousand dollars must be awarded by competitive sealed bidding except as otherwise provided in Section 11-35-1510.
- (2) Invitation for Bids. An invitation for bids must be issued in an efficient and economical manner and must include specifications and all contractual terms and conditions applicable to the procurement.
- (3) Notice. Adequate notice of the invitation for bids must be given at a reasonable time before the date set forth in it for the opening of bids. The notice must include publications in "South Carolina Business Opportunities" or a means of central electronic advertising as approved by the designated board office. Governmental bodies may charge vendors the cost incurred for copying and mailing bid or proposal documents requested in response to a procurement.
- (4) Receipt and Safeguarding of Bids. All bids, including modifications, received before the time of opening must be kept secure and unopened, except as provided by regulation of the board.
- (5) Bid Opening. Bids must be opened publicly in the presence of one or more witnesses, at the time and place designated in the invitation for bids and in the manner prescribed by regulation of the board. The amount of each bid, and other relevant information as may be specified by regulation, together with the name of each bidder, must be tabulated. The tabulation must be open to public inspection at that time.
- (6) Bid Acceptance and Bid Evaluation. Bids must be accepted unconditionally without alteration or correction, except as otherwise authorized in this code. The invitation for bids must set forth the evaluation criteria to be used. Criteria must not be used in bid evaluation that are not in the invitation for bids. Bids must be evaluated based on the requirements in the invitation for bids and in accordance with the regulations of the board.

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EXHIBIT D

a decision in writing within ten days. The decision will state the reasons for the actions taken. a copy of the decision shall be mailed or furnished immediately to the Protestant and any other party intervening.

A decision shall be final and conclusive, unless fraudulent, or unless any person adversely affected by the decision requests a review, in writing, setting forth the grievance, to the procurement Review Panel, within ten days of the decision. The protester may also request an interview with the panel.

In the event a professor should have been awarded the contract under a solicitation but is not, then such party may apply to the Review Panel, the reimbursement of the actual costs, not to exceed five thousand dollars incurred in connection with the solicitation including bid preparation. Upon receipt of such application, the Review Panel may order the computation of a reasonable reimbursement amount and make such recommendations to the board as it deems equitable, including reimbursement of bid preparation costs, not to exceed five thousand dollars, and other relief.

Sole Source Procurement

In accordance with Section 11-35-1560 of the Consolidated Procurement Code, sole source procurement is permitted when a requirement is available from only one Supplier. The following are examples of circumstances which could necessitate sole source procurement:

1. Where the compatibility of equipment, accessories, or replacement parts is the primary consideration;
2. Where a sole supplier's item is needed for trial use or testing;
3. Where a sole supplier item is to be procured for resale;
4. Where public utility services are to be procured; and
5. Where the item is one of a kind.

* To obtain approval for a sole source procurement, the using department must complete a Justification for Sole Source Procurement form to be forwarded to the college president for final determination and approval. These forms may be obtained from the Purchasing Department. (See attachment V.)

EXHIBIT E

RE: meeting

Hide Details

FROM: Walt Tobin

Thursday, September 24, 2009 8:24 AM

TO: John May

Dr. May,

Thank you for your response and for sending the information that I requested.

At this point, the College is consulting with its attorney and I should have a response for you very soon.

From: John May [mailto:drjpemmay@yahoo.com]**Sent:** Monday, September 21, 2009 3:36 PM**To:** Walt Tobin**Cc:** Pete Denton**Subject:** meeting

Dr. Tobin,

We have not heard from you since we mailed our response and memo attachments on September 10 nor our email on September 17 both referencing your September 1 email to us. Surely the attachments met your threshold for proving meaningful involvement in June and July.

As you know, our contract is through September 30 so time is short but we still stand ready to assist you and the school - the decision is yours. If you would like, Dr. Denton and I can meet with you to discuss future involvement and/or provide an exit interview of our experiences and insights gained at the institution. Such a meeting can fit into both of our schedules on next Monday or Wednesday. We remain busy with other commitments and these days will soon fill so please let us know at your earliest convenience. The meeting can also serve as a time we can pick-up our check.

Reply to Walt Tobin

A rectangular button with the word "Send" in a bold, sans-serif font.

00.99

Fw: EDUSYSTEMS

From: R DENTON <drwdenton@yahoo.com>

[View Contact](#)

To: john may <drjpmay@yahoo.com>

Tuesday, September 1, 2009 5:37:31 PM.

JOHN

WELL----OF COURSE IT FOLLOWS CONTRACT
WHAT ABOUT LAST QUARTER
HOW YOU THINK WE SHOULD RESPOND
AND DID WE INCLUDE WHITE PAPER AS TO WORKFORCE DEV?

P

-- On Tue, 9/1/09, Walt Tobin <tobinw@denmarktech.edu> wrote:

From: Walt Tobin <tobinw@denmarktech.edu>

Subject: EDUSYSTEMS

To: drwdenton@yahoo.com

Date: Tuesday, September 1, 2009, 3:07 PM

Dr. Denton,

Thank you for sending the material regarding EDUSYSTEMS and your work for Denmark Technical College. I noticed that the last report was dated June 30, 2009, but was based on work conducted through March 31, 2009. Do you have progress reports for April through July 13th?

Also, is there any other evidence other than the Executive Report? The three documents you sent appear closely related to each other and even more closely related to the contract. **Where is the evidence that these things were actually managed, conducted, analyzed, developed, etc.?** There are numerous areas in which I'd like to see some evidence of work, and I'll provide a few examples of what I'm referring to:

1. "Determine feasibility of establishing a two year Registered Nurse program." Do you have the feasibility information?
2. "Begin initial review of individual programs of study progress with obtaining, maintaining, and/or meeting discipline specific/professional specific accreditation." Where is the initial review and what does it contain?
3. Determine feasibility of developing new or modifying existing credit programs in hospitality management, agriculture/agribusiness, various health areas, and other technically based areas of workforce development need. Do you have the feasibility information?
4. "Resurrected the process for updating and completing the 2009-2010 Denmark Technical College Catalog..." When I arrived the Catalog was far from being complete. There was incorrect information and many grammatical errors. Do you have info to contradict what I observed?

Please provide as much evidence as you are able to. Before any funds are released I need to feel comfortable that work was actually conducted. The Executive Report does not provide that level of detail that I deem sufficient. As it relates to the work conducted between April and June, I'd like that same level of detail as well.

Hope to hear from you soon,
Walt

00100

Re: meeting

From: John May <drjpemmay@yahoo.com> Add to Contacts
 To: Walt Tobin <tobinw@denmarktech.edu>
 Cc: Pete Denton <drwdenton@yahoo.com>; Tquinn@quinnlawsc.com
 INVOICE TOBIN docx (13KB)

Thu, September 24, 2009 1:28:21 PM

Dr. Tobin,

We are disappointed with the delaying actions and tone of your reply. If it is your intent to act in bad faith and not pay this legitimate contract in full, please have Denmark Technical College's attorney contact our attorney (Timothy G. Quinn 803-771-0936, Tquinn@quinnlawsc.com). We hope you will exercise presidential leadership and save the college intellectual capital, time, and money by promptly paying the amount now due.

From: Walt Tobin <tobinw@denmarktech.edu>
To: John May <drjpemmay@yahoo.com>
Sent: Thursday, September 24, 2009 8:24:03 AM
Subject: RE: meeting

Dr. May,

Thank you for your response and for sending the information that I requested.

At this point, the College is consulting with its attorney and I should have a response for you very soon.

From: John May [<mailto:drjpemmay@yahoo.com>]
Sent: Monday, September 21, 2009 3:36 PM
To: Walt Tobin
Cc: Pete Denton
Subject: meeting

Dr. Tobin,

We have not heard from you since we mailed our response and memo attachments on September 10 nor our email on September 17 both referencing your September 1 email to us. Surely the attachments met your threshold for proving meaningful involvement in June and July.

As you know, our contract is through September 30 so time is short but we still stand ready to assist you and the school - the decision is yours. If you would like, Dr. Denton and I can meet with you to discuss future involvement and/or provide an exit interview of our experiences and insights gained at the institution. Such a meeting can fit into both of our schedules on next Monday or Wednesday. We remain busy with other commitments and these days will soon fill so please let us know at your earliest convenience. The meeting can also serve as a time we can pick-up our check.

00101

EXHIBIT F

00102

1 Q. I understand that. And Exhibit Two is the Bible that
2 other Presidents of the college would be expected to go
3 by?

4 A. One of them.

5 Q. Okay.

6 A. We have many Bibles, you know.

7 Q. Do you know what special damages are in the context of
8 a legal proceeding?

9 A. Would you like to explain it to me? I'd appreciate it
10 I'm sure.

11 Q. Yes, ma'am. Well, special damages are defined as
12 damages that are not within the context of the relief
13 sought to be granted to the Plaintiff in a particular
14 case.

15 A. Say that one more time.

16 Q. I will be glad to do see because I had to memorize
17 that.

18 A. Okay.

19 Q. Because that is a very complex question. Special
20 damages are damages that are not contained within the
21 context of the actual pleading of a Plaintiff's case or
22 in this case, a Defendant's case.

23 A. Okay. Yes, sir. I --

24 Q. Does that make it better?

25 MR. DUFF: That doesn't even sound accurate to me,

1 the legal matter.

2 Q. Do you know what special damages are in this case?

3 A. If I get a clear understanding.

4 Q. Do you know what damages Denmark Technical College
5 suffered as a result of this action?

6 A. I think I can delineate those.

7 Q. Okay. Tell me.

8 A. Well, first of all, amount of monies that Denmark
9 Technical College paid.

10 Q. To who?

11 A. To Edusystems.

12 Q. And do you know how much they paid to Peachtree?

13 A. Well, somewhat.

14 Q. Yes, ma'am. And how much did they pay to Peachtree?

15 A. I can't give you an exact amount, but I know it was
16 over \$100,000.00.

17 Q. Was it almost a million dollars?

18 A. Yeah.

19 Q. Okay. And do you know if Peachtree went through the
20 procurement code of the State of South Carolina?

21 A. It's my understanding they didn't.

22 Q. Did or did not?

23 A. Did not.

00104

24 Q. Okay. And do you know if the Area Commission for
25 Denmark Technical College approved the hiring of

EXHIBIT G

00105

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS
SECOND JUDICIAL CIRCUIT

COUNTY OF BAMBERG)

Case No.: 2011-CP-05-160

Dr. Robert W. Denton and)
Dr. John P. May,)
D/B/A Edusystems, a general partnership,)

**AMENDED
NOTICE OF TAKING RULE
30(b)(6) DEPOSITION**

Plaintiffs,)

v.)

Denmark Technical College and)
South Carolina State Board for Technical)
and Comprehensive Education,)

Defendants.)

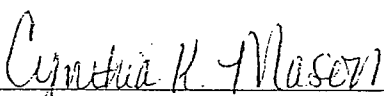
TO: DAVID DUFF, ESQUIRE, ATTORNEYS FOR THE DEFENDANT DENMARK
TECHNICAL COLLEGE:

YOU WILL PLEASE TAKE NOTICE that on October 14, 2011 at 12:00 p.m. at the Bamberg County Courthouse, 2959 Main Highway, Bamberg, South Carolina, 29003, the attorney for the Plaintiffs, will take the deposition of the officer(s), director(s), managing agent(s) or other persons designated by Defendant Denmark Technical College before a Notary Public, or some other officer authorized by law to take depositions, said deposition to continue from day to day until completed. This deposition is taken for the purpose of discovery or for use of evidence or both pursuant to the South Carolina Rules of Civil Procedure.

Pursuant to SCRCP 30(b)(6), Defendant Denmark Technical College, is required to designate and fully prepare one or more officers, directors, managing agents, or other persons who consent to testify on its behalf and whom Defendant will fully prepare to testify regarding the following designated matters. The persons so designated shall testify as to all information known or reasonably available to Defendant Denmark Technical College regarding the following matters:

00106

1. What services that were requested by the President of Denmark Technical College did Edusystems not perform?
2. What services that were required by the contract did Edusystems not perform?
3. Specify what contracts the governing board of Denmark Technical College specifically authorize and how was such authorization given.
4. Specify how the interim President of Denmark Technical College directed Edusystems to stop all work.
5. Specify how Edusystems was supposed to know that the President of Denmark Technical College had no authority to enter into contracts.
6. What direct and actual damages were incurred by Denmark Technical College through the conduct of Edusystems?
7. How were any acts of Edusystems unfair or deceptive?
8. What special damages has Denmark Technical College suffered as a result of any act or acts by Edusystems?
9. State what limitations are placed upon the President of Denmark Technical College and what is the basis for these limitations.
10. How is the public to know of any limitations that are imposed on the President of Denmark Technical College?
11. Any other matters relevant and germane to the topics referenced above.



Timothy G. Quinn, Esq.
Cynthia K. Mason, Esq.
2309 Devine Street
Columbia, SC 29205
803-771-0936
Fax 803-254-7751
Attorneys for the Plaintiffs

September 22, 2011

00107

EXHIBIT H

00108

1711
X-7

EDUSYSTEMS

P. O Box 3017

West Columbia, S. C. 29171

To: Dr. Walt Tobin

From: EDUSYSTEMS

Subject: Response September 1, 2009 Email

Date: September 10, 2009

The following will again explain our contractual relationship with Denmark Technical College and answer questions raised in your September 1, 2009 email. As we discussed in our August 26, 2009 meeting, how to utilize our services during the remainder of the contract is your decision - whether a retrospective report or future oriented problem solving assignments.

By custom and agreement we provide a quarterly Executive Summary of our activities. By its nature an Executive Summary provides a succinct overview of activities; it is not intended to be a detailed report. These summaries serve as the progress reports. Quarterly reports were submitted on December 31, 2008, March 31, 2009, and June 30, 2009.

The contract is a blueprint that guided our efforts under the direction of the past President from October 2008 through mid - July 2009. The contract was developed in late spring and signed in May 2008 for the upcoming federal fiscal year with our engagement being part of the Title III grant. The President played a role in specifying the areas where he wanted us to concentrate efforts especially in academic and workforce areas. This was done months before the financial calamity that has since affected the country. Early in the contract, Denmark Technical College was faced with a severe mandated budget reduction. From that point on the President redirected our focus more and more toward budget related issues, budget reduction scenarios, staffing issues, and reorganization scenarios at the expense of specific items to which he was committed. (This is yet again, a humble reminder of the old saying, "if you want to make God smile - tell Him you made plans.") This newly directed work was clearly strategic in nature, thus, it fit the Strategic Initiatives section of the contract which precluded developing an addendum. These additional activities were reported under the Strategic Initiatives section in the executive Summaries. In other words, much of our work to date was not anticipated in May; therefore, it was not specifically included in the contract. However, this added activity was (and rightfully so) considered part of the Strategic Initiatives section of the contract. Again, please realize that we work for and report directly to the President, past or current.

00109

Your email mentions that the three documents appear closely related to each other and even more closely related to the contract. The vast majority of our work was dedicated to on-going endeavors that were and remain process oriented until final resolution is realized. The continuous process can readily be seen in the on going efforts to increase tuition and establish new realistic fees. Until the Commission finally approves raising the lowest tuition in the technical college system, the issue was and still should be a subject of continuing deliberation and focus. Two additional examples are in Segment Three where similarly focused deliberations and recommendations were conducted to (1.) streamline operations and reduce costs by combining student affairs, developmental studies, and STAR as well as (2.) realign the barbering curriculum to meet state licensing regulations. The aforementioned will remain process oriented issues until internal and external political opposition is overcome. We continuously addressed and treated these and other issues from October 2008 through July 2009. When working in areas and on projects such as reduction scenarios for fiscal year 2009-2010 or prodding Wesley Peachtree toward completion, there are many similarities in work performed thus similarities in how these activities are reported from one Executive Summary to another. The close relationship that you mentioned between the Executive Summaries is the direct result of working on continuing process oriented issues that have yet come to final resolution.

You are exactly correct in noticing that the Executive Summaries resemble the contract. This is purposely done with the intent of demonstrating that our work outputs, products, and continuing efforts are in line with the spirit of the contract. As previously mentioned, however, the sudden and dramatic changes caused by the state mandated budget reduction resulted in our efforts being judiciously redirected toward more pressing campus issues at the expense of working on specified contract items.

The following address the four examples you included in your September 1, 2009 email:

1. You included the following and questioned its validity because you found grammatical errors and incorrect information in the current incomplete version of the college catalog . . . "Resurrected the process for updating and completing the 2009 – 2010 Denmark Technical College Catalog . . ." Key word within the quotations is PROCESS. We constructed and implemented a process that involved key institutional players (deans, vice presidents, etc.) to revive and update the college catalog. The current catalog version is no where near complete and needs substantial work before it is ready for the printers. At our recent meeting we informed you that we had started work on the college catalog; we did not tell you it was complete only that it is much closer to completion than when we began working on it a couple of months ago. We had no input since Dr. Waddell's suspension and suspect little has been done since. This has been a difficult project. While pushing the catalog forward we encountered passive aggressive

hostility, chronic non-responsiveness, and even lies/deception. In fact, the condition in which you found the catalog is substantially better than what we found in May 2009. A brief and incomplete history on the college catalog finds that during summer 2008 the various departments had completed their information for inclusion in the 2008-2009 version and forwarded it to the Executive Vice President of Institutional Research. There it remained untouched until the President directed us in May 2009 to have a catalog completed, printed, and in-hand before fall semester 2009. We were told by all players that the information forwarded in summer 2008 was complete and accurate; obviously it was, at best, haphazardly developed. In addition to developing the catalog is the pressing need to have the on-line catalog accurately updated and consistently maintained. We pressed for and had the on-line catalog partially updated prior to the State Board of Nursing on-site review. Again, it was a difficult process to get accomplished. Finally, after much pressure Dr. Kabisatpathy and Dean Roberts performed the update but only after announcing their refusal to be considered webmasters for future maintenance. As you know, on-line resources are only beneficial when they are current. The entire catalog fiasco speaks volumes about the current culture of the college, frames the difficulties a progressive president faces, and emphasizes the need for outside change agents.

2. You questioned whether feasibility information is available for . . . "Determine feasibility of developing new or modify existing credit programs in hospitality management, agriculture/agribusiness, various health areas, and other technically based areas of workforce development need" . . . The economic environment caused the redirection of our focus and energy to financially oriented issues early in the contract cycle and precluded our intensive involvement in these projects. The following summarize our involvement and the current status of these programs:

- The hospitality management program was envisioned by the past President as a hybrid program that would include the current culinary arts technical certificate. Essentially, the course of study would culminate with an Associate Degree in Hospitality Management while including the culinary curriculum. Students could opt for the entire program of study or simply complete the culinary certificate requirements. Courses beyond the culinary curriculum would be focused on the management aspects of the hospitality industry. Those courses with sufficient rigor would be submitted for inclusion in the Statewide Articulation Agreement. We had contacted and obtained experts from both the academic perspective of hospitality management as well as noted practitioners in the industry. Both

groups had agreed to provide expert assistance and guidance for program development.

- The agriculture/agribusiness program was envisioned to be a one year technical certificate course of study. Success of the program hinged on the institution forging a relationship with the Black Farmer's Association. Dr. Waddell and Dr. John Boyd (association director) were to meet to discuss the possibility of developing an inter-institutional/association relationship that would initially offer non-credit opportunities to local farmers in subjects such as information technology, fiscal management, etc. Also, Dr. Boyd expected to receive significant federal funds to expand the association's outreach, including into the local service area. The 2008 Black Farmer's Association meeting at Denmark Technical College was postponed and rescheduled for this year. In addition the association did not receive the anticipated federal funding. These two circumstances resulted in pushing this program further into the future.
- The current nursing program was originally the Nursing and Allied Health Program. It contained two academic programs: the practical nursing program and the nurse assistant program. The credit nurse assistant program has a competitor on campus - the less expensive continuing education non-credit nurse assistant program. Both seem to get their graduates certified. The immediate past Vice President for Academic Affairs personally developed the nurse assistant program and refused to allow any meaningful discussions about either altering the program or collapsing any of the non-credit health based programs into the nursing department. With a new Vice President for Academic Affairs there is an opportunity to creatively bundle and professionally manage these multiple allied health programs. The past President clearly understood that the opportunity for capitalizing on a natural progression for acquiring professional credentials exists at Denmark Technical College - from technical certificate to licensed practical nurse to registered nurse to baccalaureate prepared nurse.
- As previously mentioned, the redirection of our efforts severely restricted our involvement in any new programmatic efforts until after the financial crisis subsided.

3. You asked where is the initial review and what does it contain with . . . "Begin initial review of individual programs of study progress with obtaining, maintaining, and/or meeting discipline specific/professional specific accreditation". . . During October and November 2008 we worked with the Dean of Business, Computer and Related Technologies to assess the accreditation status of the cosmetology program with

NACCAS (National Accrediting Commission of Cosmetology Arts and Sciences). In spring 2008 the cosmetology program missed the deadline for submitting accreditation materials to the NACCAS. Later, after inquiries by the college, the association gave the institution a new deadline. In addition to violating critical association time lines, there were other long standing issues that had helped delay full accreditation. One issue was from a previous on-site visit that concerned student tuberculosis inoculations. Others were the accrediting body insistence that the reaffirmation document had not been developed correctly nor had the institution provided sufficient back-up documentation. We conducted several meetings with the recently appointed Dean. The initial meetings focused on understanding the program, past reaffirmation efforts, and identified areas of deficiency. In later meetings we guided the drafting of the reaffirmation document and search for the accompanying evidence. The reaffirmation document was completed and posted before another NACCAS imposed deadline. Our work with the cosmetology program gave rise to efforts to help the barbering program increase retention. After issuing a basic questionnaire to the faculty, follow-up efforts to meet and discuss the program were thwarted by claims from the Dean of personnel problems within the department. The barbering curriculum still does not meet the state mandated contact hours to permit graduates to take the state licensing exam.

4. You questioned whether we have feasibility information for . . . "Determine feasibility of establishing a two year Registered Nurse program". . . Clearly, Denmark Technical College has the facilities, academic leadership, and intellectual capital to offer a high quality two year registered nursing program. The feasibility information you seek is imbedded in the success of the practical nursing program. The practical nursing program enrolled the first cohort in fall 2007. By fall 2008 the first cohort had a 100% pass rate with the NCLEX-PN. In May 2009 the practical nursing program received full approval/accreditation from the South Carolina State Board of Nursing. This program is the only selective admission program at Denmark Technical College. During the first three cohort selection cycles the number of candidates far outnumbered the available slots. Practical nurses in this service area and in surrounding counties would find a two year registered nursing program at Denmark Technical College a viable route for professional advancement. The nursing program is professionally administered and expertly staffed. The only impediments to developing a two year registered nursing program are insufficient financial resources and political opposition from either Aiken Technical College and/or Orangeburg Calhoun Technical College.

Much of the reporting and/or follow-ups were done in face-to-face meetings, telephone conversations, and via electronic delivery to the President and, at times, to various college principals. The Executive Summaries clearly identify areas where multiple contacts and follow-

ups were made (i. e. staffing changes, tuition increase, nursing approval process, etc.) instead of formal written memos. Our relationship and trust level with the past President coupled with the sensitive nature of issues being dealt with (reorganization scenarios, personnel issues, budget reduction discussions, etc.) resulted in our not reducing every meeting/discussion to a formal memo. Many meetings and follow-ups were recorded in cryptic notes that served as reminders of tasks to be completed, status of the issue(s), and information to be obtained. Formal hardcopy memos were issued when it was determined that documentation was needed for accreditation purposes (i. e. practical nursing program) and when dealing with issues that could be easily misinterpreted (i.e. college catalog). It is interesting that in our brief relationship you have contacted us twice, once by telephone and once via email. We also employed the same immediate communication channels while fulfilling our obligations to the institution.

Enclosed is the evidence you requested from April 2009 - July 13, 2009 with the contract.

00114

Dr John K Waddell
Office of the President
Denmark Technical College
Denmark SC, 29042-0327

Re: Enrollment Enhancement Services

Advise the President on enrollment enhancement strategy for the fall 2007 semester within a relationship of institutional capacity, student readiness and career opportunities.

Report format: Verbal to the President or others as directed

Timeline: August 2007 to November 2007

Professional Fee: \$2500 payable at end of semester

Dr John P. May
Federal ID 250-98-3594
3224 Girardeau
Columbia, SC 29204

Agreed and accepted

John K Waddell, President

00115

DENMARK TECHNICAL COLLEGE
SERVICE AREA (BAMBERG, BARNWELL, AND ALLENDALE COUNTIES)
ENROLLMENT 2004-05 THROUGH 2006-2007

TOTAL HEAD COUNT ENROLLMENT IN CREDIT BASED PROGRAMS FROM THE SERVICE AREA

	DTC Service Area Enrollment				DTC	Service Area
	Bamberg	Barnwell	Allendale	Total	Total	% of DTC
Fall 2004	320	313	140	773	1423	54.3%
Spring 2005	301	255	170	726	1442	50.3%
Summer 2005	114	99	45	258	459	56.2%
Fall 2005	281	285	156	722	1408	51.3%
Spring 2006	248	232	137	617	1299	47.5%
Summer 2006	32	94	76	202	411	49.1%
Fall 2006	281	285	156	722	1408	50.5%
Spring 2007	297	224	97	618	1227	50.4%
Summer 2007	87	55	23	165	326	50.6%
Fall 2007	359	296	113	768	1571	48.9%
Spring 2008	431	214	89	734	1480	49.6%

TOTAL HEAD COUNT ENROLLMENT IN CREDIT BASED DIPLOMA AND CERTIFICATE PROGRAMS
FROM THE SERVICE AREA

	FALL 2004	FALL 2005	FALL 2006	FALL 2007
BAMBERG	119	136	76	212
BARNWELL	105	118	44	170
ALLENDALE	54	49	7	75
TOTAL	278	303	127	457

EDUSYSTEMS

To: Dr. John K. Waddell

From: EDUSYSTEMS

Subject: Financial Information for Commission Update

Date: June 30, 2009

We met today with Clarence Bonnette, Vince Whetsell, and Carl Johnson to construct/reconstruct the Area Commissioners financial report. There was significant tension with Mr. Bonnette over either his lack of preparation or his not understanding financial processes and data. He wanted to leave before report was completed and was prodded to stay until near completion. He may very well be a good facilities person but finances are not his strong area. We also pushed Carl to give a projected date for Wesly Peachtree completion and told him we had expected them to have been finished well before now. Response was fluid and non-committal – this issue again needs to be taken up directly with Don. There is now a realistic report for the Commissioners. Vince learned more about the culture of the college.

EDUSYSTEMS facilitated multiple projects for Denmark Technical College which included:

- 1 • correctly analyzing fund balance position for fiscal year 2007-2008;
- 2 • identifying weakness in financial records for fiscal year 2007-2008;
- 3 • assembling and leading a team to properly charge federal funds for fiscal years 2007-2008 and 2008-2009;
- 4 • advising President with strategic initiatives to address existing and developing financial emergencies; ~~EXIGENCIES~~ ^{EXIGENCIES} ~~EXIGENCIES~~ ^{EXIGENCIES}
- 5 • conducting personnel assessments for reorganization and reduction in force scenarios;
- 6 • obtaining South Carolina State Board of Nursing accreditation/approval for the Practical Nursing Program;
- 7 • maintaining National Accrediting Commission of Cosmetology Arts and Sciences accreditation for the Cosmetology Program;
- 8 • issuing two major reports (1.) Assessment and Recommendations: Nursing and Allied Health and (2.) Workforce Development: Denmark Technical College;
- 9 • analyzing the state mandated cosmetology continuing education license renewal process for future programmatic initiatives;
- 10 • resurrecting the college catalog review process;
- 11 • increasing enrollments from spring 2007 to spring 2008 due to recommended enrollment enhancement strategies;
- 12 • identifying qualified candidates for the position of Chief Financial Officer;
- 13 • developing request for proposal for new auditor engagement; ^{Requested}
- 14 • identifying weakness in institutional reporting of workforce development efforts which resulted in decreased formula funding and recommended new reporting system; ^{they} ~~For these activities~~
- 15 • assessing STAR program and recommending efforts be coordinated in the academic fabric of the college and ensuring only qualified candidates be granted student financial aid.

STATE OF SOUTH CAROLINA
COUNTY OF BAMBERG

Dr. Robert W. Denton and Dr. John May,
D/B/A Edusystems, a general partnership,

Plaintiffs and Counterclaim Defendants,

v.

Denmark Technical College,

Defendant, Counterclaim Plaintiff
and Third-Party Plaintiff,

v.

Dr. John K. Waddell,

Third-Party Defendant.

IN THE COURT OF COMMON PLEAS
SECOND JUDICIAL CIRCUIT

C.A. No. 2011-CP-05-00160

**AFFIDAVIT OF
DR. WALT TOBIN
IN SUPPORT OF
DEFENDANT
DENMARK TECHNICAL
COLLEGE'S MOTION
FOR SUMMARY JUDGMENT
AND IN OPPOSITION TO PLAINTIFFS'
MOTION FOR SUMMARY JUDGMENT**

I, Dr. Walt Tobin, being duly sworn according to law, depose and say as follows:

1. I am currently the President of Orangeburg-Calhoun Technical College ("OC Tech") in Orangeburg, South Carolina. I began serving as President at OC Tech on June 1, 2011.

2. I formerly served as Interim President of Denmark Technical College ("DTC" or "the College") from July 2009 until January 2010. I came to be Interim President at DTC after the college terminated the former President, Dr. John K. Waddell. As President, I served as the chief administrative officer of the College.

3. In my years of experience in college administration, specifically South Carolina technical colleges, I have become familiar with both State procurement requirements, to

00119

which all technical colleges are subject, as well the procurement policies of individual colleges, including the DTC procurement policies while I served as Interim President.

4. While serving as Interim President of DTC, I found it necessary to look into the business dealings between the College and the educational consulting firm of Edusystems, which is a partnership between Dr. Pete Denton and Dr. John May. I looked into the relationship between DTC and Edusystems once I realized that the College was paying Denton and May \$10,500 a month for consulting services, the value and necessity of which were not clear to me or others.

5. Under Section 11-35-40(2) of the State Procurement Code, which DTC is subject to, the Code applies to every procurement or expenditure of funds under contract by a governmental body irrespective of the source of funds, including federal assistance money. Consequently, whether or not the contracts with Denton and May d/b/a Edusystems were to be paid with Historically Black Colleges and Universities ("HBCU") Title III funds, the awarding of the contracts had to comply with State and College procurement requirements.

6. I was first able to locate two possible letter agreements between Edusystems and the College. Copies of those agreements are attached as Exhibits A and B. The first letter of agreement had a date, May 1, 2008, and appeared to cover the period May 15 through September 30, 2008 (Exhibit A). It called for the payment of a professional fee of \$10,500 per month, covering services described in the document. I noticed, however, that this letter agreement was unsigned by either Dr. Waddell, at the time the President of the College, or Drs. Denton or May on behalf of Edusystems.

00120

7. I found a second letter agreement that also was dated May 1, 2008, covering the period October 1, 2008, to September 30, 2009 (Exhibit B). Curiously, this second letter contract was not signed by the parties in May 2008 but instead was signed on October 13, 2008, by Waddell, Denton, and May. It called for a professional fee to Edusystems per month of \$10,500, for a total contract price over the 12-month period of \$126,000. I have been told by the attorneys for DTC that it is the second contract dated May 1, 2008 (Exhibit B) which Denton and May are suing on.

8. With further investigation, I found a collection of documents that included invoices from Edusystems, pay requests and payment checks, certain incomplete and apparently after-the-fact "sole source" documents, and consultant requests/approval and contract forms. This documentation is attached as Exhibit C (pp. 1-16). It appeared to me that Waddell and Edusystems attempted on September 19, 2008, to use a sole source procurement justification for services that were rendered starting back in May 2008 under the first contract (Exhibit A), and that they tried to have first sole source justification also cover the second, 12-month contract (Exhibit B), for services supposedly not beginning until October 1, 2008.

9. In examining the sole source and related consultant request documentation, it became obvious that the attempted justification was not only after-the-fact, but mostly incomplete. See Exhibit C, pp. 2-4. I noted that none of the four options of the "sole source checklist" at the top of the Justification form, which identify the particular reason for justification of a sole source procurement, were marked by Waddell. The form identified "Edusystems" as the provider of the sole source procurement, and simply explained that Edusystems was being procured to provide "facilitation of the College's Strategic Plan,

00121

Workforce Development, Allied Health and Leadership objectives.” The only other information contained on the form was Waddell’s signature as President without any date. See Exhibit C, p.

2. The only attachments to the Justification form were two sheets, one entitled “Approval/Request for Consultant Services” and the other entitled “Consultant Contract.” Exhibit C, pp. 3, 4. Neither of these documents contained any further information justifying the hiring of Edusystems in a sole source procurement. The most that was said is that Edusystems is a “professional firm that specializes in developing and implementing high quality products and services. The firm assists with comprehensive and strategic planning to exploit the unique strengths and program opportunities for institutions.” Exhibit C, p. 3.

10. I also noted that the documentation covering the first payment under the second contract (Exhibit B), for the initial period November 1 through November 30, 2008, contained no additional sole source form, whether complete or incomplete, and only had an undated request for consultant services and a consultant contract form indicating an initial payment of \$10,000. See Exhibit C, pp. 13-16.

11. In searching the files, I also discovered an earlier contractual arrangement between Waddell and Edusystems, which apparently was entered into in February of 2008, that Waddell and Edusystems attempted to justify as a sole source procurement which again lacked justification and proper documentation. See Exhibit D attached.

12. In reviewing the type of services described in the second May 1, 2008, contract (Exhibit B), it became clear the services as described in the document amounted to standard, run-of-the-mill consultant services in areas such as strategic planning, workforce development, and program development. Such services do not meet State or College

00122

requirements for a sole source procurement. Those requirements are contained in the DTC purchasing policies and procedural manual, attached as Exhibit E, p. 7. As they relate to this situation, those requirements are that the item be one of a kind and available from only the supplier. Educational consultant services of the nature and type that Denton and May were providing were not unique or available only from one source of supply. I personally know of several consulting firms that can offer the same type of consultant services as Edusystems was providing DTC. In addition, the documentation itself was after-the-fact and incomplete in several respects. See Exhibit C, p. 2. In addition, as stated above in paragraph 8, there was no sole source or other documentation validating procurement of the services of Denton and May for the contract period October 1, 2008, to September 30, 2009.

13. The procurement of the services of Denton and May d/b/a Edusystems failed to comply with a second requirement of the College's procurement policies, which is that all procurements over \$50,000 be sent to "Central State Purchasing" for processing. See Exhibit E, p. 6. As stated in the related State regulation, sec. 19-445.2020, procurements in excess of \$50,000 must receive certification by the Materials Management Officer of the Budget and Control Board ("Central State Purchasing"), including procurements in the area of "consultant services." Exhibit E, p. 8, 10. I could find no documentation whatsoever that the required certification by Central State Purchasing/MMO had been requested by Waddell or granted by the MMO.

14. As stated in the College's procurement manual and State regulation, sec. 9-445.2015, unauthorized procurements of contracts in excess of \$50,000 may be ratified, if particular conditions are met, or terminated as null and void. Exhibit E, pp. 2, 10. No

ratification occurred in this case, and it seems obvious why none was attempted. In order to ratify, the regulation requires that an appropriate official prepare a written determination concerning the facts and circumstances surrounding the unauthorized contract, what corrective action is being taken to prevent recurrence, and the action taken against the individual committing the unauthorized act.

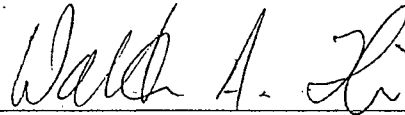
15. After reviewing the circumstances of the relationship between Denton and May, d/b/a Edusystems, and the College, I discussed the situation with DTC's governing body, the Area Commission. It was decided by the Commission and me, as Interim President, that the agreement between Edusystems and the College was improper, and that Denton and May had not provided the services contracted for. Sometime in mid-July 2009, Denton and May were advised that their services were no longer needed, and that they were not to return to the College. At that point, Denton and May d/b/a Edusystems had been paid their monthly fee of \$10,500 through the end of June 2009.

16. The last Executive Report provided by Edusystems concerning claimed services rendered is dated June 30, 2009, and states that it covers activities from March 31 to June 30, 2009, which indicates to me that June 30, 2009, was the last date on which Denton and May might have performed services.

17. As they allege in paragraph 12 their Complaint, DTC did not use Edusystems' services in June and July 2009; however, Denton and May claim the College did use their services in August and September 2009. First, because Denton and May were told in mid-July that their services were terminated, any work they claim they performed in August and September was unauthorized and not entitled to payment. In addition, what Denton and May

00124

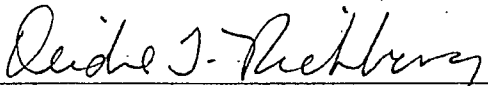
claim to be utilization of their services is merely time they spent meeting with me on August 26, 2009, when I asked them to explain what they had done for the College, and a follow-up letter that Denton and May sent me, dated September 10, 2009, which attempted to explain in writing what services Edusystems had provided during the relationship. I do not consider the meeting on August 26 nor the September 10, 2009 letter, to be services rendered by Denton and May to DTC.



Dr. Walt Tobin

SWORN to and subscribed before me this

15 day of November 2011.



Notary Public of South Carolina

My Commission Expires 01/29/2017

00125

EDUSYSTEMS

P. O. Box 3017

West Columbia, S. C. 29271

Phone (803)-955-3606

Email Drrwdenton@yahoo.com

May 1, 2008

Dr. John K. Waddell, President

Denmark Technical College

500 Solomon Blatt Boulevard

Denmark, South Carolina 29042-0327

Dear Dr. Waddell:

EDUSYSTEMS is a professional firm that specializes in developing and implementing high quality college and university products and services. The firm helps strategically position institutions to exploit their unique strengths and programming opportunities. The core competency of EDUSYSTEMS is to provide high quality, long-term, entrepreneurial oriented, and high profile program and service concepts. The contract will begin May 15, 2008 and conclude September 30, 2008.

The EDUSYSTEMS proposal consists of three segments. The first segment will focus on the Nursing and Allied Health Program by beginning the implementation of the recommendations set forth in the April 16, 2008 EDUSYSTEMS report. Included are curriculum analysis based on the student success with the NCLEX-PN exam; beginning the State Board of Nursing accreditation document; initiating searches for appropriate credit allied health programs; and preparing students for the NCLEX-PN EXAM. The second segment of the proposal is to examine the feasibility of developing an agriculture/agribusiness degree program. The third segment will begin the analysis of the STAR Program for review by the Southern Association of Colleges and Schools (SACS). All three segments will require the development of faculty and administrator task forces.

Exh. A

Segment 1: Begin Implementation of Nursing and Allied Health Recommendations:

- Begin guiding Nursing and Allied Health faculty with developing the State Board of Nursing accreditation document
- Assess the August 2008 NCLEX-PN exam results and begin guiding nursing curriculum analysis and improvement initiatives;
- Guide nursing faculty with securing and implementing a post graduate NCLEX-PN exam review initiative.

Segment Two: Begin Feasibility Analysis for Agriculture/Agribusiness Program:

- Develop and facilitate interdepartmental and cross departmental task force comprised of faculty and administrators;
- Guide the task force in identifying similar programs in two year colleges;
- Begin benchmarking existing curriculum and campus resources to determine strengths and weaknesses currently present that can help or hinder the development of an Agriculture/Agribusiness;
- Create and involve a responsive advisory board;

Segment Three: Begin Analysis of STAR Program for SACS Review:

- Develop and facilitate of interdepartmental and cross departmental task force; comprised of faculty and administrators to critically examine the STAR Program;
- Review existing SACS recommendations for the STAR Program;
- Examine current outcome assessment mechanisms and current level/quality of data generation;

PAYMENT SCHEDULE

The program is based on a four month and two week timeframe; from May 15, 2008 to September 30, 2008.

1. Professional Fee Per Month - \$10,500.00
2. Specialty Consultants as Needed - up to \$6,000.00

ACCEPTED BY:

Dr. John K. Waddell, President
Denmark Technical College

Date

Dr. R. W. Denton, EDUSYSTEMS

Date

Dr. John P. May, EDUSYSTEMS

Date

EDUSYSTEMS

P. O. Box 3017

West Columbia, S. C. 29271

Phone (803)-955-3606

Email Drrwdenton@yahoo.com

May 1, 2008

Dr. John K. Waddell, President

Denmark Technical College

500 Solomon Blatt Boulevard

Denmark, South Carolina 29042-0327

Dear Dr. Waddell:

EDUSYSTEMS is a professional firm that specializes in developing and implementing high quality college and university products and services. The firm helps strategically position institutions to exploit their unique strengths and programming opportunities. The core competency of EDUSYSTEMS is to provide high quality, long-term, entrepreneurial oriented, and high profile program and service concepts. The contract is intended to be covered by Title III funds and will begin October 1, 2008 and conclude September 30, 2009.

The EDUSYSTEMS proposal consists of four segments. The first segment of the proposal involves consulting directly with the President. The segment also encompasses EDUSYSTEMS guiding the top leadership of the institution in strategic initiative recognition and implementation. The second segment focuses on the Nursing and Allied Health Program and includes developing the State Board of Nursing approval document and implementing the recent EDUSYSTEMS recommendations. The third segment of the proposal is to establish an effective baseline in order to ensure the integrity of future academic enhancement efforts. The baseline is intended to be a living document that can expand to encompass future areas for performance enhancement as the institution undertakes holistic academic reform. The fourth segment is to assure that existing workforce development efforts are accurately and completely recorded and reported. Mindful that accrediting bodies consider that curricular related issues and changes reside in the collective actions of the faculty, EDUSYSTEMS will undertake critical

Page 1 of 4

00129

Exh. B

portions of the proposal by facilitating newly formed inter and cross departmental faculty and staff task forces:

Segment One: Strategic Initiatives:

- Consult directly with the President on mission critical issues such as:
 1. Analysis of current tuition and make recommendations for increasing or retaining the current fee;
 2. Analysis of selected programs of study to determine financial viability of each and where indicated recommend constructing and charging a laboratory or clinical fee to supplement tuition;
- Guide top leadership with identifying, addressing, and implementing strategic initiatives;
- Assist with the development and implementation of a partnership with Denmark Technical College and Medical University of South Carolina that will:
 1. Assist entities in the service area with grant writing for allied health services;
 2. Provide students at the College and from the service area with obtaining higher degree pathways in health related disciplines;
 3. Develop health related infrastructure in the service area;
 4. Provide rural health initiatives.
- Guide top leadership of the institution with maintaining progress toward satisfying Southern Association of Colleges and Schools (SACS) requirements in areas such as:
 1. STAR Program;
 2. Institutional and major programs' mission statement congruence;
 3. Currency of progress with required SACS actions.

Segment Two: Nursing and Allied Health:

- Guide Nursing and Allied Health faculty with developing the State Board of Nursing approval/accreditation document
- Assess the August 2008 NCLEX-PN exam results and begin guiding nursing curriculum analysis and improvement initiatives;
- Guide nursing faculty with securing and implementing a post graduate NCLEX-PN exam review initiative;
- Determine feasibility of establishing a two year Registered Nurse program.

Segment Three: Review and Analysis of Opportunities for Academic Reform and Advancement

- Begin initial review of individual programs of study progress with obtaining, maintaining, and/or meeting discipline specific/professional specific accreditation;

- Review, analyze, and assure the college parallel/transfer program is properly aligned with existing South Carolina State University articulation agreements and the new and University of South Carolina Bridge Program;
- Determine feasibility of developing new or modifying existing credit programs in hospitality management, agriculture/agribusiness, various health areas, and other technically based areas of workforce development need.
- Develop and facilitate of Interdepartmental and cross departmental General Education/Transitional Studies Task Force comprised of faculty and administrators;
- Guide the General Education/Transitional Studies Task Force in critically analyzing, adopting, and/or developing a mission statement for the General Education Core. Assure that this mission statement is properly aligned with the Institution's mission and those of other departments;
- Review and analyze the General Education/Transitional Studies core for currency, consistency, and flexibility;
- Benchmark the core requirements in the various programs of study to those of aspirant institutions;

Segment Four: Identifying Existing Workforce Development Efforts

- Review existing non-credit programs and public service events for proper capture of institutional credit;
- Identify workforce development activities not currently reported;
- Recommend reporting/recording procedures to accurately reflect total institutional efforts;
- Establish a mechanism for investigating and determining workforce development at needs at Savannah River Site;
- Establish new or improve existing mechanisms (both on and off campus) for improving business relations by determining new areas that require workforce development (i.e., Duke Power/SCANA lineman training and technically related workforce development training).

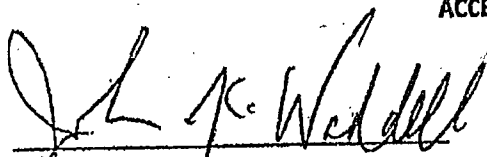
PAYMENT SCHEDULE

The program is based on a twelve month timeframe; from October 1, 2008 to September 30, 2009.

1. Professional Fee Per Month - \$10,500.00
2. Yearly Specialty Consultants as Needed - up to \$16,000.00

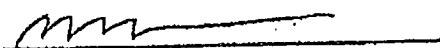
Payments will be issued on a monthly basis.

ACCEPTED BY:


Dr. John K. Waddell, President
Denmark Technical College

10-13-08

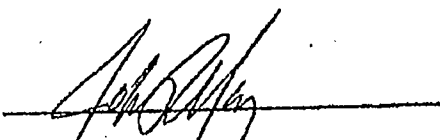
Date



Dr. R. W. Denton, EDUSYSTEMS

10-13-08

Date



Dr. John P. May, EDUSYSTEMS

10-13-08

Date

EDUSYSTEMS

Post Office Box 3017
West Columbia, South Carolina 29271
Phone (803)-955-3606

INVOICE

July 1, 2008

To: Denmark Technical College
C/O: Dr. John K. Waddell
Denmark Technical College
500 Solomon Blatt Boulevard
Denmark, South Carolina 29042-0327

From: EDUSYSTEMS

For: Consulting services provided to Denmark Technical College May 15, 2008 through June 30, 2008. Fee based on accepted \$10,500 per month professional services fee.

Amount: \$15,750.00 ✓

Remittance: Make check payable to EDUSYSTEMS

Exh. C

00133

p. 1

JUSTIFICATION FOR
SOLE SOURCE PROCUREMENT

SOLE SOURCE CHECKLIST

- ☒ Yes No A) Is the item needed due to compatibility with equipment, accessories, or replacement parts?
☐ Yes No B) Is the item one of a kind or unique and only available from a single source?
☐ Yes No C) Has the market been researched with the results confirming the criteria for a sole source?
☐ Yes No D) Has the market been tested recently on the applicability of a sole source? If so, when? _____

Based upon the following determination, the proposed procurement action described below is being procured pursuant to the authority of Section 11-35-1560 of the South Carolina Procurement Code and 19-445.2105 of the Rules and Regulations, 1976 South Carolina Code of Laws.

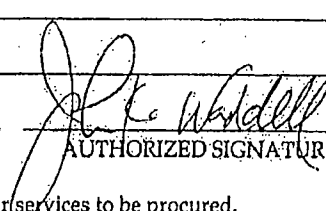
This Board proposes to procure Facilitation of the College's Strategic Planning, Workforce Development, Allied Health and Leadership objectives.

as a sole source procurement from EDUSYSTEMS

(2)

Explain any answer noted as YES on the checklist and provide additional information, either below or with an attachment, on the proposed sole source procurement.

☒ Attachment _____

DATE	<u>Denmark Technical College</u>		<u>President</u>
	GOVERNMENTAL BODY	AUTHORIZED SIGNATURE	TITLE

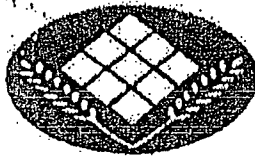
NOTES: (1) Enter description of goods or services to be procured.
(2) Enter name of sole source contractor.
(3) Enter the determination and basis for sole source procurement.

The Drug-free Work Place certification must be obtained for sole source procurements greater than \$50,000.

The effective date of the contract/order must be after the effective date of the proposed justification and the justification must be approved by a person with delegated procurement authority.

ADDITIONAL RESOURCES

Materials Management Office-State Procurement Office
Chief Information Office
Office of the State Engineer



DENMARK

TECHNICAL COLLEGE

Approval/Request for Consultant Services

I. Consultant's Name and Address:

EDUSYSTEMS

P.O. Box 3017

West Columbia, SC 29171

II. Purpose of Consultation/Need for Consultant:

Facilitation of the College's Strategic
Planning, Workforce Development, Allied Health and Leadership objectives.

III. Consultant's Qualifications:

Professional firm that specializes in developing and
implementing high quality products and services. The firm assists with comprehensive
strategic planning to exploit the unique strengths and program opportunities for institutions.

IV. Estimated cost of consultation:

a. Professional Fee	\$15,750.00
b. Travel	
c. Per Diem	
d. Preparation	
e. Miscellaneous	
f. Total	\$15,750.00

V. Requested:

Initiating Individual

Date

Recommended:

Dean of the Division

Date

Approved:

Business Manager

Date

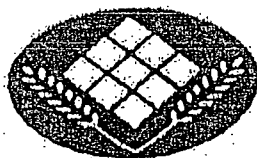
Approved:

President

Date

00135

3.



DENMARK TECHNICAL COLLEGE

CONSULTANT CONTRACT

- I. EDUSYSTEMS has agreed to serve as a consultant to Denmark Technical College for the purpose(s) outlined below:
Facilitate the College's Strategic Planning, Workforce Development, Allied Health And Leadership objectives

- Identify the main issues that are currently affecting your area. Concentrate on the major issues that are impeding the division in meeting its objectives.

- Identify the major challenge(s) faced in order to resolve the issue.

- SACS, the Financial Audit, the Enrollment Audit and all other auditing/accrediting bodies are seeking documentation. In this column, identify how you will document that the challenge(s) was met? (The objective was met.)

- II. Services will be rendered on the following date(s):
May 15, 2008 through June 30, 2008

- III. A professional fee of \$15,750.00 has been agreed upon, and an expense voucher outlined additional costs will be submitted by the consultant upon completion of services.

EDUSYSTEMS
Consultant's Signature

Date

57-1121965

Social Security Number

00126

4.

DIRECT EXPENDITURE VOUCHER (D.E.V.)

DENMARK TECHNICAL COLLEGE
SOLOMON BLATT BLVD./POST OFFICE BOX 327
DENMARK, SC 29042

To: Account Payable

Vendor Name EDUSYSTEMS

From: President's Office

Vendor Address: Post Office Box 3017
West Columbia, SC 29271

Subject: _____

Invoice Numbers:

Minority Business: _____

Partial Payment: _____

Total Amt. Invoice(s) _____

ACCOUNT	DESCRIPTION	AMOUNT
21-9841487-52990		
21-9841506-53990	For Consulting Services	\$15,750.00
	Rendered from May 15, 2008	
	To June 30, 2008.	

TOTAL \$15,750.00

DIRECT EXPENDITURE INSTRUCTIONS:
A DIRECT EXPENDITURE VOUCHER MUST BE USED IN
ALL CASES WHEN A P.O. IS NOT APPLICABLE.
EVERY DIRECT EXPENDITURE TRANSACTION MUST BE
APPROVED BEFORE SUBMISSION TO ACCOUNTS PAYABLE.
THE ORIGINAL (WHITE) DIRECT EXPENDITURE VOUCHER
WILL BE ATTACHED TO EXPENDITURE DOCUMENTATION
AND FORWARDED TO ACCOUNTS PAYABLE.
YOU MUST MARK "X" IF PARTIAL PAYMENT.

REQUESTED BY/DATE

APPROVED BY/DATE

APPROVED BY/DATE

APPROVED BY/DATE

APPROVED BY/DATE

00137

5.

**DENMARK TECHNICAL COLLEGE**P.O. BOX 327
DENMARK, SOUTH CAROLINA 29042
UNRESTRICTED FUND

NO: 1080031

INVOICE DATE	DESCRIPTION	REFERENCE	AMOUNT PAID
09/19/08	SERVICES FOR 5/15-6/30	N/A	15,750.00
TOTALS			15,750.00

**DENMARK TECHNICAL COLLEGE**P.O. BOX 327
DENMARK, SOUTH CAROLINA 29042
UNRESTRICTED FUNDWACHOVIA BANK & TRUST CO.
BAMBERG, SOUTH CAROLINA67-1
532

NO: 1080031

SEP 19, 2008

\$15,750.00

PAY Fifteen Thousand, Seven Hundred Fifty Dollars and Zero Cents

TO THE
ORDER EDUSYSTEMS
OF PO BOX 3017
COLUMBIA SC 29271**File Copy****DENMARK TECHNICAL COLLEGE**P.O. BOX 327
DENMARK, SOUTH CAROLINA 29042
UNRESTRICTED FUNDEDUSYSTEMS
PO BOX 3017
COLUMBIA SC 29271

00138

6

EDUSYSTEMS

Post Office Box 3017
West Columbia, South Carolina 29271
Phone (803)-955-3606

INVOICE

September 16, 2008

To: Denmark Technical College
C/O: Dr. John K. Waddell
Denmark Technical College
500 Solomon Blatt Boulevard
Denmark, South Carolina 29042-0327

From: EDUSYSTEMS

For: Consulting services provided to Denmark Technical College July 1, 2008 through September 30, 2008. Fee based on accepted \$10,500 per month professional services fee.

Amount: \$31,500.00

Remittance: Make check payable to EDUSYSTEMS

00139

7.

X

JUSTIFICATION FOR
SOLE SOURCE PROCUREMENT

SOLE SOURCE CHECKLIST

- Yes No A) Is the item needed due to compatibility with equipment, accessories, or replacement parts?
Yes No B) Is the item one of a kind or unique and only available from a single source?
Yes No C) Has the market been researched with the results confirming the criteria for a sole source?
Yes No D) Has the market been tested recently on the applicability of a sole source? If so, when? _____

Based upon the following determination, the proposed procurement action described below is being procured pursuant to the authority of Section 11-35-1560 of the South Carolina Procurement Code and 19-445.2105 of the Rules and Regulations, 1976 South Carolina Code of Laws.

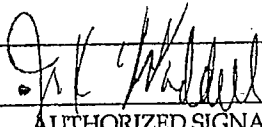
This Board proposes to procure of consulting services in Financial Audit, Nursing and Cosmetology.

as a sole source procurement from EDUSYSTEMS

(2)

Explain any answer noted as YES on the checklist and provide additional information, either below or with an attachment, on the proposed sole source procurement.

Attachment _____

	<u>Denmark Technical College</u>		<u>President</u>
DATE	GOVERNMENTAL BODY	AUTHORIZED SIGNATURE	TITLE

NOTES: (1) Enter description of goods or services to be procured.
(2) Enter name of sole source contractor.
(3) Enter the determination and basis for sole source procurement.

The Drug-free Work Place certification must be obtained for sole source procurements greater than \$50,000.

The effective date of the contract/order must be after the effective date of the proposed justification and the justification must be approved by a person with delegated procurement authority.

ADDITIONAL RESOURCES

Materials Management Office-State Procurement Office
Chief Information Office
Office of the State Engineer

DIRECT EXPENDITURE VOUCHER (D.E.V.)

DENMARK TECHNICAL COLLEGE
SOLOMON BLATT BLVD./POST OFFICE BOX 327
DENMARK, SC 29042

To: Account Payable

Vendor Name EDUSYSTEMS

From: President's Office

Vendor Address: Post Office Box 3017
West Columbia, SC 29271

Subject: _____

Invoice Numbers:

Minority Business _____
Partial Payment _____
Total Amt. Invoice(s) _____

ACCOUNT	DESCRIPTION	AMOUNT
21-9841407-52990 9841411	For Consulting Services Rendered from July 1, 2008 To September 30, 2008.	\$19,000.00

TOTAL \$19,000.00

DIRECT EXPENDITURE INSTRUCTIONS:
A DIRECT EXPENDITURE VOUCHER MUST BE USED IN
ALL CASES WHEN A P.O. IS NOT APPLICABLE.
EVERY DIRECT EXPENDITURE TRANSACTION MUST BE
APPROVED BEFORE SUBMISSION TO ACCOUNTS PAYABLE.
THE ORIGINAL (WHITE) DIRECT EXPENDITURE VOUCHER
WILL BE ATTACHED TO EXPENDITURE DOCUMENTATION
AND FORWARDED TO ACCOUNTS PAYABLE.
YOU MUST MARK "X" IF PARTIAL PAYMENT.

REQUESTED BY/DATE West Jackson

APPROVED BY/DATE _____

APPROVED BY/DATE _____

APPROVED BY/DATE _____

APPROVED BY/DATE _____

00141

9.

**DENMARK TECHNICAL COLLEGE**P.O. BOX 327
DENMARK, SOUTH CAROLINA 29042
UNRESTRICTED FUND

NO: 1080592

INVOICE DATE	DESCRIPTION	REFERENCE	AMOUNT PAID
11/05/08	CONSULTANT SERVICES	N/A	19,000.00
TOTALS			19,000.00

**DENMARK TECHNICAL COLLEGE**P.O. BOX 327
DENMARK, SOUTH CAROLINA 29042
UNRESTRICTED FUNDWACHOVIA BANK & TRUST CO.
BAMBERG, SOUTH CAROLINA67-1
632

NO: 1080592

NOV 05, 2008

\$19,000.00

PAY Nineteen Thousand Dollars and Zero Cents

TO THE ORDER OF
EDUSYSTEMS
PO BOX 3017
COLUMBIA SC 29271**File Copy****DENMARK TECHNICAL COLLEGE**P.O. BOX 327
DENMARK, SOUTH CAROLINA 29042
UNRESTRICTED FUNDEDUSYSTEMS
PO BOX 3017
COLUMBIA SC 29271

10.

00142

DIRECT EXPENDITURE VOUCHER (D.E.V.)

DENMARK TECHNICAL COLLEGE
SOLOMON BLATT BLVD./POST OFFICE BOX 327
DENMARK, SC 29042

To: Account Payable

Vendor Name EDUSYSTEMS

From: President's Office

Vendor Address: Post Office Box 3017
West Columbia, SC 29271

Subject: _____

Invoice Numbers: _____

Minority Business _____

Partial Payment _____

Total Amt. Invoice(s) _____

ACCOUNT	DESCRIPTION	AMOUNT
21-9841407-52990 9841911	For Consulting Services Rendered from July 1, 2008 To September 30, 2008.	\$12,500.00

TOTAL \$12,500.00

DIRECT EXPENDITURE INSTRUCTIONS:
A DIRECT EXPENDITURE VOUCHER MUST BE USED IN
ALL CASES WHEN A P.O. IS NOT APPLICABLE.
EVERY DIRECT EXPENDITURE TRANSACTION MUST BE
APPROVED BEFORE SUBMISSION TO ACCOUNTS PAYABLE.
THE ORIGINAL (WHITE) DIRECT EXPENDITURE VOUCHER
WILL BE ATTACHED TO EXPENDITURE DOCUMENTATION
AND FORWARDED TO ACCOUNTS PAYABLE.
YOU MUST MARK "X" IF PARTIAL PAYMENT.

REQUESTED BY/DATE

APPROVED BY/DATE

APPROVED BY/DATE

APPROVED BY/DATE

APPROVED BY/DATE

00143

11.

**DENMARK TECHNICAL COLLEGE**P.O. BOX 327
DENMARK, SOUTH CAROLINA 29042
UNRESTRICTED FUND

NO: 1080591

INVOICE DATE	DESCRIPTION	REFERENCE	AMOUNT PAID
11/05/08	CONSULTING SERVICES	N/A	12,500.00
TOTALS			12,500.00

**DENMARK TECHNICAL COLLEGE**P.O. BOX 327
DENMARK, SOUTH CAROLINA 29042
UNRESTRICTED FUNDWACHOVIA BANK & TRUST CO.
BAMBERG, SOUTH CAROLINA87-1
532

NO: 1080591

NOV 05, 2008

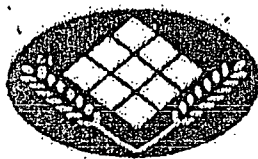
\$12,500.00

PAY Twelve Thousand, Five-Hundred Dollars and Zero Cents

TO THE ORDER OF EDUSYSTEM
PO BOX 3017
COLUMBIA SC 29271**File Copy****DENMARK TECHNICAL COLLEGE**P.O. BOX 327
DENMARK, SOUTH CAROLINA 29042
UNRESTRICTED FUNDEDUSYSTEM
PO BOX 3017
COLUMBIA SC 29271

00144

12.



DENMARK

TECHNICAL COLLEGE

Approval/Request for Consultant Services

I. Consultant's Name and Address:

EDUSYSTEMS

P.O. Box 3017

West Columbia, SC 29171

II. Purpose of Consultation/Need for Consultant:

Facilitation of the College's Strategic

Planning Meeting.

III. Consultant's Qualifications:

Professional firm that specializes in developing and implementing high quality products and services. The firm assists with comprehensive strategic planning to exploit the unique strengths and program opportunities for institutions.

IV. Estimated cost of consultation:

a. Professional Fee	\$10,000.00
b. Travel	
c. Per Diem	
d. Preparation	
e. Miscellaneous	
f. Total	\$10,000.00

V. Requested:

Initiating Individual _____ Date _____

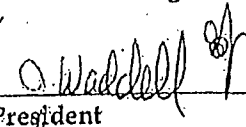
Recommended:

Dean of the Division _____ Date _____

Approved:

Business Manager _____ Date _____

Approved:


President _____ Date _____

00145

13.



DENMARK TECHNICAL COLLEGE

CONSULTANT CONTRACT

- I. EDUSYSTEMS has agreed to serve as a consultant to Denmark Technical College for the purpose(s) outlined below:
Facilitate the college's Strategic Planning Meeting by identifying

- Identify the main issues that are currently affecting your area. Concentrate on the major issues that are impeding the division in meeting its objectives.

- Identify the major challenge(s) faced in order to resolve the issue.

- SACS, the Financial Audit, the Enrollment Audit and all other auditing/accrediting bodies are seeking documentation. In this column, identify how you will document that the challenge(s) was met? (The objective was met.)

- II. Services will be rendered on the following date(s):
Nov 1 through Nov 20, 2008
- III. A professional fee of \$10,000.00 has been agreed upon, and an expense voucher outlined additional costs will be submitted by the consultant upon completion of services.

EDUSYSTEMS
Consultant's Signature

Date

57-1121965

Social Security Number

[Signature]
College Agent's Signature

Date

Account Number

00146

14

DIRECT EXPENDITURE VOUCHER (D.E.V.)

DENMARK TECHNICAL COLLEGE
SOLOMON BLATT BLVD./POST OFFICE BOX 327
DENMARK, SC 29042

To: Account Payable

Vendor Name EDUSYSTEMS

From: President's Office

Vendor Address: Post Office Box 3017
West Columbia, SC 29271

Subject: _____

Invoice Numbers:

Minority Business _____

Partial Payment _____

Total Amt. Invoice(s) _____

ACCOUNT	DESCRIPTION	AMOUNT
21-9841- ~~407~~ -52990. 1911-	For Consulting Services Rendered from Nov 1 To Nov 20, 2008.	\$10,000.00

TOTAL \$10,000.00

DIRECT EXPENDITURE INSTRUCTIONS:
A DIRECT EXPENDITURE VOUCHER MUST BE USED IN
ALL CASES WHEN A P.O. IS NOT APPLICABLE.
EVERY DIRECT EXPENDITURE TRANSACTION MUST BE
APPROVED BEFORE SUBMISSION TO ACCOUNTS PAYABLE.
THE ORIGINAL (WHITE) DIRECT EXPENDITURE VOUCHER
WILL BE ATTACHED TO EXPENDITURE DOCUMENTATION
AND FORWARDED TO ACCOUNTS PAYABLE.
YOU MUST MARK "P" IF PARTIAL PAYMENT.

REQUESTED BY/DATE: Lee Jackson 25/Nov 08

APPROVED BY/DATE: [Signature]

APPROVED BY/DATE: _____

APPROVED BY/DATE: [Signature]

APPROVED BY/DATE: [Signature]

00147

15.

**DENMARK TECHNICAL COLLEGE**

P.O. BOX 327
DENMARK, SOUTH CAROLINA 29042
UNRESTRICTED FUND

NO: 1081692

INVOICE DATE	DESCRIPTION	REFERENCE	AMOUNT PAID
11/25/08	CONSULTING SERVICES	N/A	10,000.00
TOTALS			10,000.00

**DENMARK TECHNICAL COLLEGE**

P.O. BOX 327
DENMARK, SOUTH CAROLINA 29042
UNRESTRICTED FUND

WACHOVIA BANK & TRUST CO.
BAMBERG, SOUTH CAROLINA

87-1
532

NO: 1081692

NOV 25, 2008

PAY Ten Thousand Dollars and Zero Cents

\$10,000.00

TO THE
ORDER
OF

EDUSYSTEMS
PO-BOX 3017
COLUMBIA SC 29271

File Copy**DENMARK TECHNICAL COLLEGE**

P.O. BOX 327
DENMARK, SOUTH CAROLINA 29042
UNRESTRICTED FUND

EDUSYSTEMS
PO BOX 3017
COLUMBIA SC 29271

00148

16.

EDUSYSTEMS
P. O. BOX 3017
WEST COLUMBIA, S. C. 29271

Phone (803)-955-3606

Email Drrwdeton@yahoo.com

To: Dr. John K. Waddell, President
Denmark Technical College

From: EDUSYSTEMS

Date: February 1, 2008

Subject: Contract to Review and Assess Nursing and Allied Health Program

EDUSYSTEMS is a professional firm that specializes in developing and implementing high quality products and services. The firm helps strategically position institutions to exploit their unique strengths and programming opportunities. The core competency at EDUSYSTEMS is to provide high quality, long term, entrepreneurial oriented, and high profile program and service concepts.

The EDUSYSTEMS proposal consists of two interrelated segments:

Segment 1: Review and assess the Nursing and Allied Health Program. In conjunction with selected faculty and staff, review and assess the program mission, program of study, and curricular offerings.

Segment 2: Based on program assessment develop recommendations for the program that will aid in the following:

- Obtaining South Carolina State Board of Nursing Accreditation for Denmark Technical College;
- Assuring student success in passing NCLEX-PN (National Council Licensure Examination for Practical Nurse).

Timeframe: The proposal is based on a two and half month timeframe; beginning February 1, 2008 and concluding April 15, 2008.

Payment: \$24,500.00

Payment Schedule:

\$12,500.00 at the beginning of the contract
\$12,000.00 at the conclusion of the contract

Exh. D

00149

JUSTIFICATION FOR
SOLE SOURCE PROCUREMENT

SOLE SOURCE CHECKLIST

- Yes No A) Is the item needed due to compatibility with equipment, accessories, or replacement parts?
☒ Yes No B) Is the item one of a kind or unique and only available from a single source?
☒ Yes No C) Has the market been researched with the results confirming the criteria for a sole source?
Yes No D) Has the market been tested recently on the applicability of a sole source? If so, when? _____

Based upon the following determination, the proposed procurement action described below is being procured pursuant to the authority of Section 11-35-1560 of the South Carolina Procurement Code and 19-445.2105 of the Rules and Regulations, 1976 South Carolina Code of Laws.

This Board proposes to procure Review Assessment + Recommendations
of Nursing + Allied Health programs as an
emerging institution
as a sole source procurement from EDUSYSTEM
(2)

Explain any answer noted as YES on the checklist and provide additional information, either below or with an attachment, on the proposed sole source procurement.

Attachment

DATE	<u>Denmark Technical College</u>	_____ AUTHORIZED SIGNATURE	<u>President</u> TITLE
	GOVERNMENTAL BODY		

NOTES: (1) Enter description of goods or services to be procured.
(2) Enter name of sole source contractor.
(3) Enter the determination and basis for sole source procurement.

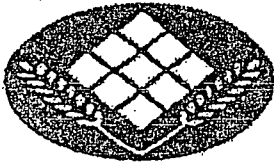
The Drug-free Work Place certification must be obtained for sole source procurements greater than \$50,000.

The effective date of the contract/order must be after the effective date of the proposed justification and the justification must be approved by a person with delegated procurement authority.

ADDITIONAL RESOURCES

Materials Management Office-State Procurement Office
Chief Information Office
Office of the State Engineer

00150



DENMARK

TECHNICAL COLLEGE

Approval/Request for Consultant Services

I. Consultant's Name and Address:

EDUSYSTEMS

PO Box 3017
West Columbia, SC 29171

II. Purpose of Consultation/Need for Consultant:

Review, Assessment, Recommendations
EMERGING INSTITUTION - Programs of Nursing & Allied
Health

III. Consultant's Qualifications:

Strategic Higher Education Leadership
AS EXECUTIVE OFFICERS, DEAN, FACULTY MEMBER, Accreditation
Expert, Multiple state, multiple institutional experiences

IV. Estimated cost of consultation:

- a. Professional Fee
- b. Travel
- c. Per Diem
- d. Preparation
- e. Miscellaneous
- f. Total

including

24500

V. Requested:

Initiating Individual

Date

Recommended:

Dean of the Division

Date

Approved:

Business Manager

Date

Approved:

President

Date

00151

JUSTIFICATION FOR
SOLE SOURCE PROCUREMENT

SOLE SOURCE CHECKLIST

- Yes No A) Is the item needed due to compatibility with equipment, accessories, or replacement parts?
Yes No B) Is the item one of a kind or unique and only available from a single source?
Yes No C) Has the market been researched with the results confirming the criteria for a sole source?
Yes No D) Has the market been tested recently on the applicability of a sole source? If so, when? _____

Based upon the following determination, the proposed procurement action described below is being procured pursuant to the authority of Section 11-35-1560 of the South Carolina Procurement Code and 19-445.2105 of the Rules and Regulations, 1976 South Carolina Code of Laws.

This Board proposes to procure Review Assessment and Recommendation of Nursing & Allied Health Programs as
(1)
an emerging institution.

as a sole source procurement from EDUSYSTEMS
(2)

Explain any answer noted as YES on the checklist and provide additional information, either below or with an attachment, on the proposed sole source procurement.

Attachment

_____	<u>Denmark Technical College</u>	_____	<u>President</u>
DATE	GOVERNMENTAL BODY	AUTHORIZED SIGNATURE	TITLE

- NOTES: (1) Enter description of goods or services to be procured.
(2) Enter name of sole source contractor.
(3) Enter the determination and basis for sole source procurement.

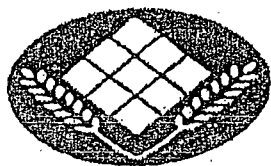
The Drug-free Work Place certification must be obtained for sole source procurements greater than \$50,000.

The effective date of the contract/order must be after the effective date of the proposed justification and the justification must be approved by a person with delegated procurement authority.

ADDITIONAL RESOURCES

Materials Management Office-State Procurement Office
Chief Information Office
Office of the State Engineer

00152



DENMARK

TECHNICAL COLLEGE

Approval/Request for Consultant Services

I. Consultant's Name and Address:

EDUSYSTEMS

P.O. Box 3017

West Columbia, SC 29171

II. Purpose of Consultation/Need for Consultant:

Review, Assessment, Recommendations

Emerging Institution Programs of Nursing & Allied Health

III. Consultant's Qualifications:

Strategic higher education, Leadership as executive officers, dean, faculty members, accreditation expert, multiple state, multiple institution experience.

IV. Estimated cost of consultation:

a. Professional Fee

24,500

b. Travel

c. Per Diem

d. Preparation

e. Miscellaneous

f. Total

24,500

V. Requested:

Initiating Individual

Date

Recommended:

Dean of the Division

Date

Approved:

Business Manager

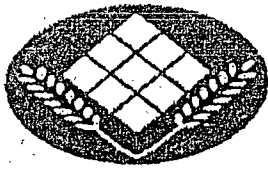
Date

Approved:

President

Date

00153



DENMARK TECHNICAL COLLEGE

CONSULTANT CONTRACT

- I. EDUSYSTEMS has agreed to serve as a consultant to Denmark Technical College for the purpose(s) outlined below:
Review assessment recommendations emerging institution programs of Nursing & Allied Health.
- II. Services will be rendered on the following date(s):
February 1, 2008 thru April 15, 2008
- III. A professional fee of 24,500 inclusive payable 12,500 as retainer and 12,000 has been agreed upon, and an expense voucher outlined additional costs will be submitted by the consultant upon completion of services.

EDUSYSTEMS
Consultant's Signature

Date

57-1121965

Social Security Number

College Agent's Signature

Date

Account Number

00154

DENMARK TECHNICAL COLLEGE

Purchasing Policies and Procedures

GENERAL INFORMATION

Purpose of Manual

This manual is provided as a guide to all departments of Denmark Technical College for the procurement of materials, supplies, equipment, and services required for their respective operations and for budgetary control of the costs of purchases.

These procedures apply regardless of the source of funds.

Although this manual is not intended to completely cover the internal operations of the college's Purchasing Department, certain phases of its operation are included to clarify procedures.

Denmark Technical College adheres to the provisions of the South Carolina Consolidated Procurement Code.

Responsibilities of the Purchasing Department

Under the authority delegated to Denmark Technical College (DTC) by the South Carolina Act Number 654, By-laws of the DTC Area Commission in conformity with provisions, regulations and policies of the State Board for Technical and Comprehensive Education, the Purchasing Department under the supervision of the Chief Business Officer has the exclusive responsibility for:

- A. Supporting the educational mission of the college by procuring the materials, supplies, equipment, and services required for the college's operation.
- B. Providing Purchasing services to all departments and locations that are a part of the college.
- C. Procuring such commodities and services in the most efficient, economical, and responsible manner.

00155

Exh. E

p. 1.

A. Departmental Solicitation by Sales Representatives

Many items used by the college must be obtained under state contracts or by competitive bidding vendors, so departmental solicitation of business is of little productive value to a sales representative. However, the Processing Department serves as a screen from salesmen, but not a barrier.

B. Correspondence with Vendors

Following the transmittal of a purchase order to the vendor, all correspondence in connection with the fulfillment of the contract is to be handled by the Purchasing Department.

C. Adjustments

The Purchasing Department will conduct all adjustment negotiations.

Unauthorized Purchases

The Purchasing Department is the only unit of the college authorized to procure goods and services for the college, except as provided for in the policy on petty cash. Unauthorized procurements and D.E.V.'s shall become the responsibility of the individual making such procurement.

All unauthorized purchases must be ratified by the President of the College up to the College's procurement certification limit. Any unauthorized procurement above the College's certification limit will be ratified in accordance with Regulation 19-445-2015 of the South Carolina Consolidated Procurement Code.

Budgetary Control

Each department, using materials and services as described in this manual, is responsible for confining its expenditures within the limits of its fiscal budget.

If a departmental budget is overspent, requisitions will not be processed for that particular department unless deemed in the best interest of the College.

Authorization for Purchasing

All procurement or obligations shall require the following levels of approval:

1. Originator
2. Program Coordinator or Division Chairperson
3. Dean
4. Chief Financial Officer
5. President

a. All requisitions and D.E.V.'s

Miscellaneous Policies

A. Restricted Specifications

Section 11-35-2750 of the code states that all specifications be non-restrictive. This rule applies to each solicitation and includes, among other, all specifications prepared by architects, engineers, designers, draftsmen, and land surveyors for state contract.

B. Retention of Records

All procurement records of Denmark Technical College shall be retained and disposed of in accordance with records retention guidelines and schedules approved by the Department of Archives and History as stated in Section 11-35-2430 of the Code.

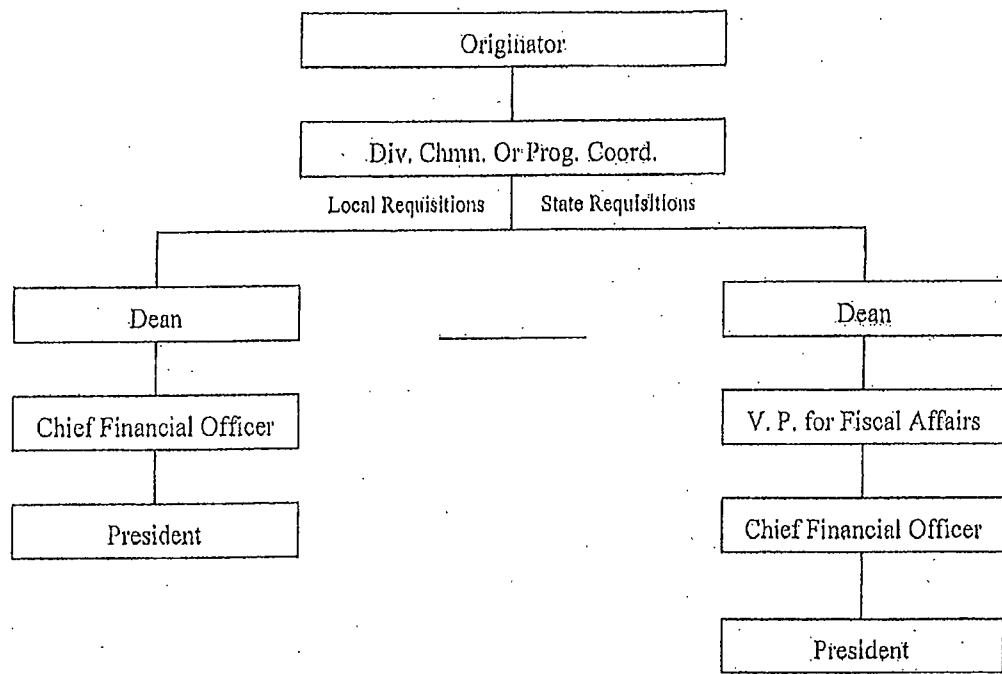
C. Warrant and Quality

All items must be warranted for a period of one year unless otherwise indicated. Any item offered or shipped shall be new and in first-class condition.

D. Advance Notification of Needs by Users

All users should schedule their needs well in advance so proper procurement procedures can be followed.

SUPPLIES/SERVICES
REQUISITIONS



Substitution Purchases

All purchase orders must be strictly adhered to. In the event of an item listed on the original purchase order not being available at the time the requestor picked up the item, he/she would be allowed the opportunity to substitute one item for another. The purchase price of this item must not exceed \$2.00 over the original item.

In the event of you having to substitute an item on your original purchase order you must also provide a written justification for your purchasing a different item not originally listed on the purchase order. If a change has been made to the original purchase order and a justification has not been done, this will obtain as an unauthorized purchase.

Invoice processing

Invoice processing is handled by the Business Office. It involves an audit of the purchase order, the receiving report, and the invoice. The audit verifies the receipt of materials or services rendered, the correctness of pieces, the accuracy of extensions, and other pertinent factors. Any discrepancy is referred to Accounts Payable and Purchasing for resolution.

- A. A variance letter must be issued for all invoices that exceed the total purchase order by five (5) percent.
- B. The variance letter must be submitted for approval to the Chief Financial Officer. A copy must also be forwarded to the Procurement Officer with the Chief Financial Officer approval signature.

Emergency Procurement

The determination for an emergency procurement is made in writing and authorized by the President. Emergency procurements are permitted only when there exist an immediate threat to public health, welfare, or safety, such as may arise by reason of floods, epidemics, riots, equipment failures, fire loss, or such other reason as may be proclaimed by the President. Emergency procurements shall be made with as much competition as is practical under the circumstances. Emergency commitments are made in accordance with emergency procurement procedure. (See attachment IV.)

Lead Time

In determining lead time for processing of purchase orders, the following factors should be taken into consideration:

- A. If no bids are required, the Purchasing Department normally requires a minimum of 3 working days to process the order.
- B. If bids are required, an additional 7-15 calendar day will be required for processing.
- C. If competitive sealed bids are required, additional 20 to 30 calendar days will be required for processing.
- D. If the order has to be sent to Central State Purchasing, processing time will require a minimum of 60-90 days.

Note: All quotes must be current (no more than 30 days old).

00159

5.

Competition Requirements

- A. Purchases of \$2500 or less, do not require competitive quotations if the prices are considered to be fair and reasonable by the Procurement Officer.
- B. Purchases from \$2501 to \$10000 require solicitations of verbal or written quotes from a minimum of three qualified sources.
- C. Purchases from \$10001 to \$50000 require written quotes, bids or proposals. The procurement must be advertised at least once in the South Carolina Business Opportunities publication or through a means of central electronic advertising approved by the Office of General Services.
- D. Purchases from \$50001 will be sent to the Central State Purchasing for processing.

In computing the total dollar amount to determine one of the bidding categories, the amount will include any shipping, handling, packing, and installation charges, excluding S.C. Sales Tax.

Note: S. C Tax is excluded when determine the bidding category; however, is included when determine if items are applicable for the equipment category.

I. In-State Bidder's Preference

These are the only conditions under which any in-state preference is shown.

Competitive procurements shall be made from a responsive and responsible vendor resident in South Carolina:

A. For procurements under \$10,000.00 if such bid does not exceed the lowest qualified bid from a nonresident vendor by more than two percent of the latter bid, and if the resident vendor has made written claim for such preference at the time the bid was submitted.

B. For procurements in excess of \$10,000.00 if such bid does not exceed the qualified bid from a nonresident vendor by more than one percent of the latter bid, and if the resident vendor has made written claim for such preference at the time the bid was submitted. a vendor shall be a resident of this state is such vendor be an individual, partnership, association or corporation that is authorized to transact business within the state,

a decision in writing within ten days. The decision will state the reasons for the actions taken. a copy of the decision shall be mailed or furnished immediately to the Protestant and any other party intervening.

A decision shall be final and conclusive, unless fraudulent, or unless any person adversely affected by the decision requests a review, in writing, setting forth the grievance, to the procurement Review Panel, within ten days of the decision. The protester may also request an interview with the panel.

In the event a professor should have been awarded the contract under a solicitation but is not, then such party may apply to the Review Panel, the reimbursement of the actual costs, not to exceed five thousand dollars incurred in connection with the solicitation including bid preparation. Upon receipt of such application, the Review Panel may order the computation of a reasonable reimbursement amount and make such recommendations to the board as it deems equitable, including reimbursement of bid preparation costs, not to exceed five thousand dollars, and other relief.

Sole Source Procurement

In accordance with Section 11-35-1560 of the Consolidated Procurement Code, sole source procurement is permitted when a requirement is available from only one Supplier. The following are examples of circumstances which could necessitate sole source procurement:

1. Where the compatibility of equipment, accessories, or replacement parts is the primary consideration;
2. Where a sole supplier's item is needed for trial use or testing;
3. Where a sole supplier item is to be procured for resale;
4. Where public utility services are to be procured; and
5. Where the item is one of a kind.

To obtain approval for a sole source procurement, the using department must complete a Justification for Sole Source Procurement form to be forwarded to the college president for final determination and approval. These forms may be obtained from the Purchasing Department. (See attachment V.)

Information Technology Purchases

The Coordinator of Management Information System (MIS) is the single point of contact for computer resources within the college. The Coordinator should advise the Chief Financial Officer on all requisitions associated with acquisition of computer devices including work processors, modem, etc. These restrictions apply to software as well as hardware. Also, the college is not certified in this area, and therefore, procurement that exceed \$25,001 must be submitted to State Purchasing. In addition to this, IT plans must be prepared annually.

Purchase of Consultation and Other Professional Services

All consultants must be procured in compliance with the Procurement Code and Regulations unless specifically exempted by the Budget and Control Board.

A. Evaluation Specifications

1. The Program Coordinator is responsible for preparing specifications for program evaluation in accordance with program guidelines.
2. The Program Coordinator submits the specifications to at least three (3) prospective consultants.
3. The Program Coordinator will review consultant evaluation proposals and make recommendations for institutional concurrence.

B. Approval/Request for Consultative Services

1. The Program Coordinator prepares an Approval/Request for Consultative Services with the following information. (See Attachment VI).
 - a. Consultant name and address
 - b. Purpose of consultation/need for consultation
 - c. Consultant qualifications (must include copy of resume):
 1. Professional fee
 2. Travel
 3. Per Diem
 4. Preparation
 5. Miscellaneous
 6. Total

00162

8. |

2. The Program Coordinator approves as the initiating individual and obtains the approval signatures of the Dean responsible for the program and the college President.

C. Consultant Contract

1. Based on the Approval/Request for Consultative services, the Program Coordinator prepares a Consultant Contract containing the following information: (See Attachment VII.) A Purchase Order Number is not required for payment of consultant contracts. However, approval to pay must be written on the invoice or in memo form before payment can be made.
 - a. Name of consultant and purpose of consultative services
 - b. Dates of services
 - c. Fees documented by executed Approval/Request for Consultative Services
2. The Program Coordinator will obtain the signatures of the consultant and the college President or designee.
3. The Program Coordinator will provide copies of the executed contract as follows:
 - a. President
 - b. Consultant
 - c. Dean responsible for program
 - d. Chief Financial Officer
 - e. Coordinator

Purchase of Construction and Related Professional Services

Denmark Technical College will adhere to guidelines established by the Office of the State Engineer in conjunction with Procurement Code requirements for construction procurements.

Printing

All printing services must be procured in accordance with the South Carolina Consolidated Procurement Code, the State Procurement Regulations and the South Carolina Government printing Service Manual. Also, procurements that exceed \$10,000 must be advertised in the South Carolina Business Opportunities.

Although the length of time required for the procurement process may vary, sixty (60) days is the average time frame required for procuring printing services (including delivery).

19-445.2015. Ratification.

A. Upon finding after award that a State employee has made an unauthorized award of a contract or that a contract award is otherwise in violation of law, the appropriate official may ratify or affirm the contract or terminate it in accordance with this section. The contract may be terminated and reasonable termination costs, if any, may be awarded as provided in this section. The contract may be ratified and affirmed only if it is in the best interests of the State. The decision required by this subsection A may be made by the chief procurement officer, the head of a purchasing agency, or a designee of either officer, above the level of the person responsible for the person committing the act. If the value of the contract exceeds one hundred thousand dollars, the chief procurement officer must concur in the written determination before any action is taken on the decision.

B. All decisions to ratify or terminate a contract shall be supported by a written determination of appropriateness. In addition, the appropriate official shall prepare a written determination as to the facts and circumstances surrounding the act, what corrective action is being taken to prevent recurrence, and the action taken against the individual committing the act. Any governmental body shall submit quarterly a record listing all decisions required by subsection A to the chief procurement officers. A copy of the record shall be submitted to the board on an annual basis and shall be available for public inspection.

C. Except as provided in subsection D, if a contract is terminated pursuant to subsection A, the State shall, where possible and by agreement with the supplier, return the supplies delivered for a refund at no cost to the State or at a minimal restocking charge. If a termination claim is made, settlement shall be made in accordance with the contract. If there are no applicable termination provisions in the contract, settlement shall be made on the basis of actual costs directly or indirectly allocable to the contract through the time of termination. Such costs shall be established in accordance with generally accepted accounting principles. Profit shall be proportionate only to the performance completed up to the time of termination and shall be based on projected gain or loss on the contract as though performance were completed. Anticipated profits are not allowed.

D. Upon finding after award that an award is in violation of law and that the recipient of the contract acted fraudulently or in bad faith, the appropriate chief procurement officer shall declare the contract null and void unless it is determined in writing that there is a continuing need for the supplies, services, information technology, or construction under the contract and either (i) there is no time to re-award the contract under emergency procedures or otherwise; or (ii) the contract is being performed for less than it could be otherwise performed. If a contract is voided, the State shall endeavor to return those supplies delivered under the contract that have not been used or distributed. No further payments shall be made under the contract and the State is entitled to recover the greater of (i) the difference between payments made under the contract and the contractor's actual costs up until the contract was voided, or (ii) the difference between payments under the contract and the value to the State of the supplies, services, information technology, or construction it obtained under the contract. The State may in addition claim damages under any applicable legal theory.

E. Regardless of its ratification and affirmation of a contract, the State shall be entitled to any damages it can prove under any theory including but not limited to contract and tort.

19-445.2020. Certification.

A. Review Procedures.

(1) Unless otherwise authorized by statute, any governmental body that desires to make direct agency procurements in excess of \$50,000.00, shall contact the Materials Management Officer in writing to request certification in any area of procurement, including the following four areas:

- (a) Supplies and services;
- (b) Consultant services;
- (c) Construction and related professional services;

E-10.

STATE OF SOUTH CAROLINA)
)
COUNTY OF BAMBERG)

IN THE COURT OF COMMON PLEAS

Dr. Robert W. Denton and Dr. John May,
D/B/A Edusystems, a general partnership,

Case No.: 2011-CP-05-00160

Plaintiffs,

v.

Denmark Technical College,

Defendant, Counterclaim Plaintiff
And Third-Party Plaintiff,

v.

Dr. John K. Waddell,

Third-Party Defendant.

**WADDELL'S RESPONSE IN
OPPOSITION TO DENMARK
TECHNICAL COLLEGE'S MOTION FOR
SUMMARY JUDGMENT**

Third-Party Defendant Dr. John K. Waddell hereby submits his response in opposition to Denmark Technical College's Motion for Summary Judgment. In determining whether any triable issues of fact exist, the trial court on a motion for summary judgment must view the evidence and all inferences which can be reasonably drawn therefrom in the light most favorable to the non-moving party. *Prince v. Liberty Life Ins. Co.*, 390 S.C. 166, 169, 700 S.E.2d 280, 281-82 (2010) (citing *Sauner v. Pub. Serv. Auth. of S.C.*, 354 S.C. 397, 404, 581 S.E.2d 161, 165 (2003)). The evidence in the record, as well as the affidavit of Waddell, attached as Exhibit A hereto, when viewed in the light most favorable to Waddell, creates material issues of fact as to Denmark's claims for civil conspiracy and constructive fraud. Accordingly, the Court should deny the Denmark's Motion for Summary Judgment.

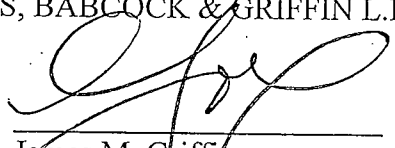
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BAMBERG, SC
2011 NOV 18 PM 2:16
JAMES B. HENS

LEWIS, BABCOCK & GRIFFIN L.L.P.

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Columbia, South Carolina
November 16, 2011

ATTORNEYS FOR THIRD-PARTY
DEFENDANT WADDELL

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EXHIBIT A

Affidavit of Dr. John K. Waddell

00167

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF BAMBERG)

Dr. Robert W. Denton and Dr. John May,
D/B/A Edusystems, a general partnership,

Case No.: 2011-CP-05-00160

Plaintiffs,

v.

Denmark Technical College,

AFFIDAVIT OF DR. JOHN K. WADDELL

Defendant, Counterclaim Plaintiff
And Third-Party Plaintiff,

v.

Dr. John K. Waddell,

Third-Party Defendant.

FILED
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2011 NOV 18 PM 12:16
JAMES E. HERS
CLERK OF COURT
BAMBERG, SC

I, John K. Waddell, swear under penalty of perjury that the following is true and correct:

1. I am a citizen and resident of the State of South Carolina, and I am over the age of eighteen.
2. I have a bachelor's degree in secondary education and a master's degree in student personnel from the University of South Carolina.
3. I earned my doctorate in higher education administration from Florida State University and attended the Harvard University Institute for Educational Management.
4. When I arrived at Denmark Technical College (Denmark), various problems existed which would have prevented Denmark from filing a timely audit.
5. Throughout my employment at Denmark, I routinely and accurately informed the Denmark Board, Denmark employees, and others of all problems like those listed above as they were discovered.
6. Specifically, I informed Dr. Barry Russell, the President of the South Carolina State Board for Technical and Comprehensive Education at that time, and the CFO of Midlands

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Technical College of these issues. Although I requested help from each with the audit, neither sent Denmark assistance required to file a timely audit.

7. Thereafter, I discussed retaining Edusystems to assist with the audit with each member of the Denmark Board individually and collectively.

8. Prior to hiring the Plaintiffs, I instructed the Vice President of Business for Denmark to contact the State Carolina State Board for Technical and Comprehensive Education and the South Carolina Budget and Control Board for approval and instruction on the proper procurement procedures for retaining Edusystems.

9. The Vice President of Business indicated to myself and the Denmark Board that he had spoken with these entities and had obtained the correct procedures to move forward with hiring Edusystems.

10. The Vice President of Business instructed myself and the Denmark Board that to properly hire Edusystems, the Denmark Board would need to vote for an emergency procurement and to adjust the institution's companion rule book accordingly.

11. These steps were carried out and the Denmark Board there after voted to retain Edusystems.

12. Prior to signing contracts with Edusystems, I had the Vice President of Business review and approve them.

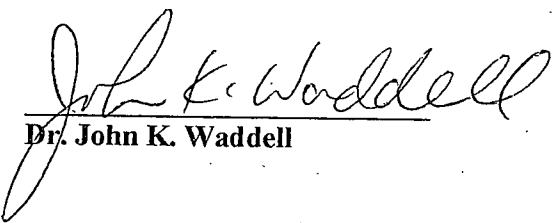
13. Upon their hiring, a representative of Edusystems attended all Denmark Board meetings and provided status updates on the services being provided by Edusystems.

14. I never made false or fraudulent misrepresentations to the Denmark Board or Denmark employees regarding the services being provided by the Plaintiffs.

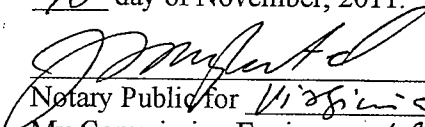
15. Furthermore, I did not engage in a civil conspiracy with the Plaintiffs and never entered into an agreement with the Plaintiffs for the purpose of taking money from Denmark.

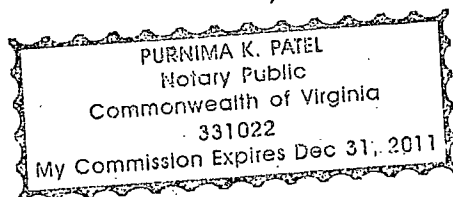
FURTHER AFFIANT SAYETH NOT.

This 16 day of November, 2011.


Dr. John K. Waddell

SWORN TO and subscribed before me this
16 day of November, 2011.

 (SEAL)
Notary Public for Virginia Beach, Virginia
My Commission Expires: 12-31-11



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STATE OF SOUTH CAROLINA

COUNTY OF BAMBERG

Dr. Robert W. Denton and Dr. John May,
D/B/A Edusystems, a general partnership,

Plaintiffs and Counterclaim Defendants,

v.

Denmark Technical College,

Defendant, Counterclaim Plaintiff
and Third-Party Plaintiff,

v.

Dr. John K. Waddell,

Third-Party Defendant.

IN THE COURT OF COMMON PLEAS
SECOND JUDICIAL CIRCUIT

C.A. No. 2011-CP-05-00160

**AFFIDAVIT OF
CLARENCE F. BONNETTE**

JAMES B. HIERS
CLERK OF COURT
BAMBERG, SC

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BAMBERG COUNTY

I, Clarence F. Bonnette, being duly sworn according to law, depose and say as follows:

1. I am presently the Interim Vice President for Business at Denmark Technical College. I assumed that position on June 27, 2011.

2. I previously served as Vice President for Business at the College from August 1994 until the end of June 2009.

3. I have been provided with a copy of the Affidavit of Dr. John K. Waddell, dated November 16, 2011. I have had an opportunity to carefully read that affidavit.

4. In the Affidavit, Dr. Waddell refers to discussions he had with the "Vice President of Business" concerning the hiring of Edusystems. If, in his Affidavit, Dr. Waddell is referring to me, Clarence Bonnette, as the Vice President of Business with whom he was

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interacting and having discussions, then Dr. Waddell is mistaken. I never had any discussions with Dr. Waddell concerning how Edusystems could be properly hired. Specifically, I was never asked by Dr. Waddell to contact the South Carolina State Board for Technical and Comprehensive Education or the South Carolina Budget and Control Board to determine the proper way of retaining Edusystems. I also never instructed Dr. Waddell or the Denmark Board that Edusystems could be hired through an emergency procurement. I am familiar with proper reasons for an emergency procurement under the College's purchasing policies and procedures, and know that our policy requires that there exist an immediate threat to public health, welfare, or safety for an emergency procurement to be justified, such as may occur when there is a flood, a fire loss, an equipment failure, or similar circumstances. Retaining a consulting firm, like Edusystems, for on-going consultant services, cannot be justified as an emergency procurement.

5. Also, contrary to what Dr. Waddell states in his Affidavit, I never reviewed any contracts between the College and Edusystems, either before or after they were signed.

6. It is possible, in his affidavit, that Dr. Waddell, when he refers to the "Vice President of Business," is referring to an individual by the name of Carl Johnson, who was an employee or representative of The Wesley Peachtree Group, CPAs. Dr. Waddell had brought The Wesley Peachtree Group to the College to address certain financial matters. A group of Wesley Peachtree employees or representatives, including Carl Johnson, spent many months at Denmark TEC during 2008 and 2009 working on financial matters and getting the College's books ready for an audit.

(CONTINUED ON NEXT PAGE)

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Clarence F. Bonnette
Clarence F. Bonnette

SWORN to and subscribed before me this

18th day of November 2011.

Louya M. Otis

Notary Public of South Carolina
My Commission Expires February 25, 2013

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STATE OF SOUTH CAROLINA

COUNTY OF BAMBERG

Dr. Robert W. Denton and
Dr. John P. May,
D/B/A Edusystems, a general partnership,
Plaintiffs,

v.

Denmark Technical College and
South Carolina State Board for Technical
and Comprehensive Education,

Defendants.

) IN THE COURT OF COMMON PLEAS
) SECOND JUDICIAL CIRCUIT

) Case No.:2011-CP-05-00160
)

) **MOTION TO ALTER OR AMEND**
) **RULE 59(e) SCRCP**
)

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JAMES B. HAY
CLERK OF COURT
BAMBERG COUNTY, SC

The Plaintiffs respectfully move the Court to alter or amend its Order of December 9, 2011 which was received by the undersigned December 14, 2011, by reversing the same and denying the summary judgment motion of Denmark Technical College.

Grounds for this motion include the following:

1. The Trial Court held a hearing on this motion on November 21, 2011, at which time the Plaintiffs were given twenty (20) days to submit a proposed order in support of their position. The twenty day period would have expired on December 12, 2011. Contrary to what was directed at the November 21, 2011 hearing, on December 7, 2011, the Trial Court directed that a proposed order be prepared by the Defendant, Denmark Technical College without the opportunity for the Plaintiffs to respond.
2. The summary judgment motion of Denmark Technical College was not served with any affidavits; however at the hearing Denmark Technical College served the affidavit of Dr.

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Walt Tobin thus depriving the Plaintiffs of their opportunity to serve opposing affidavits as provided by Rule 56 (c) SCRCF.

3. The Trial Court, in its Order, relied heavily on the Tobin affidavit which the Plaintiffs were foreclosed from opposing.
4. The Trial Court improperly granted Denmark Technical College's motion for summary judgment while discovery was outstanding and the Plaintiffs had an outstanding motion to compel.
5. The Court overlooked specific areas of fact in rendering its Order of December 9, 2011,

to wit:

- A) The Court's Order asserts that the basis for the Plaintiff's action involved an unauthorized procurement. The Court makes this assertion even though there is no showing that the procurement was not authorized.
- B) To the contrary, it was shown to the Court that the President of Denmark Technical College made the procurement in the scope of his authority as President. The facts, as revealed at the December 16, 2011, deposition of the then President of Denmark Technical College, Dr. John K. Waddell, show that Dr. Waddell made the determination that an emergency existed at Denmark Technical College. Having made this determination he determined that a sole source procurement was most appropriate. He then sought permission from the Chief Executive Officer of the State of Technical Education and his area commission. Receiving permission as requested, he directed the Vice-President for Business at Denmark Technical College to process the procurement. If this Vice-President did or did not properly process the procurement, it was a technicality that would not allow Denmark Technical College to disavow the contract in question. Further, it was a technicality which the Plaintiffs had no means to detect.

- C) The Trial Court improperly placed the Plaintiffs in a position of having to insure that the contracting entity, Denmark Technical College, would properly follow its own procurement policies, those of the state procurement code and the state regulations as may be appropriate.
- D) The Trial Court made the conclusionary statement in its Order that "...the agreement cannot be considered a legitimate sole source contract."

The Purchasing Policies and Procedures Manual of Denmark Technical College states on page 15:

"to obtain approval for a sole source procurement, the using department must complete a [A] justification for sole source procurement [B] form to be forwarded to the college President for final determination and approval".

In this instance, the college President himself made the procurement as a sole source and emergency procurement and relied on his staff to properly process the same. There was no showing before the Court if that did or did not happen, but if it did not, it was a technicality that would not adversely impact the validity of the contract.

Further, pursuant to South Carolina Consolidated Procurement Code §11-35-1560(c),

"A violation of these regulations by a purchasing agency, upon recommendation of the designated board office (FN1) with approval of the Budget and Control Board, must result in the temporary suspension, not to exceed one year, of the governing body's ability to procure supplies, services, information technology, or construction items pursuant to this section."

With regard to the sole source procurement, the Trial Court over-looked the fact that the determination of "sole source" is a subjective determination in this instance, one made by the President. In accordance with the Purchasing and Procedures Manual of Denmark Technical

(FN1) "board" means the Budget and Control Board

College, the President has the final say on that subjective decision. In this instance, he made that decision because of his knowledge of the experience and ability of the Plaintiffs and his belief that it was best for Denmark Technical College.

Dr. Waddell, the President of Denmark Technical College, also determined that this was an emergency procurement due to the incomplete audit of the College and the imminent accreditation issues. The Denmark Technical College Purchasing Policy and Procedures Manual provides:

“The determination for an emergency procurement is made in writing and authorized by the President. Emergency procurements are permitted only when there exist an immediate threat to public health, welfare, or safety, such as may arise by reason of floods, epidemics, riots, equipment failures, fire loss, or such other reason as may be proclaimed by the President (emphasis added).

Emergency procurements shall be made with as much competition as is practical under the circumstances. Emergency commitments are made in accordance with emergency procurement procedure. (See attachment IV). FN2”

Here again, as the President directed his Vice-President for Business to handle this procurement in this fashion, it was certainly a reason as proclaimed by the President and is authorized.

While the Consolidated Procurement Code also address emergency procurements in §11-35-1570 where the head of the purchasing agency authorizes others to make such a procurement for reasons as stated therein which include “critical economy and efficiency”. If the desired documentation was not correctly processed by the President’s staff, it again would not adversely impact the contract entered into by the President of the College.

E) The Trial Judge erred by extending the obligation of the Plaintiff, vendor, to not

FN2 The manual apparently has no attachment IV

only be sure that the procedures of Denmark Technical College were observed and the consolidated was observed but that state regulations were complied with. Such is not, and cannot be the obligation of the vendor.

Whether the vendee complies with the regulation is not the responsibility of the vendor. Should the vendee violate the regulations by not seeking certification, such vendee may be subject to having its procurement abilities suspended, but the contract is not adversely impacted.

However, the state agency rule making authority is defined in Aherns v. State 392 SC 340, 709 SE2d 54 (2011). This Court has often described a state agency's rule making power as its authority to "fill up the details of the laws promulgated by the General Assembly".

Further it states "an agency may not make rules that conflict with or... change in any way the statute conferring such authority" citing Fisher v. J.H. Sheridan Co., Inc. 182 SC 316, 326, 189 SE 356, 360 (1936).

The applicable statute, the South Carolina Consolidated Procurement Code provides in 11-35-1520 (1), "contracts greater than fifty thousand dollars must be awarded by competitive bidding except as otherwise provided in Section 11-35-1510. Section 11-35-1510, exempts sole source contracts from competitive bidding".

While again, it is not the responsibility of the Plaintiffs, in this instance, to follow a procurement process, nor is it within the ability of such vendor to do so. In the instant matter, the Plaintiffs were told by the President of Denmark Technical College that their contract was on a sole source procurement basis. There is no showing that the Plaintiffs had any knowledge or the means of knowledge as to the internal processes of Denmark Technical College's procurements, they had a justifiable reliance on the assurance of this President and they performed under all contracts but were not paid for the last four months of the last contract which is the basis of their present action.

It is clearly a factual issue as to the authority of the President, although it is clear that he

was granted the actual authority to enter into contracts. See Denmark Technical College's Purchasing Policies and Procedure Manual.

While Denmark Technical College has produced no authority that shows that the Denmark Technical College Area Commission or the State Board of Technical and Comprehensive Education is required to, or has the ability to approve contracts executed by the President, in the deposition taken by Denmark Technical College of the then President, John K. Waddell, he testified that both of those entities approved his contracting with Edusystems.

6. The Trial Court erred by concluding that "principles of agency or [sic] parent authority, however, are unavailing in public contracting".

The obvious question is, if not, how does the public contract except through its agents. Further, it is clear that governmental bodies will be denied the ability to escape its contracts when it was entered into by an authorized agent. HH Hunt Corp. v. Town of Lexington, 389 SC 623 (Ct. App. 2010).

7. The Trial Court erred in its interpretation of State Regulations 19-445.2015, which deals with ratification, of unauthorized contracts. Said regulations provide that the appropriate official may ratify or affirm the contract. Further, the Court order incorrectly cites the regulations 19-445.2015 A, B, neither of which refers to fraudulent or bad faith procurements (both fact issues). Although subsection D does contain the fraudulent, bad faith language, it further provides additional language that preserves the contract if "(I) there is no time to reward the contract under emergency procedures or otherwise".
8. While the Plaintiffs contend that regulation, 19-445.2015 is not applicable to them if it is the decision to ratify or terminate a contract shall be supported by a written determination of appropriateness. Sub-section 19-445.2015B. There has been no showing that Denmark Technical College made any written determination to terminate the Edusystems contract, and in any instance, the findings of fraud or bad faith have not been shown by

any means except by bald conclusionary allegations.

CONCLUSION

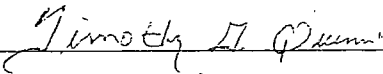
In summary, as set forth above the Court's Order granting summary judgment is fact laden. Further, the Trial Court granted summary judgment while discovery was outstanding, the Plaintiff's had a motion to compel pending and a motion involves questions of agency. These issues alone would preclude summary judgment.

Our Appellant Courts have held that for granting summary judgment the Trial Court must view the evidence and all reasonable inferences that may be drawn from the evidence in the light most favorable to the non-moving party. David v. McLeod Reg'l Med. Ctr. 367 SC 242, 626 SE2d 1 (2006). Because summary judgment is a drastic remedy, it must be granted until the opposing party has had a full and fair opportunity to complete discovery. Dawkins v. Fields 354 SC 58, 580 SE2d 433 (2003). Generally, "questions of agency ordinarily should not be resolved by summary judgment where there are any facts giving rise to an inference of any agency relationship". Citing Reid v. Kelly and Play Air, Inc. 274 SC 171, 262 SE2d 24 (1980) and Jamismo v. Howard 271 SC 385, 247 SE2d 450 (1978). Further, summary judgment is only appropriate when there is no issue of material fact such that the moving party is entitled to prevail as a matter of law. Evening Post v. Berkeley School District 392 SC 76 (2011).

This matter was premature for a motion for summary judgment and under the facts and evidence before the Court, summary judgment should not have been granted.

Further, the Court is aware that the Plaintiffs were paid for eight months of the final contract which was a twelve month contract. Denmark Technical College continued to accept the services of the Plaintiffs. Surely an active area commission would have been aware of the expenditures for these services and by letting it continue and accepting the services of the Plaintiffs, they ratified the contract. The Plaintiffs contend however that this was not required.

Wherefore, the Plaintiffs pray that the summary judgment motion of Denmark Technical College should be denied and the Court's Order of December 9, 2011 should be amended to reflect the same.

_____

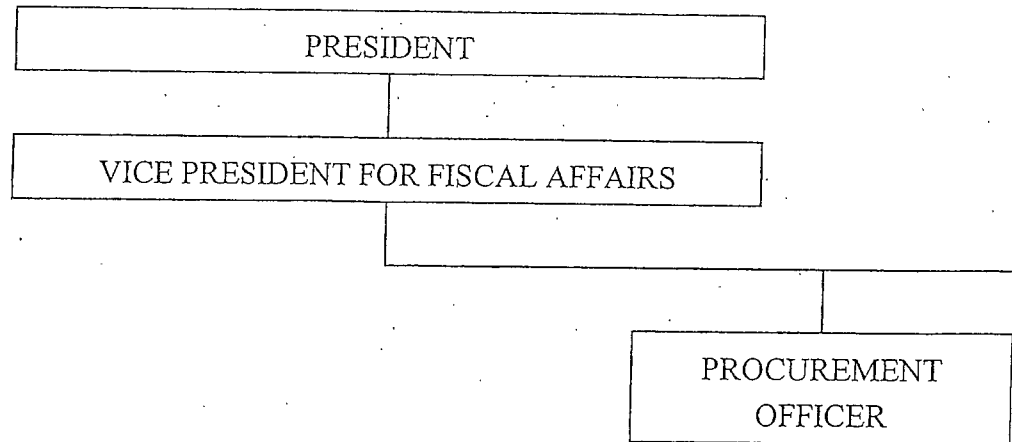
Timothy G. Quinn
Attorney for the Plaintiff
2309 Devine Street
Columbia, SC 29205
(803) 771-0936
Fax (803) 254-7751

December 21, 2011

Enclosures:

Excerpts from the Denmark Technical College Purchasing Policies and Procedures Manual.

ORGANIZATION



PURCHASING POLICIES/PRACTICES

General

A contract is defined as a binding agreement based upon the genuine consent of two or more parties to perform a service or provide a product under established conditions for defined consideration.

From the inception to the consummation of a contract, many important issues are involved. Therefore, the proper handling of these issues and the administering of the business features connected with them are vital factors in the successful completion of a contract.

For these reasons, the authority and responsibility of purchasing rests with the Purchasing Department. This places the responsibility on those who have the interest and the skill to do the work properly and whose primary concern is in the performance of this special task. Under these conditions, the Purchasing Department can establish uniform policies with respect to seller relationships. Such policies are summarized as follows:

A. Departmental Solicitation by Sales Representatives

Many items used by the college must be obtained under state contracts or by competitive bidding vendors, so departmental solicitation of business is of little productive value to a sales representative. However, the Processing Department serves as a screen from salesmen, but not a barrier.

B. Correspondence with Vendors

Following the transmittal of a purchase order to the vendor, all correspondence in connection with the fulfillment of the contract is to be handled by the Purchasing Department.

C. Adjustments

The Purchasing Department will conduct all adjustment negotiates.

Unauthorized Purchases

The Purchasing Department is the only unit of the college authorized to procure goods and services for the college, except as provided for in the policy on petty cash. Unauthorized procurements and D.E.V.'s shall become the responsibility of the individual making such procurement.

All unauthorized purchases must be ratified by the President of the College up to the College's procurement certification limit. Any unauthorized procurement above the College's certification limit will be ratified in accordance with Regulation 19-445-2015 of the South Carolina Consolidated Procurement Code.

Budgetary Control

Each department, using materials and services as described in this manual, is responsible for confining its expenditures within the limits of its fiscal budget.

If a departmental budget is overspent, requisitions will not be processed for that particular department unless deemed in the best interest of the College.

Authorization for Purchasing

All procurement or obligations shall require the following levels of approval:

1. Originator
2. Program Coordinator or Division Chairperson
3. Dean
4. Chief Financial Officer
5. President
 - a. All requisitions and D.E.V.'s

Miscellaneous Policies

A. Restricted Specifications

Section 11-35-2750 of the code states that all specifications be non-restrictive. This rule applies to each solicitation and includes, among other, all specifications prepared by architects, engineers, designers, draftsmen, and land surveyors for state contract.

B. Retention of Records

All procurement records of Denmark Technical College shall be retained and disposed of in accordance with records retention guidelines and schedules approved by the Department of Archives and History as stated in Section 11-35-2430 of the Code.

C. Warrant and Quality

All items must be warranted for a period of one year unless otherwise indicated. Any item offered or shipped shall be new and in first-class condition.

D. Advance Notification of Needs by Users

All users should schedule their needs well in advance so proper procurement procedures can be followed.

E. Sample Submission

When required, a sample must be submitted free of expense to the college and will be non-refundable.

F. Confirmation Orders

No confirmation orders shall be issued by any person other than the Procurement Officer, except in emergency situations.

PURCHASING PROCEDURES

Purchase Requisitions for Supplies/Services

The standard college requisition form is to be used for requesting expendable supplies or services. Examples of these are: instructional and office supplies, maintenance and repair services, and membership fees.

The purchase requisition is the most important form of communication between the various departments and the Purchasing Department. This document notifies the Purchasing Department that a department desires a specific commodity or service. Usually it is the only document submitted; therefore, the purchase requisition must present specific and complete details on the commodity or service desired.

The following information should be furnished when submitting a purchase requisition (See attachment I.)

1. Date: Enter the date on which the requisition is prepared.
2. Budget to be Charged: Enter the accounting code from your department or program budget.
3. Department: Enter the department or program name.
4. Special instructions: When applicable, enter any specific instructions regarding the processing of your requisition. For instance, if you need to pick up the items listed, please indicate. If you have a required mailing or delivery date, please indicate. Avoid "ASAP" "Immediately", or "Rush." If we feel that we cannot meet your date, we will advise you so that you may choose another course of action or obtain a more realistic date.

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5. Quality: For each item, enter the amount required.
Unit: For each item, list unit such as pounds, dozen, each.
6. Description: The description should be specific and complete so that the commodity or service can be easily identified.
 - a. Commodity-description should include manufacturer, model number, and order number, color, and size if applicable, etc.
 - b. Service-description should include type of service.
7. Unit Cost: Include the actual cost, your best estimate of what you think the item will cost, or the amount you are willing to spend. This information can be obtained from price lists, catalogs or prior purchases.
8. Total: Enter the total amount of the item including sales tax (if applicable).
9. Vendor and Address: Enter complete address including zip code. If vendor is an individual, enter name and, if applicable, complete address.
10. Telephone Numbers: Enter the telephone number of vendor.
11. Quoted By: If the prices on your requisition are quoted, enter name of person quoting the prices and a number where they can be reached. If it's a fax quote, attached the quote to the back of the requisition.
12. Originator's Signature: The requisition must be signed and dated by the person originating the request for purchase.
13. Division Chairperson/Program Coordinator: All requisitions should be approved and dated by the Division Chairperson or Program Coordinator.
14. Dean: All requisitions should be approved and dated by the appropriate Dean or Institutional Officer.
15. Approved: All requisitions must be authorized by the President

Any attachments should be stapled to the requisition.

Requisitions should be carefully reviewed before being sent to the Purchasing Department. Accuracy is important. Make sure that the requisition is fully legible. Incomplete or inaccurate requisitions may be returned for revisions. This will result in unnecessary delay in the processing of your request.

The Purchasing Department maintains a limited catalog library to assist departments in preparing

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Invoice processing

Invoice processing is handled by the Business Office. It involves an audit of the purchase order, the receiving report, and the invoice. The audit verifies the receipt of materials or services rendered, the correctness of pieces, the accuracy of extensions, and other pertinent factors. Any discrepancy is referred to Accounts Payable and Purchasing for resolution.

- A. A variance letter must be issued for all invoices that exceed the total purchase order by five (5) percent.
- B. The variance letter must be submitted for approved to the Chief Financial Officer. A copy must also be forwarded to the Procurement Officer with the Chief Financial Officer approval signature.

Emergency Procurement

The determination for an emergency procurement is made in writing and authorized by the President. Emergency procurements are permitted only when there exist an immediate threat to public health, welfare, or safety, such as may arise by reason of floods, epidemics, riots, equipment failures, fire loss, or such other reason as may be proclaimed by the President. Emergency procurements shall be made with as much competition as is practical under the circumstances. Emergency commitments are made in accordance with emergency procurement procedure. (See attachment IV.)

Lead Time

In determining lead time for processing of purchase orders, the following factors should be taken into consideration:

- A. If no bids are required, the Purchasing Department normally requires a minimum of 3 working days to process the order.
- B. If bids are required, an additional 7-15 calendar day will be required for processing.
- C. If competitive sealed bids are required, additional 20 to 30 calendar days will be required for processing.
- D. If the order has to be sent to Central State Purchasing, processing time will require a minimum of 60-90 days.

Note: All quotes must be current (no more than 30 days old).

a decision in writing within ten days. The decision will state the reasons for the actions taken. a copy of the decision shall be mailed or furnished immediately to the Protestant and any other party intervening.

A decision shall be final and conclusive, unless fraudulent, or unless any person adversely affected by the decision requests a review, in writing, setting forth the grievance, to the procurement Review Panel, within ten days of the decision. The protester may also request an interview with the panel.

In the event a professor should have been awarded the contract under a solicitation but is not, then such party may apply to the Review Panel, the reimbursement of the actual costs, not to exceed five thousand dollars incurred in connection with the solicitation including bid preparation. Upon receipt of such application, the Review Panel may order the computation of a reasonable reimbursement amount and make such recommendations to the board as it deems equitable, including reimbursement of bid preparation costs, not to exceed five thousand dollars, and other relief.

Sole Source Procurement

In accordance with Section 11-35-1560 of the Consolidated Procurement Code, sole source procurement is permitted when a requirement is available from only one Supplier. The following are examples of circumstances which could necessitate sole source procurement:

1. Where the compatibility of equipment, accessories, or replacement parts is the primary consideration;
2. Where a sole supplier's item is needed for trial use or testing;
3. Where a sole supplier item is to be procured for resale;
4. Where public utility services are to be procured; and
5. Where the item is one of a kind.

To obtain approval for a sole source procurement, the using department must complete a Justification for Sole Source Procurement form to be forwarded to the college president for final determination and approval. These forms may be obtained from the Purchasing Department. (See attachment V.)

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Information Technology Purchases

The Coordinator of Management Information System (MIS) is the single point of contact for computer resources within the college. The Coordinator should advise the Chief Financial Officer on all requisitions associated with acquisition of computer devices including work processors, modem, etc. These restrictions apply to software as well as hardware. Also, the college is not certified in this area, and therefore, procurement that exceed \$25,001 must be submitted to State Purchasing. In addition to this, IT plans must be prepared annually.

Purchase of Consultation and Other Professional Services

All consultants must be procured in compliance with the Procurement Code and Regulations unless specifically exempted by the Budget and Control Board.

A. Evaluation Specifications

1. The Program Coordinator is responsible for preparing specifications for program evaluation in accordance with program guidelines.
2. The Program Coordinator submits the specifications to at least three (3) prospective consultants.
3. The Program Coordinator will review consultant evaluation proposals and make recommendations for institutional concurrence.

B. Approval/Request for Consultative Services

1. The Program Coordinator prepares an Approval/Request for Consultative Services with the following information. (See Attachment VI).
 - a. Consultant name and address
 - b. Purpose of consultation/need for consultation
 - c. Consultant qualifications (must include copy of resume):
 1. Professional fee
 2. Travel
 3. Per Diem
 4. Preparation
 5. Miscellaneous
 6. Total

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2. The Program Coordinator approves as the initiating individual and obtains the approval signatures of the Dean responsible for the program and the college President.

C. Consultant Contract

1. Based on the Approval/Request for Consultative services, the Program Coordinator prepares a Consultant Contract containing the following information: (See Attachment VII.) A Purchase Order Number is not required for payment of consultant contracts. However, approval to pay must be written on the invoice or in memo form before payment can be made.

- a. Name of consultant and purpose of consultative services
- b. Dates of services
- c. Fees documented by executed Approval/Request for Consultative Services

2. The Program Coordinator will obtain the signatures of the consultant and the college President or designee.

3. The Program Coordinator will provide copies of the executed contract as follows:

- a. President
- b. Consultant
- c. Dean responsible for program
- d. Chief Financial Officer
- e. Coordinator

Purchase of Construction and Related Professional Services

Denmark Technical College will adhere to guidelines established by the Office of the State Engineer in conjunction with Procurement Code requirements for construction procurements.

Printing

All printing services must be procured in accordance with the South Carolina Consolidated Procurement Code, the State Procurement Regulations and the South Carolina Government printing Service Manual. Also, procurements that exceed \$10,000 must be advertised in the South Carolina Business Opportunities.

Although the length of time required for the procurement process may vary, sixty (60) days is the average time frame required for procuring printing services (including delivery).

STATE OF SOUTH CAROLINA

COUNTY OF BAMBERG

Dr. Robert W. Denton and
Dr. John May,
D/B/A Edusystems, a general partnership,

Plaintiffs,

v.

Denmark Technical College,

Defendant, Counterclaim Plaintiff
and Third-Party Plaintiff,

v.

Dr. John K. Waddell,

Third-Party Defendant.

IN THE COURT OF COMMON PLEAS
SECOND JUDICIAL CIRCUIT

C.A. No. 2011-CP-05-00160

**DEFENDANT DENMARK TECHNICAL
COLLEGE'S REPLY TO
PLAINTIFFS' MOTION TO ALTER OR
AMEND**

Defendant/Counterclaimant, Denmark Technical College (hereinafter "DTC" or "the College"), files this Reply to Plaintiffs' Motion to Alter or Amend under Rule 59(e) SCRPC. DTC hereby replies to the Motion in accordance with the numbered paragraphs thereof.

1. There clearly is nothing improper about the Court, following the November 21, 2011 hearing and review of the written submissions, determining that DTC's summary judgment motion should be granted and Plaintiffs' motion denied, despite the fact that the Court initially had requested each side to submit proposed orders. Nothing prevents the Court at any time, following full submission of supporting materials and oral argument by counsel, from reaching a conclusion that, as a matter of law, a plaintiff cannot recover under his complaint. "[W]hen plain, palpable and indisputable facts exist on which reasonable minds cannot differ, summary judgment should be granted." Ellis v. Davidson, 358 S.C. 509, 595 S.E.2d 817, 822 (Ct. App. 2004).

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2. Plaintiffs simply are mistaken in stating that DTC served the Affidavit of Dr. Walt Tobin on the day of the hearing, November 21, 2011. To the contrary, the Tobin Affidavit was served on counsel for Plaintiffs on November 16, 2011, the deadline set by the Court for submission of all supporting documents related to the pending motions. The affidavit which was served by DTC on opposing counsel on the date of the hearing (November 21) was not the Tobin Affidavit but rather the Affidavit of Clarence Bonnette. The Bonnette Affidavit was a reply affidavit to the Affidavit of Dr. John K. Waddell, served on November 16 by counsel for Third-Party Defendant Waddell. Rule 6(d) specifically allows for the service of reply affidavits at any time before the hearing commences. In compliance with Rule 6(a), the reply Affidavit of Clarence Bonnette was served on opposing counsel immediately prior to the commencement of the hearing on November 21.

3. Indeed, the Court in its Order did rely on the Tobin Affidavit, but, as indicated, that affidavit was served on Plaintiffs' counsel on November 16, five (5) days before the hearing. Accordingly, Plaintiffs were not "foreclosed from opposing" statements contained in the Tobin Affidavit and, in fact, had ample time to review and analyze that Affidavit and even to submit a reply affidavit, as did counsel for Waddell.

4. The Court did not improperly grant DTC's summary judgment motion during a time when discovery was outstanding and Plaintiffs had a pending motion to compel. Initially, Rule 56(a) permits the filing of a motion for summary judgment at any time after expiration of 30 days from commencement of the action, even if the discovery phase is not concluded. Further, the discovery dispute addressed in Plaintiffs' motion to compel has no bearing on the question whether, as a matter of law, Plaintiffs' contract was an improper sole

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source (or emergency) procurement and therefore void. Accordingly, incomplete discovery or discovery disputes were not reasons for the Court to withhold its ruling.

5 (A)-(E). Plaintiffs' various contentions in Paragraph 5 of their Motion as to why the Court incorrectly concluded that Plaintiffs' agreement with DTC is not a legitimate sole source contract are largely a re-hash of Plaintiffs' previous arguments or an attempt to argue for the first time that the contract may be justified as an "emergency" procurement. Any contention that Plaintiffs' agreement is a valid emergency procurement should be disregarded. See Kiawah Prop. Owners Grp. v. Public Serv. Comm'n. 359 S.C. 105, 597 S.E.2d 145, 149 (2004); Dixon v. Dixon, 362 S.C. 388, 608 S.E.2d 849, 854 (2005) (a party cannot use a motion to reconsider, alter or amend an order to present an issue that could have been raised prior to the order but was not).

As to contentions that they previously asserted, Plaintiffs appear to argue, based on Waddell's deposition testimony on December 16, 2011 (after the Court's Order of December 9) that, as President, he did not need specific authorization from the governing body, the Area Commission, to enter into contracts and that, again as President, he had the authority and discretion to determine when a contract could be justified as a sole source procurement. Even assuming Waddell did not need specific approval from the Commission to enter into a properly procured contract on behalf of the College, clearly Waddell had no authority or discretion to ignore State and College procurement provisions that determine what is and what is **not** a legitimate "sole source" contract. That Waddell, in his own mind, may have believed that Plaintiffs were the "best" educational consultants certainly does not mean that they were the "only" consultants in the marketplace. The clear and obvious failure to comply with sole source

procurement requirements was not, as Plaintiffs allege in their Motion, a mere "technicality" which may be disregarded.

Plaintiffs also misperceive the legal consequences of an unauthorized procurement in contending that, even if the procurement of their contract was fatally flawed, they should be barred from enforcement of the agreement. Citing State Procurement Code §11-35-1560(C), Plaintiffs argue that it is only the **purchasing agency** that suffers a consequence, in the form of a possible temporary suspension from the ability to procure supplies and services. Plaintiffs' position ignores the decisional law and State regulations relied upon by the Court in its December 9 Order, holding that those who do business with state entities are presumed to know whether the agent of the state entity with whom they are contracting has complied with procurement requirements, and further that the consequences of an improper procurement is a voiding of the agreement, precluding further payment under the contract. Ahrens v. South Carolina Retirement Sys., 392 S.C. 340, 709 S.E.2d 54, 61 (2011); Service Mgmt., Inc. v. State HHS Fin. Comm'n, 298 S.C. 234, 379 S.E.2d 442, 444 (Ct. App. 1989); S.C. Code Regs. 19-445.2015. See Order of 12/9/11 pp. 7-8.

6. Contrary to Plaintiffs' contention, the Court correctly noted that principles of agency or apparent authority are unavailing in public contracting. Order p. 7. An official of a state entity, by law, either has the authority to execute contracts which have been procured in compliance with State requirements, or he does **not**. If he does not, principles of agency, more specifically, of apparent authority, are unavailing for the vendor. Moreover, this is not a case of an ill-informed vendor seeking to contract with an ignorant public contracting official; rather, it is a case of the vendor and the contracting official acting in concert to intentionally circumvent

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procurement requirements to give the contract to the vendor for the mutual benefit of the vendor and the contacting official.

7. Contrary to Plaintiffs' claim, the Court properly interpreted and applied the remedial provisions of Regulation 19-445.2015 dealing with consequences and remedies for unauthorized procurements. That regulation essentially codifies the holdings of such cases as Ahrens and Service Mgmt. to the effect that public contracts awarded in violation of law are void or voidable, and the private party has no right to receive public funds as a result of the unauthorized conduct of a government employee.

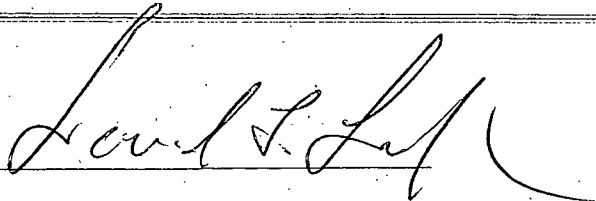
8. Plaintiffs contend that there has been no showing under Regulation 19-445.2015 of a written determination by DTC to terminate Plaintiffs' contract and no finding thus far of fraud or bad faith on the part of Plaintiffs. The short answer to this contention is that, aside from the Regulation, which DTC maintains has been substantially satisfied, the common law rule under the Ahrens and Service Mgmt. decisions is that the improper procurement is void, and Plaintiffs, at a minimum, cannot receive **additional** payments under the unlawful contract. Therefore, Plaintiffs cannot recover, as a matter of law, under their contract and the Court correctly determined that DTC is entitled to summary judgment on Plaintiffs' complaint.

For these reasons, Plaintiffs' Rule 59(e) Motion must be denied.

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00194

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Attorneys for Defendant Denmark Technical
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December 28, 2011

00195

STATE OF SOUTH CAROLINA

COUNTY OF BAMBERG

Dr. Robert W. Denton and
Dr. John P. May,
D/B/A Edusystems, a general partnership,

Plaintiffs,

v.

Denmark Technical College and
South Carolina State Board for Technical
and Comprehensive Education,

Defendant, Counterclaim
Plaintiff and
Third Party Plaintiff,

v.

Dr. John K. Waddell,

Third Party Defendant,

) IN THE COURT OF COMMON PLEAS
) SECOND JUDICIAL CIRCUIT

) Case No.:2011-CP-05-00160
)

) **PLAINTIFF'S SUPPLEMENT**
) **TO ITS MOTION TO ALTER**
) **OR AMEND THE COURT'S**
) **ORDER GRANTING**
) **SUMMARY JUDGMENT**
) **IN FAVOR OF**
) **DENMARK TECHNICAL COLLEGE**

FILED
BAMBERG COUNTY
2012 JAN 11 PM 1:35
JAMES H. HERS
CLERK OF COURT
BAMBERG, SC

As the Court is aware, any shown issues of fact defeat a motion of summary judgment.

The memorandum of law submitted by Denmark Technical College (DTC) in support of its motion for summary judgment and in opposition to Plaintiff's motion for summary judgment acknowledges that there are issues of material fact (see attached pg. 3 of DTC memorandum and pg. 7).

Received January 10, 2012, was the deposition of Dr. John K. Waddell which justifies his determination that there was an emergency situation at DTC, the justification for employing Edusystems, as well as approvals of the head of South Carolina State Board for Technical and Comprehensive Education and his board members. He also testified as to the unique experience

and abilities of the members of Edusystems which resulted in over two million dollars being brought into DTC. He explained to Mr. Bonnette, his chief financial officer that he needed to employ Edusystems for immediate needs of DTC and that Mr. Bonnette advised that such could be done as an emergency procurement through a sole source contract. Mr. Bonnette was instructed to proceed with the procurement in coordination with South Carolina State Board for Technical and Comprehensive Education. The board voted to retain Edusystems. The two contracts involving Edusystems were reviewed and approved by Mr. Bonnette. Mr. Bonnette was also instructed to talk to the people at the Budget and Control Board and make sure, "that all of the things that should have been followed, were followed".

It is obvious from his deposition that Dr. Waddell as President of DTC had contracting authority and properly performed his function by telling his chief financial officer to handle the procurement properly. Dr. Waddell also testified that Mr. Bonnette said he was working with legal counsel and that they were reviewing all the things.

Dr. Waddell said that the contracts in questions consisted of four segments and that Edusystems rendered "outstanding service" and the scope of the services provided by Edusystems grew beyond the initial areas and encompassed other needs of DTC. Edusystems located additional funding for DTC that had previously been over-looked. Also, when DTC received no applications for the job auditor and chief financial officer, Edusystems suggested competent people who were ultimately hired.

Initially, Dr. Waddell attempted to secure consultants through the Technical Education System but it was only when that was unsuccessful that he employed Edusystems. Again, this employment was done in consultation with his board and South Carolina State Board for Technical and Comprehensive Education. Edusystems was the only choice he had as consultants and "Oh, they did a brilliant job".

Edusystems, Dr. Denton and Dr. May had a reasonable right to rely on Dr. Waddell when

he advised that Mr. Bonnette had procured a sole source contract for them.

Dr. Waddell also testified that contrary to Mr. Bonnette's affidavit, which was earlier presented to the Court, which was a lie, that Mr. Bonnette had signed off on internal expenditure vouchers for Edusystems.

DTC had no nursing program, being the only technical college in the State of South Carolina that did not have this program. Edusystems designed the program for DTC and DTC implemented that program and that program alone brought in millions of dollars.

Dr. Denton of Edusystems discovered a \$218,000.00 error in the audit that "saved the institution and that is why it is operating today".

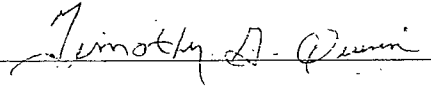
Edusystems created "new money [for the institution] that didn't exist".

(Excerpts of deposition of John K. Waddell attached.)

The deposition of Dr. Waddell clearly shows that he felt that there was an emergency at DTC and that he needed outside help to handle it. He went to the South Carolina State Board for Technical and Comprehensive Education and sought its assistance in providing consultants and it was only when that effort was unsuccessful that he sought to employ Edusystems. Then, with discussions with his chief financial officer, he was told that it could be done as an emergency procurement on a sole source basis. The chief financial officer told him that it had been cleared with South Carolina State Board for Technical and Comprehensive Education and the Budget and Control Board. Dr. Waddell himself, then cleared it with South Carolina State Board for Technical and Comprehensive Education and his area commission before going forward.

These are clearly factual issues which defeat summary judgment. In this unusual matter, notwithstanding the fact that both the Plaintiff and the Defendant assert that there are factual issues regarding the Plaintiff's case, the Court granted summary judgment.

It is respectfully submitted that the Court made an error of law and of fact and over
looked the outstanding facts of this case.

A handwritten signature in cursive script, reading "Timothy G. Quinn", is written over a horizontal line.

Timothy G. Quinn
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January 11, 2012

STATE OF SOUTH CAROLINA

COUNTY OF BAMBERG

Dr. Robert W. Denton and Dr. John May,
D/B/A Edusystems, a general partnership,

Plaintiffs,

v.

Denmark Technical College,

Defendant, Counterclaim Plaintiff
and Third-Party Plaintiff,

v.

Dr. John K. Waddell,

Third-Party Defendant.

IN THE COURT OF COMMON PLEAS
SECOND JUDICIAL CIRCUIT

C.A. No. 2011-CP-05-00160

**DEFENDANT DENMARK TECHNICAL
COLLEGE'S MEMORANDUM OF LAW
IN SUPPORT OF ITS MOTION FOR
SUMMARY JUDGMENT AND IN
OPPOSITION TO PLAINTIFFS' MOTION
FOR SUMMARY JUDGMENT**

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JAMES B. HIGGS
CLERK OF COURT
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Defendant/Counterclaimant, Denmark Technical College ("DTC" or "College"), submits this Memorandum in support of its Motion for Summary Judgment and in opposition to the Motion for Summary Judgment of Plaintiffs, Dr. Robert W. Denton and Dr. John May, d/b/a Edusystems, a General Partnership (collectively "Plaintiffs" or "Edusystems"). The parties' cross-motions for summary judgment address Plaintiffs' Complaint, not DTC's Counterclaim.

I. INTRODUCTION

Plaintiffs filed this contract action against DTC alleging that the College breached a consulting agreement with Plaintiffs by terminating its relationship with Edusystems and refusing payment of Plaintiffs' invoices for the contract balance of \$42,000. DTC has filed a Counterclaim against Plaintiffs seeking recovery of consulting fees paid to Edusystems in the amount of \$130,000. The pending cross motions for summary judgment address only Plaintiffs' claim for contract damages of \$42,000, not DTC's Counterclaim of \$130,000.

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breached. Plaintiffs contend that the May 1, 2008, agreement is a valid "sole source" contract, which the College cancelled without justification four months before its end. Based on undisputed facts, Plaintiffs' contention is erroneous, as a matter of law. The alleged contract is in violation of the State's and the College's procurement codes and, therefore, is deemed null and void. Under State regulations, no further payments can be made under a contract procured in violation of law. Accordingly, Plaintiffs are not entitled to summary judgment on their claim for the contract balance and, conversely, it is DTC which is entitled to summary judgment in its favor on that claim.

Even if Edusystems had a valid contract with DTC, Plaintiffs would not be entitled to summary judgment. In its Answer and Counterclaim, the College asserted that Plaintiffs, in failing wholly or substantially to perform or complete the consulting services contracted for, breached the agreement and thereby discharged DTC of any remaining obligation to pay. There is, at the very least, a genuine issue of material fact regarding Plaintiffs' performance, which requires denial of their motion.

II. ARGUMENT

A. The Agreement Is Invalid As A "Sole Source" Contract

There is no question that the agreement upon which Plaintiffs sue was not awarded on a competitive basis. Plaintiffs attempt to validate the agreement as a "sole source" contract. Sole source contracts are a narrow exception to the competitive processes under procurement requirements. The criteria for a sole source contract are extremely stringent, and clearly were not satisfied here. Despite the fact that sole source criteria clearly were not met in this case, Plaintiffs attempt to argue that determination as to the validity of a sole source procurement lies within the sole discretion of a College President. See Supplement to Plaintiffs

Waddell or anyone else to the Budget and Control Board for certification. Tobin Affidavit ¶13.

Therefore, separate and apart from the failure to satisfy sole source requirements, the contract on which Plaintiffs sue violates the certification requirement of the State Code and the College's purchasing policies.

C. The Failure To Comply With Procurement Requirements Renders The Contract Null And Void, And No Further Payments May Be Made Under A Void Contract

State procurement regulations address a situation, such as here, where a State employee has made an unauthorized award of a contract or when the contract is otherwise in violation of law. The relevant regulatory provisions are found at State Regulation sec. 19-445.2015 (copy at Exhibit E, p. 10 of Tobin Affidavit). That regulation provides that, unless the unauthorized contract has been properly ratified under specific criteria, which did not happen,¹ the contract is void, and "[n]o further payment shall be made under the contract" Sec. 19-445.2015.D. The regulation further provides that, "[r]egardless of its ratification and affirmation of a contract, the State shall be entitled to any damages it can prove under any theory including but not limited to contract and tort." Sec. 19-445-2015.E. See Service Management, Inc., 379 S.E.2d at 444 ("A private party has no right to public funds received as a result of the unauthorized conduct of a government employee.") Accordingly, since no further payments can be made under a contract which is void for failure to comply with procurement requirements, Plaintiffs cannot, as a matter of law, recover on their claim. Plaintiffs' motion for summary judgment, therefore, must be denied, and DTC's summary judgment motion granted.

D. Even if Plaintiffs Had A Valid Agreement, Their Summary Judgment Motion Must Be Denied Because, At A Minimum, There Is A Material Issue Of Fact Regarding Their Performance Under The Contract

¹ See Tobin Affidavit ¶14.

provide a satisfactory explanation regarding the services they had rendered and what had been achieved under the alleged agreements.” See Counterclaim ¶II. Such allegations are sufficiently supported by Dr. Tobin’s Affidavit (para. 15) to at least raise a triable issue as to the adequacy of Plaintiffs’ performance and thus to require that their summary judgment motion be denied.

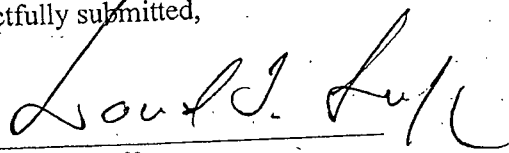
III. CONCLUSION

For the foregoing reasons, Plaintiffs’ motion for summary judgment on the claims of their Complaint must be denied, and DTC’s cross motion for summary judgment on the Complaint granted. There is no genuine issue of material fact and, as a matter of law, the contract on which Plaintiffs sue was entered upon in violation of State and College procurement requirements and thus is null and void. By State regulation, no further payment can be made on a void contract. If no further payment can legally be made, Plaintiffs’ motion must be denied and DTC’s granted. Plaintiffs’ motion also ignores the fact that the inadequacy in a material way of their performance has been put in issue. A material breach of one party to a contract excuses further performance of the other party. At the very least, there is a triable issue as to Plaintiffs’ performance, which requires denial of their summary judgment motion on that ground alone.

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Attorneys for Defendant Denmark Technical
College

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1 had not responded to the Southern organization.

2 Dr. Denton's great value was that he served on
3 a major Southern Association Board and intimately
4 understood the accreditation requirements, as well as
5 how to help staff prepare. And Paul Quinn had not even
6 responded to their reports.

7 So we had to have experienced consultants get
8 into that work very quickly.

9 Q. And Paul Quinn is located where, again?

10 A. Dallas, Texas.

11 Q. Is it solely an undergraduate institution?

12 A. Yes.

13 Q. What was the enrollment there?

14 A. About 800.

15 Q. Was Dr. Denton and Dr. May, were they doing
16 business as Edusystems at that point?

17 A. I don't remember.

18 Q. But both of them were involved at Paul Quinn?

19 A. That's correct.

20 Q. They traveled to the campus and did their
21 work?

22 A. Yes.

23 Q. And then returned to Columbia?

24 A. Yes, that's correct.

25 Q. You were there, approximately, at Paul Quinn,

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1 became apparent to me that they were somewhat limited in
2 their ability to provide certain information and get
3 things done, that kind of thing.

4 Shortly after I had got there, and from time
5 to time I'd called her, and say, I need help with
6 certain things. And she was very open and very helpful.
7 But shortly after I arrived there, the State Tech
8 President, Dr. Barry Russell, contacted me and was very
9 concerned about the institution.

10 He expressed to me his grave concern that it
11 might even have to be consolidated or closed if we
12 didn't correct some of the deficiencies as he described
13 them.

14 Q. What were those, as he described them?

15 A. Declining enrollment for three consecutive
16 years. He said to me that there was a significant lack
17 of support for the institution by Mr. Danny Black, who
18 was the president of what we call the South Carolina
19 Alliance.

20 This group headed the economic development
21 efforts in Bamberg, Allendale and Barnwell Counties, and
22 he said from a technology standpoint that Mr. Black, who
23 worked with the counties in the tri-county area, did not
24 feel that Denmark Tech had the curriculum, the
25 technology or the facilities for the manufacturers to

1 train workers appropriately.

2 And that they had not been doing that over the
3 years, and that we -- that the college had not worked
4 with local businesses. So there was this
5 disconnectedness that he was very concerned about, and
6 he said State Tech was very concerned about.

7 He also described a federal issue with the
8 campus disability, I think there were barriers, the
9 stairwells and things. The State had been under a
10 lawsuit, I believe, to fix those things. And he said
11 that they had been coming to Denmark Tech for years and
12 years to get that dealt with, and it had not been dealt
13 with. So he went onto express a lot of concerns about
14 that in getting things fixed.

15 So he had said to me -- I had known Dr.
16 Russell since he was the president of Midlands Tech and
17 I was president of Allen University, and so he said he
18 needed them fixed and he needed them fixed quickly
19 because of the upcoming budget issues.

20 So I said to him, after assessing the
21 problems, I believe this is something that we can fix.
22 We just simply have to work together at a team approach
23 and I have people, there are people that we can work
24 with to get this done.

25 Secondly, the other way they came there, there

1 He then advised me to talk with all the board members.

2 And we all talked individually and

3 collectively, shared what these issues were, and they

4 said, well, we were well aware there were problems. We

5 ended up letting Ms. Pate go, and what we decided to do

6 was, as a team, they said, well, Dr. Waddell, we need

7 you to fix the problems.

8 They said do you have anybody? I said I know

9 experienced people who can come in and fix the problems.

10 They told me to move forward. I was also working with

11 Dr. Russell, he was well aware of all these issues, all

12 of these things were put on the table. And they told

13 me, Mr. President, keep us involved. Which Dr. Denton

14 came to all the formal meetings, we talked to them

15 individually and collectively, until a person, each of

16 those board members said to me by phone and in person,

17 Dr. Waddell, move forward.

18 They would ask the individuals, particularly

19 Dr. Denton and Dr. May at the meetings, all the

20 different questions, so they asked me to bring them in.

21 The system we were using was, because I was a new

22 president, we had the State Tech president working with

23 my vice presidents and his vice presidents, so every

24 time there was an issue on initiative, what I had my

25 vice presidents do just to make sure there was integrity

1 A. It was right after I started; it couldn't have
2 been more than a month or two. You could check his
3 calender book, it should be, hopefully they haven't lost
4 the information.

5 Q. So would it not be true that whatever
6 deficiencies existed at that time occurred or arose
7 during Dr. Boyd Scotland's tenure?

8 A. Yes.

9 Q. So she had, during her presidency, are you
10 saying that she had allowed these deficiencies to take
11 place?

12 A. No. This is a -- higher education is shared
13 governance. The president can't be all places at all
14 times. They depend on vice presidents to follow up and
15 follow through, that's what they're paid for. And at
16 times you had pockets of situations where you had staff
17 persons that had clearly defined roles, but they may not
18 have been effective doing certain things.

19 There may have been a piece of paper in
20 financial aid, or things in a file that should have been
21 followed up on. Those two or three documents may not
22 have been in the file but were critical to the student
23 receiving the appropriate level of financial aid.

24 Dr. Boyd Scotland is sitting up in the
25 president's office working with Dr. Russell and doing a

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1 chairman, and he would say, now call the board members
2 and tell them what's going on. There was a gentleman on
3 the board who is now the chairman of State Tech,
4 Mr. Monty -- we had intimate conversations about all
5 these issues. They all said, John, we're aware of these
6 things, just fix them, deal with who you need to deal
7 with. And that's what I did.

8 Q. Well, wouldn't the fix have been you directing
9 your subordinates to do something; they either do it or
10 they don't. If they don't, you make a change in
11 personnel; isn't that the way you go about it?

12 A. That's part of the fix. What the real fix is,
13 because of state requirements and how you deal with
14 employees, there was a timeline leading with the audit
15 and other issues. We also had an issue of getting the
16 nursing accreditation ready. We had a visit coming with
17 the nursing board.

18 So there was not time to sit there and fire
19 people, and do this and that. You really had to get
20 things done. So we did deal with people, certainly we
21 dealt with people who couldn't do their job. But at the
22 end of the day the question the board members asked me:
23 Can you get these things responded to and get an audit
24 in on time, get the nursing visit done and the
25 accreditation? And I said, yes, I have experienced

1 people who know how to deal with these issues, they can
2 do it. They said, great, bring them on. We brought
3 them on, we got it done, and we didn't spend time
4 dealing with one or two employees; you get the job done.

5 And that's how we approached it, working
6 within a systematic way with Dr. Russell; we had a
7 systematic approach. Dr. Russell at State Tech, my VP's
8 working with his vice presidents at State Tech. So I
9 felt like what my people may have been deficient at from
10 a paperwork standpoint, his people could work with him
11 -- Mr. Duff, on a zillion issues across the board, we
12 worked beautifully together on a lot of things.

13 So that's why I found this to be incredible,
14 because we were very successful in what we were doing.

15 Q. You and -- when you say it was you and the
16 state board staff, and people, right?

17 A. Right.

18 Q. So where did Edusystems come in?

19 A. When some of the issues occurred, for example,
20 take the nursing issue. When Dr. Boyd Scotland left
21 they had an initiative to get nursing -- I think we were
22 the only school in the tech system that had not had a
23 nursing program. That program was bringing in well over
24 \$200,000 a year to the schools that had those programs.

25 I think they've gotten well over a million

1 '08, in that time frame. And so what happened was they
2 had to set up a program and prepare for the visit, it's
3 just like an accreditation visit with the Southern
4 Association. You had lot of criterion to meet, you had
5 to have space developed in one of the buildings. Very
6 little of that had been done.

7 So, for example, what we needed, the
8 experienced people, like Edusystems, to get in there; we
9 laid out the agenda, at that time they had not even
10 hired the faculty to work with the program.

11 Q. Are you still on the nursing program?

12 A. I'm on the nursing -- you asked me why do we
13 need groups like Edusystems? Ms. McGay was unable to --
14 when we sat her down in a room and said, okay, where are
15 we with this? She was not able to do that.

16 Now, if I was talking to Dr. Boyd, she could
17 lay out whatever, but when we looked after she left,
18 nothing was in place. The reason Edusystems was also so
19 valuable, Dr. Denton, in one of his former roles, the
20 head of the Nursing Board, there were individuals who
21 were on that board who were persons from the University
22 of South Carolina community proper.

23 So there were relationships and people, and
24 there was a sense of professional integrity that things
25 will be done in the right way and we could put a

1 program, and so that was an add-on value.

2 And they were able to help us get everything

3 ordered. We even called friends at the Palmetto

4 Hospital over -- not Baptist, Palmetto Richland, and

5 they even provided beds for us for this initiative.

6 This was an example of what we had to do to get these

7 programs in place.

8 Yes, they had staff there. Did the staff

9 perform? The answer is no. So we had to bring people

10 in; we were working on short deadlines. They brought in

11 well over a million dollars that was not in the

12 institution before they arrived. This was the kind of

13 initiative we got done using people like Dr. Denton.

14 Q. You said a moment ago the nursing program

15 brought in \$200,000?

16 A. Yes, sir, a year.

17 Q. And that was the situation as of the time you

18 arrived?

19 A. That's correct.

20 Q. So it was bringing in money?

21 A. Right.

22 Q. Now, what specifically had to get accomplished

23 to allow the nursing program to continue to be

24 successful; accreditation, licensing, what was it

25 exactly?

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1 gave them an assignment, they didn't have the ability to
2 follow through and get the assignments done on a
3 deadline, and so we didn't have the luxury. When she
4 was there the deadline was not approaching; when I came,
5 it had approached.

6 Q. When was the deadline?

7 A. I don't remember the exact dates; I just
8 remember the issue.

9 Q. And again, did you have to get some approval
10 for the nursing program from the state or from some
11 other party?

12 A. From the state, yes, sir.

13 Q. What?

14 A. It was the State Nursing Board.

15 Q. The State Nursing Board had to approve the
16 continuation of the nursing program?

17 A. They had no program at all. They had -- it
18 was a program being set up from the ground up. So that
19 meant not only the continuation of the curriculum, the
20 faculty had to be approved. They had to have an entire
21 program set up.

22 And Dr. Boyd Scotland had left that to be
23 done; one percent had been done. And we had to have
24 experienced people to do it. We brought them in, they
25 did it; they were able to bring in \$200,000 a year of

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1 new money that had not been in, and I know that's close
2 to a million, or over, now because of the work that was
3 done. Had they not been there, it would not have gotten
4 done.

5 Q. When you say "they" you mean Denton and May?

6 A. That's correct.

7 Q. Do you know Bonnie Inabinate?

8 A. I remember a Bonnie who was the head of the
9 department.

10 Q. Head of nursing, Dean of Nursing?

11 A. That's correct. I don't remember her last
12 name.

13 Q. Was Bonnie Inabinate in place when you
14 arrived?

15 A. I don't think so.

16 Q. Did you hire her?

17 A. I believe so.

18 Q. And did you hire her shortly after you were
19 hired?

20 A. I believe all of those people were put in
21 place after I came.

22 Q. Put in place by whom?

23 A. By my administration.

24 Q. Why wasn't Bonnie Inabinate able to do what
25 needed to be done to get the nursing program approved?

1 A. They all worked with Dr. Denton and Dr. May;
2 she couldn't do it alone. They all worked with that
3 group, it was a team effort.

4 Q. So you had a Dean of Nursing who could not
5 have gotten this approval through without Denton and
6 May?

7 A. Right. Because it was a new program that she
8 was coming in having to get everything done and she
9 couldn't do it all herself. You had to bring different
10 people in to assist.

11 Q. Do you recall when Denton and May first
12 rendered services to Denmark Tech while you were there?

13 A. Not exactly first rendered services. I just
14 remember them dealing with a multiplicity of
15 administrative issues.

16 Q. Was it '07 or '08?

17 A. Probably '07; and I say that without looking
18 at anything.

19 Q. Their first assignment was what, they're first
20 task?

21 A. It probably was dealing with a general
22 administrative matter. I'm not sure what that was, we
23 had so many issues there at the time that had to be
24 dealt with.

25 Q. So when you arrived in March of '07, that

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1 audit?

2 A. Doing McConnell's actual financial
3 calculations on the work that needed to be done with the
4 audit. So I said to Dr. Russell and the board, this is
5 getting to a point, I have people here who can help him
6 collect all -- because there were a lot of documents, he
7 was one person.

8 So here he was trying to run, and he said he
9 didn't have anything. Mr. Duff, he told me he didn't
10 have anything. Not only from the first audit, but this
11 is going into the second one. These people had worked
12 together, on one hand -- oh, we're working together.
13 And on the other, he doesn't have anything.

14 So what we had to do was get these people
15 there to deal with different parts -- from nursing to
16 Peachtree, dealing with the audit. There was pieces
17 that Edusystems worked with. For example, using their
18 expertise. Dr. Denton had worked in finance and there
19 were issues relative to the deadlines for the audit with
20 the state treasurer, and we were able to get them and go
21 in and have a very serious understanding.

22 When I went to Dr. Russell -- you asked about
23 how they got there, as well. I went to Dr. Russell, just
24 as you and I are sitting here talking; I said
25 Dr. Russell, I need help. Can you send someone from

1 another institution to help me? He said, oh, sure, I
2 can try to get someone.

3 He said, call the CFO at Midlands Tech, and
4 there was another CFO at another college toward upper
5 state. The CFO at Midlands Tech called me back, but he
6 told me we don't have anybody to help you. The one in
7 the upper state never called me back. And when I asked
8 Dr. Russell about it, he just kind of blew it off, as if
9 that's your problem.

10 So that's what really pushed us into really
11 trying to get these people in there, because we still
12 had to produce by the deadlines. He was not saying to
13 me, oh, John, I'm going to say it's okay not to do it.
14 He was saying, I still expect you to get enrollment up
15 and deal with nursing because the enrollment declined.

16 He said to me, that makes the system look bad
17 for one school to drag down the system. I'm expecting
18 you as, an experienced president, to get in here and get
19 these things done. And I told him that I had people
20 that could, and they did.

21 Q. Did you hire Peachtree before Edusystems?

22 A. I may have, I don't remember the timelines,
23 which one came first.

24 Q. But you needed Edusystems' help in addition to
25 Peachtree's help in this financial area?

1 A. Yes, because remember, you're dealing with
2 hundreds of documents, 75 to a hundred employees, all
3 kinds of issues. You're only talking about two or three
4 persons on the ground; and yet, you still had ongoing
5 reports and things to do with State Tech. And as I
6 said, many of the persons there who were there, didn't,
7 on their own, did not have the ability to do these
8 things.

9 So you had to have experienced people go over
10 here and work with this issue, and others work on this
11 issue.

12 Q. Well, we've been told that for most of the
13 period when Peachtree was there they had three, four,
14 five employees, accountants from Peachtree on the campus
15 in the business office; isn't that true?

16 A. I don't know exactly, it's been over two
17 years. I don't understand the exact numbers of what
18 they had. That may have been in the case for a specific
19 piece of the initiative they were doing, that may have
20 been necessary. But they brought the people necessary
21 to get the job in, and the audits did get in on time.

22 Q. So the first year you were there, the '06-'07
23 fiscal year, the audit for that year was filed with the
24 state at some time in the Fall, or before the end of the
25 calender year '07; correct?

1 Q. But you had been there, this was your third
2 year.

3 A. No, no, I was only there two years and three
4 months total.

5 Q. But this was in the third fiscal year with all
6 these problems?

7 A. That's correct. But that was typically within
8 a traditional time frame --

9 Q. But I thought you said it was a year?

10 A. No, I didn't say that. I'm saying to you that
11 it's typical, that I had given it enough of an
12 assessment period, from a fairness standpoint, to
13 understand that he had been through one or two cycles
14 with me and that they could not do the job properly.
15 And therefore, it was time and the board told me
16 privately and on the phone and individually, John, move
17 forward, get your own people.

18 Q. Didn't you terminate Mr. Bonnett after a
19 meeting in June of '09 that he had attended with Denton
20 and May and Carl Johnson, and when he refused to change
21 a financial report going to the area commission?

22 A. Oh, absolutely not.

23 Q. He didn't tell you that Denton and May and
24 Carl Johnson wanted the him to change the format of a
25 report that he had been submitting to the area

1 commission in June of every year in the same format?

2 A. Absolutely not.

3 Q. So why did you get rid of him?

4 A. Because of the fiasco we had with working with
5 the auditors and Mrs. Pate as vice president for
6 business, and for his working with State Tech.

7 Mr. Bonnett had been there 13 -- I want to say 13, I
8 don't know why that number comes up -- he had been there
9 much of the time Dr. Boyd Scotland had been there.

10 And many of the issues that we had dealt with,
11 I would even walk Mr. Bonnett from State Tech to the
12 budgeting control, let's get on the phone and call
13 people. And I felt that for a person in that position
14 with that kind of experience, that hand-holding going
15 forward was not necessary, so we would not have to deal
16 with consultants.

17 We needed people to stand alone. They didn't
18 have that ability, and so we needed people with a
19 different energy set, different technical skill set who
20 could do the job. They had been there a long time. Out
21 of professional courtesy, I had given them an
22 appropriate time frame to work. It was time for new
23 blood and new people.

24 Q. So who replaced Bonnett?

25 A. I think we brought Mr. Whetsell in as part of

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1 anytime we were doing anything at the college, because
2 of the nature of my dialogue with Dr. Russell at the
3 very beginning of my time there, and because of the fact
4 that the auditor and all these issues were ongoing, I
5 had a distrust of how things were done with the staff,
6 absent Dr. Boyd Scotland.

7 So anything that was done or submitted to me
8 at any time, I gave it to Mr. Bonnett in consultation
9 with State Tech. They were the ones who handled --
10 looked at everything and then gave it back. So I can't
11 say that this constituted, if something was given to me,
12 I gave it to them to vet it through the system and they
13 would bring it to me for signature.

14 Q. Let me direct your attention to Exhibit 2. If
15 you'll look on the final page, that final page bears
16 your signature, does it not?

17 A. It looks like my signature.

18 Q. Well, is it or is it not?

19 A. Well, this looks like a copy.

20 Q. Well, is this the way you write your name?

21 A. It looks like it is. The "N" looks a little
22 funny in John, but it looks like it could be a copy of
23 my signature.

24 Q. Did it appear Dr. Denton and Dr. May also
25 signed this agreement?

00222

1 A. It appears -- I can't really read Dr. Denton,
2 it looks like a scribble but I can see May's name.

3 Q. And what is the date along side or opposite
4 all three signatures?

5 A. 10-13-08.

6 Q. And what is the date on the first page?

7 A. May 1, '08.

8 Q. And do you see at the end of the first
9 paragraph, the final sentence which reads, quote, the
10 contract is intended to be covered by Title III funds
11 and will begin October 1, 2008, and conclude
12 September 30, 2009?

13 A. I see that.

14 Q. Is this Exhibit 2 letter agreement, as far as
15 you know, the contract pursuant to which or under which
16 Edusystems, Denton and May, performed their consulting
17 services to the college?

18 A. I'm not sure if this is the identical one. It
19 seems to me there was something of a different color,
20 but I don't remember. It's been over two years. When I
21 look at the language, that is what it was supposed to
22 do. And again, Mr. Bonnett would have handled all of
23 those kind of things and brought it back to me.

24 It looks like some of the initiatives and
25 things outlined on page two and three would have been

1 I discussed retaining Edusystems to assist with the
2 audit with each member of the Denmark board?

3 A. Yes, sir.

4 Q. So in your Affidavit are you not stating that
5 you discussed retaining Edusystems to assist with the
6 audit?

7 A. And other issues, yes, sir.

8 Q. But you don't say "other issues", you say
9 "audit".

10 A. Well, the audit as well other issues. That
11 doesn't externally state that we didn't -- as I
12 explained earlier, they handled a multiplicity of
13 issues.

14 Q. You see in number eight where you say prior to
15 hiring Plaintiffs, I instructed the Vice President of
16 Business to contact the State Board, et cetera?

17 A. Yes, sir.

18 Q. Now, who was the Vice President of Business?

19 A. Mr. Clarence Bonnett.

20 Q. So it's your testimony both, in your Affidavit
21 and here today, that the Vice President for Business
22 that you directed to inquire into the hiring of
23 Edusystems was Clarence Bonnett?

24 A. Yes, sir. And not simply to inquire into the
25 hiring, to make sure that the proper procedures were

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1 followed. I had those specific conversations with Dr.
2 Russell about making sure that I put my vice presidents
3 with him to make sure everything was done correctly.
4 And we did that on everything.

5 Q. Who was there, the State Board's Vice
6 President?

7 A. I want to say they had two. I think there was
8 a gentleman there when I first got there and then -- I
9 largely dealt with Barry. And then there was a young
10 woman there in recent, for that last year or so. I
11 don't remember who was the first person.

12 Q. And it appears to be your testimony that the
13 Vice President of Business then got back to you and said
14 that Edusystems could be hired as an emergency
15 procurement?

16 A. Yes, sir.

17 Q. And that, again, would be Mr. Bonnett?

18 A. Yes, sir.

19 Q. And that the board thereafter voted to retain
20 Edusystems?

21 A. Yes, sir.

22 Q. Do you have a specific memory that the board
23 voted to retain Edusystems?

24 A. Yes. What we did, in addition to talking to
25 State Tech, you should be able to go back and get phone

1 records, if you check phone records from my office and
2 from Mr. Bonnett's office, you'll see calls should have
3 been made to those people at State Tech, as well as to
4 the Budget and Control Board to be sure that he followed
5 the correct procedures.

6 He came back to me and the board and said what
7 we have to do; he brought a form or something with
8 procurement, about the procurement log, and he told all
9 of us, what you have to do is vote for an emergency.
10 This is State law. We have to adjust it for the
11 school's policy book, we had a big book, to make it go
12 in line with that..

13 The board voted on that. It was part of the
14 minutes and the chairman insisted, Mr. Leon Harden, he
15 indicated he would be willing to share that. So
16 Mr. Bonnett did all that, the board voted, and all of
17 that was done the way we thought it was supposed to be
18 done correctly.

19 Q. Do you know when the board would have voted?

20 A. No, sir, but there were minutes; I don't know
21 the exact date.

22 Q. Would it have been before May of 2008?

23 A. I don't know.

24 Q. You stated in paragraph 12, prior to signing
25 contracts with Edusystems that you had the Vice

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1 President of Business review and approve them?

2 A. Yes, sir.

3 Q. Are the contracts that you're referring to
4 Exhibit 1 and 2?

5 A. I'm not again sure that it's -- again, these
6 documents, I seem to remember a variety, I dealt with so
7 many, I can't tell you it was these. But I remember any
8 time, I don't care if it was a contract for anything,
9 documents went to the VP of Business, he had been
10 instructed to work with State Tech's VP, and then he
11 would come back to us and recommend that we sign or not
12 sign a document. That's how the process worked.

13 Q. And it was your testimony when you signed this
14 Affidavit, and it's your testimony today, that what you
15 say in the Affidavit is in reference to Edusystems and
16 not Peachtree?

17 A. That's correct.

18 Q. There's no mistake in which of these vendors
19 you're talking about in your Affidavit?

20 A. No, I understand that this is largely dealing
21 with Edusystems, right, that's correct, we're here to
22 talk about Edusystems.

23 MR. DUFF: I'm going get this marked as a
24 packet, four.

25 (Defendant's Exhibit Number 4 marked for

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1 identification.)

2 MR. DUFF: Tim, I think these came from you in
3 discovery, but I'll give you a set, too.

4 You may want to take a look, Jim, and decide
5 whether you want to confer.

6 (Break taken).

7 MR. DUFF: Back on the record.

8 BY MR. DUFF:

9 Q. Dr. Waddell, you've now had an opportunity to
10 review the content of Exhibit 4 with your attorney; is
11 that correct?

12 A. Yes.

13 Q. And you're prepared to answer some questions
14 related to the documents?

15 A. Yes.

16 Q. And for your reference to specific pages, they
17 should be numbered in the lower right hand corner. If
18 you look at the very first page, on January 11, 2008,
19 which, of course, is several months before the letter
20 agreements that we went over a few minutes ago, it looks
21 like you e-mail Pete, and I assume Pete is Pete Denton,
22 Dr. Denton?

23 A. Yes.

24 Q. Indicating that you received a \$24,000 grant
25 related to Allied Health and that you need his

00228

1 assistance on that grant immediately.

2 A. Yes.

3 Q. Now, why would you need Dr. Denton's
4 assistance with this grant?

5 A. Because, getting back to the staff people that
6 we have, it came out and obviously we're working on a
7 deadline. You needed a different mindset of thinking to
8 help frame what the grant initiatives would look like.

9 Anything that you do in higher education, you
10 always have people out there that you talk to in terms
11 of helping to frame an issue. So Pete Denton is one of
12 about 50 people that I could call for things like that.

13 Q. Who was your vice president or department head
14 in the Allied Health area?

15 A. Mrs. McGay. She was over that. She was the
16 same woman who didn't get nursing done.

17 Q. Wouldn't that also be Bonnie Inabinate's area?

18 A. I'm not sure.

19 Q. What's in Allied Health in terms of offerings
20 to Denmark Tech, other than nursing?

21 A. I'd have to look at their catalog, I couldn't
22 tell you today.

23 Q. Now, if you'll turn to page two, an e-mail
24 exchange on February 18th from Pete, which is Pete
25 Denton, you see at the top where Denton, where Pete says

00229

1 over the next 18 months and we're going to take that
2 money and adjust it over here, because we have problems
3 in finance.

4 We don't have it in our state budget lines to
5 cover that. So what Pete does is say, okay, we can help
6 you do the work but I need to have you pay me, and I
7 kind of don't want to say this but I need to put this on
8 the table. A part of the challenge is when you're
9 dealing with this kind of situation, and historically
10 Black colleges and universities there are a certain
11 number of appropriate African American consultants that
12 are used for general higher education purposes.

13 Starting with Allen University, one of the
14 reasons that I used Edusystems was because they had
15 experience with SACS, and all these issues they knew how
16 to fix. But most of the consultants private Black
17 colleges use don't look like Edusystems, Mr. Denton and
18 Mr. May. There's a group of people that they generally
19 use, and they would kill me if I said this, I'm not
20 using our folk with Black money, I'm using other people
21 to help get these things done to really fix these
22 issues.

23 So with Denton -- so when I'm trying to get
24 certain things done, they don't want to use those
25 people, the former president, for example, of Vorhees,

1 A. Absolutely not, Mr. Duff.

2 Q. No favors of a monetary nature?

3 A. No, sir.

4 Q. That's true while you were at Denmark Tech?

5 A. Everywhere. I hired them because they were
6 excellent and recommended by the Southern Association.

7 Q. The \$10,500 a month that you paid Edusystems
8 through -- well, nearly every month, how did they
9 account for, or in any way justify the \$10,500; were
10 there any time records kept?

11 A. Yes, sir. My understanding was, again,
12 Mr. Bonnett would have done all of this. In order for
13 him to process payments on their invoices, they would
14 have had to show what they did to have the check
15 written. If they didn't exist and they were not
16 legitimate by the board for as long as they were there,
17 they would not have just picked a vendor off the street
18 and handed them a check. There was a process that they
19 did, Mr. Bonnett -- and he dealt with that with them.

20 Q. Bonnett dealt with Edusystems?

21 A. Yes, sir.

22 Q. But in terms of their accountability to you as
23 the president to support or justify \$10,500 a month, did
24 they account to you in any way as far as the amount of
25 time expended each month?

00231

1 A. Oh, very much so. It's like staying in touch
2 with your employees. My job as president is to see the
3 field. As I look at that wall, I see the institution, I
4 have State Tech, I have fundraising, academic affairs,
5 business and finance, I have all these pieces out there,
6 I've got people and vice presidents and under each one
7 I've got --

8 Q. I'm only asking about Edusystems.

9 A. So Edusystems would be on the wall under
10 dealing with some specific aspect of what's happening at
11 the institution. Your answer is yes, I would then know
12 this is where they are, for example, with nursing. They
13 started trying to help, they got it done, we got the
14 million dollars or more into the institution.

15 Q. I'm going to ask you a real specific question,
16 did Denton and May, Edusystems, whatever you want to
17 call them, did they on a monthly basis give anything in
18 writing about how many hours they were expending each
19 month?

20 A. No, that would have gone to Mr. Bonnett.

21 Q. So are you saying they did account for time
22 expended each month?

23 A. I'm sure they gave the business office
24 something to get a check, whenever.

25 Q. Well, you can get a check with a simple

1 there's not just one issue.

2 Q. Okay. Dr. Waddell, was he incompetent in the
3 task when you tasked him to check out the procurement of
4 Edusystems; did he do that incompetently?

5 A. My thought was that he did it correctly, but
6 we discovered that he had not done it competently.

7 Q. In what way?

8 A. Because I'm sitting here today. The
9 information that we had him place -- I put him -- I held
10 his hand, put him with Barry Russell, with the vice
11 president of business at State Tech, had him talk to the
12 people at the budget and control board and make sure
13 that all the things that should have been followed, were
14 followed.

15 And you all are telling me that he didn't do
16 that. So obviously he was incompetent. When I look at
17 the information with the auditor, that fiasco, he was
18 the vice president of business.

19 Q. But you know, once again, you had Peachtree
20 and Edusystems were on the scene for the best part of
21 two years, weren't they?

22 A. Correct. Fixing problems that had already
23 been identified. Mr. Bonnett was one man. I couldn't
24 let it go on. My job was to fix it. They didn't hire
25 me to sit on the sidelines. And we did fix it.

1 Q. And Bonnett explained to you that hiring
2 Edusystems was a valid emergency procurement?

3 A. Yes, he did. He said he had contacted, he
4 worked with State Tech, he contacted the budget and
5 control board, brought in a statute to the meeting, he
6 told us that that was correct. We had to vote on it,
7 the board voted, and we even had on the board the
8 Chairman of the State Tech Board, Montez Martin, who was
9 the one who quietly told me the process of working
10 with -- putting it together in a systematic way. So
11 Mr. Martin never said you're not doing it the right way.

12 Q. Is it your testimony today that Mr. Bonnett
13 did not say to you that the hiring of Edusystems could
14 not be justified sole source?

15 A. Absolutely not. Mr. Bonnett was fully
16 supportive of everything. He never said that.

17 Q. Will you look at page 11 of your e-mail
18 document, November 3, 2008 e-mail exchange. This is
19 another e-mail from Pete Denton to you. It says, John,
20 about two-thirds down -- Pete Denton is saying to you,
21 John, you and I are great friends and colleagues, right?
22 And he says, I will carry your water any time. And he
23 says in the next paragraph, ask these guys why you
24 should stretch out paying first invoice of fiscal year;
25 what was that all about?

00234

1 whatever the specifics of that would have been.

2 Q. And at the time of this budget crisis,
3 November 2008, Peachtree is essentially serving as your
4 CFO, right? And Bonnett is there, as well?

5 A. That's correct, VP -- different roles.

6 Q. And yet Denton wants in on the budget?

7 A. He had to be in to help fix it.

8 Q. Bonnett couldn't fix it, Peachtree couldn't
9 fix it, Denton had to fix it?

10 A. No, no, they were working together.
11 Peachtree's role wasn't to fix the budget, it was to
12 help maintain it until we hired someone else. They were
13 the stopgap, because we had fired Ms. Pate.

14 Q. Well, she was fired much earlier than this,
15 wasn't she?

16 A. I don't know the date.

17 Q. Who fired Ms. Pate?

18 A. I did, with the support of State Tech. State
19 Tech held my hand throughout my tenure.

20 Q. Look at page 14. Looks like toward the bottom
21 there, Pete is telling you how to fire Reggie McConnell,
22 right?

23 A. Yes.

24 Q. And below that it says, after the holidays
25 we'll send out a new RFP?

00235

1 me something could even be missing here. They have
2 original copies and the people from the business office
3 on different things like that, the president doesn't --
4 , they simply say this is what we're doing, sign right
5 here. I think the actual Sole Source piece shows our
6 due diligence in trying to do it the right way.

7 Q. Explain to me why this document shows due
8 diligence.

9 A. Because this is exactly what we're talking
10 about that they were trying to do to say that we didn't
11 follow -- this is what Mr. Bonnett's people brought me.
12 Seems to me like some things are missing.

13 Q. Like what?

14 A. Well, the documentation, I don't know they
15 would always bring stacks of documents and the
16 secretaries and Mr. Bonnett would have ink pens, they
17 would circle, you sign here. My thing was to sign, his
18 thing was, his staff was to follow through and make sure
19 all the I's were dotted and T's were crossed.

20 Q. So is it standard procedure by you to just
21 sign an important document like this without a date and
22 anything else filled out?

23 A. No, my procedure was to work with the business
24 of State Tech, work with the business vice president who
25 worked with Mr. Bonnett who had been there 13 years, who

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1 didn't work.

2 Q. And this is the same procurement that you've
3 testified repeatedly was justified by Bonnett as an
4 emergency procurement?

5 A. That's correct. Thirteen-year vice president,
6 working with State Tech, checking with everybody, check
7 with Counsel, this is what we have to do, this is the
8 statute, the board has to vote on it, we voted on it, we
9 put it in place and we went forward, we got everything
10 done.

11 Q. Did it occur to you to say when you were given
12 this uncompleted document, to say to Bonnett, wait a
13 second, you told me this was an emergency procurement.
14 Why are we filling out Sole Source? Did that ever occur
15 to you?

16 A. Well, that wasn't the issue. Mr. Bonnett,
17 during the middle of any process, as we're talking to
18 different people, again, you want to assign one activity
19 to a large issue. You didn't call just one person.
20 You're dealing with the vice president at State Tech,
21 you're dealing with the budget and control board. When
22 he has to call all these different people, he's getting
23 different pieces of advice about what he has to do.

24 Because he's been there and he understands it,
25 we're relying on him to bring all of that information to

1 implementation.

2 Do you see where it says the second segment
3 was to focus on nursing and Allied Health program?

4 A. Uh-huh.

5 Q. The third segment was to establish a baseline
6 to ensure the integrity of future academic enhancement
7 efforts?

8 A. Uh-huh.

9 Q. The fourth segment addressing existing work
10 force development efforts as accurately and completely
11 recorded and reported, okay?

12 A. Uh-huh.

13 Q. And these four segments are, sort of,
14 described in bullet points or numbered, paragraphs and
15 bullet points in the second and third.

16 Now, to your knowledge did Edusystems, Denton
17 and May render services in these four areas?

18 A. Outstanding service, Mr. Duff. For the value
19 of what they did, they saved the institution -- not only
20 did they bring in the nursing program, which brought in
21 over a million dollars, they also, when we were having
22 problems trying to just get a handle --

23 Q. But Dr. Waddell, my question is: Were the
24 services rendered within the four described segments?

25 A. Yes, and could have been others. For example,

1 in some of these you had some issues with accreditation
2 with cosmetology. In addition to nursing and the STAR
3 program that Ms. Gathers ran.

4 So the answer is, yes, they did render that
5 service. And issues could flow out of these issues that
6 could come up and they would have to deal with
7 appropriately, parallel issues.

8 Q. So if we describe the four segments, and they
9 kind of have shorthand headings right from the document
10 itself: Strategic Initiatives, Nursing and Allied
11 Health, Review and Analysis of Opportunities for
12 Academic Reform and Advancement, and Identifying
13 Existing Work Force Development Efforts.

14 That's the scope of work in what becomes the
15 contract?

16 A. Right. And then the substance comes out of
17 that because once they get inside each of these, five or
18 10 or 100 issues could flow out of.

19 Q. Now, to your knowledge did the scope of work
20 ever change during the contract period?

21 A. It could have. Other issues, for example,
22 like the audit, other issues could have come in.

23 Q. Well, you answered my question "it could
24 have". My question is, to your knowledge did the scope
25 of work change?

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1 A. And my answer is it could have. I wish I
2 could say yes or no. The answer is there are a lot of
3 things that could come up and I don't recall what those
4 things might have been, but that's the nature of what we
5 do.

6 Q. So you're saying that -- are you saying that
7 you don't have recall specifically of the scope of work
8 or services changing in any way that you can articulate?

9 A. Right. I would agree to that.

10 Q. So are you saying that services continued to
11 be rendered in the Nursing and Allied Health areas?

12 A. All of these areas, that's correct.

13 Q. And that would be true of the Review and
14 Analysis of Opportunities for Academic Reform and
15 Advancement area?

16 A. Yes.

17 Q. And that was, to your knowledge, right to the
18 end?

19 A. To my time, I don't know about after I left,
20 now.

21 Q. And your time would have been mid to late
22 summer of 2009?

23 A. Right.

24 Q. To your knowledge, did services continue to be
25 formed in the Identifying Existing Work Force

1 Development efforts?

2 A. Very much so. That was key because of the
3 funding formula the State Tech system had. Dr. Denton
4 and his team discovered that we were not receiving all
5 of our funding based upon how Dr. Skuba was reporting
6 the data. She was not giving us the credits -- she did
7 not know how to calculate the work force credit so the
8 students hours that students were taking, which was
9 impacting Denmark Tech's data -- I mean funding from the
10 State. And we raised that issue with the system.

11 Q. Is there any way that can you allocate as a
12 percentage of the services rendered to any of the four
13 areas -- see what I'm saying?

14 A. You mean based on 100 percent how much out of
15 each one they might have done?

16 Q. Not how much they did but do you have any
17 sense of, I think they spend 25 percent of their efforts
18 fell into Strategic Initiatives, 25 percent fell in
19 Nursing and Allied Health -- do you have any sense of
20 that?

21 A. I wouldn't have a sense of that. It was
22 whatever the priority was based upon deadlines, for
23 example, getting nursing done. If there was a deadline,
24 we jumped on that and we just prioritized it that way.

25 Q. Did you ever ask Denton or May to redirect

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1 their energies, as a directive from you?

2 A. I may have.

3 Q. Well, you may have but do you recall doing
4 so?

5 A. I don't recall doing so, no.

6 Q. So you don't recall Denton or May, you don't
7 recall directing Denton or May to redirect their
8 energies within the scope of work?

9 A. One time I do, for example, when we were
10 working on nursing we had a big issue with cosmetology
11 and I remember saying I need you guys to stop because we
12 had a letter questioning their accreditation. And I had
13 them get their hands around the scope of it, yes, sir.

14 Q. Do you recall Denton and/or May suggesting to
15 you that they redirect their energies in some way within
16 this scope of work?

17 A. Not suggesting to me that they redirect. We
18 would go back and forth about the issues that were at
19 hand and how we might address them, but not them saying
20 you ought to not look at this, you ought to look at
21 that.

22 Q. So you don't recall you directing them to
23 re-focus their work, nor do you recall them suggesting
24 to you that they re-focus their work?

25 MR. GRIFFIN: Object to the form of the

1 question.

2 MR. DUFF: I covered both sides of my prior
3 two questions.

4 MR. GRIFFIN: He mentioned an example of
5 cosmetology.

6 MR. DUFF: Let me rephrase.

7 BY MR. DUFF:

8 Q. Other than cosmetology where you say you asked
9 them to re-focus or redirect their efforts, right?

10 A. Yes.

11 Q. Other than cosmetology, if I understand your
12 testimony it is that you did not direct them to re-focus
13 or redirect their work, nor did they suggest to you --

14 A. No, no, I said I may have depending on what
15 the priorities were. I remember cosmetology, I also
16 remember the STAR center and trying to get things done
17 with Ms. Gathers and money aid.

18 Q. And STAR is within segment one?

19 A. Exactly. And than leads into Mr. McConnell
20 and couldn't get the files, all of that is
21 inter-related, yes, sir.

22 Q. But again, in terms of a specific directive
23 other than cosmetology, although you may have you have
24 no specific recall of doing so?

25 A. Right, right.

1 Q. In your mind is the problems with the audit
2 process, getting an audit, getting the books ready to be
3 audited, okay, is that a separate issue than the budget
4 crisis?

5 A. Yes. Those are two separate issues.

6 Q. And you've already said that Denton and May
7 did assist in dealing with the audit problem?

8 A. That's correct.

9 Q. What about the budget issue?

10 A. Yes, they played a significant role. That was
11 another, when I said I may not recall, that was another
12 one that I sought their counsel, and that came up
13 quickly on us.

14 Q. What did you say to get Denton and May
15 involved in the budget?

16 A. I would ask him, for example, to, listen, we
17 need some good thinking -- what happened was State --
18 Dr. Russell and State Tech received information from the
19 legislature that the budget would be cut and it was cut
20 incrementally up to 27 to 30 percent.

21 And schools had to come together -- Dr.
22 Russell asked us to meet in Columbia and talk about how
23 we were going to cut that portion from our budget. So
24 we had to meet with VP's of State Tech -- they sat us in
25 a room, and they said you go back to your people and

1 them and eat, whether it was lunch, at the end of the
2 day, and so that's what you did. You were treating them
3 ugly if you don't do that.

4 With everybody we did that. We did that with
5 the board, anybody who came, we did that.

6 Q. You hadn't heard that so-called running joke?

7 MR. DUFF: Okay, I'm finished for the moment.

8 MR. GRIFFIN: Any questions, Mr. Quinn?

9 THE WITNESS: But I think it goes to the
10 cynicism how they perceived things, too, you know.

11 EXAMINATION

12 BY MR. QUINN:

13 Q. Dr. Waddell, I'm referring to Exhibits 1 and
14 2, the documents referred to as contracts in this case.
15 And in these contracts, does it specify any time
16 Edusystems was to devote for these two work periods?

17 A. No, it doesn't, I don't think it does.

18 Q. And was this contract more of a mission based
19 contract requiring them to work as much time as
20 necessary to accomplish the mission?

21 MR. DUFF: Object to form.

22 A. Very much so. I could call him at
23 2:00 o'clock in the morning if something came into my
24 mind. They were on the clock 24 hours for me, because
25 presidents travel. If I'm dealing with issues, I can

1 call them and say, okay, where are we on this, this,
2 this, and this, even if we don't have a meeting
3 scheduled the next day.

4 BY MR. QUINN:

5 Q. So there was no time and no definite schedule
6 for them to do it, it was just as-needed?

7 A. And probably more than needed, they were,
8 whenever, 24 hours a day.

9 Q. And we were talking a moment ago about the
10 four major issues that we had in the second -- which
11 would be exhibit 2, you've got four major issues. Out
12 of the four issues were they restricted to those four
13 issues or did other projects grow out of the four
14 issues?

15 A. As I mentioned earlier, other projects grew
16 out because as you were dealing with an issue you might
17 find there are two or three other pieces that need to be
18 addressed in that, that have not been done. Something,
19 as you're talking to someone over the program that has
20 something related to the program.

21 You may discover there's something that has to
22 be addressed that they have not been addressing. Well,
23 Edusystems had the ability to help address it, get it
24 restructured and have them do it the right way.

25 Q. And did you have at that time a CFO and

1 auditor for the college?

2 A. Yes, sir, we did.

3 Q. Early on you did?

4 A. Yes, sir.

5 Q. Did you subsequently lose those people?

6 A. Yes, sir.

7 Q. And did you replace those offices?

8 A. We replaced the auditor there; I think the
9 CFO, we were looking for one and we found one later.

10 Q. How did you find one?

11 A. Dr. Denton helped us to find one.

12 Q. And how about the auditor that you
13 subsequently got?

14 A. Dr. Denton did counsel us that that person was
15 available.

16 Q. Did you send out a request for proposal on the
17 auditor and the chief financial officer?

18 A. Yes, sir, we did.

19 Q. Did you get any response?

20 A. No, sir.

21 Q. On either one?

22 A. We did get some, once or twice, not enough
23 people responded so we ended up -- we had to keep going,
24 we expanded, we asked a lot of people and advertised it.

25 Q. Who makes the decision at the college as to a

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1 sole source contractor?

2 A. That would be the Mr. Bonnett and the board. (

3 Mr. Bonnett and the board of trustees, so when you do a

4 contract you take that information, for example, you

5 talk about what you're trying to do. Then I go to

6 Mr. Bonnett. He tells us, he calls State Tech. As I

7 mentioned that structure we had, the lady that's VP for

8 business, his job is to find out how to do it.

9 Q. And did you do a sole source contract with

10 Edusystems?

11 A. Yes, sir.

12 Q. Why did you do that?

13 A. Because that is what Mr. Bonnett advised me.

14 Q. You mentioned a moment ago there are a lot of

15 other consulting educational consulting companies

16 around?

17 A. Yes, sir.

18 Q. Why did you select Edusystems?

19 A. Well, we were working on a deadline. Before

20 we ever went to Edusystems, that wasn't the first group

21 we went to. The first group would have been consultants

22 sent from State Tech. Dr. Russell -- we would have been

23 paying the person coming from other schools as

24 consultants. They wouldn't get us consultants, so

25 that's when we went to Edusystems.

1 Q. Tell me that again.

2 A. When I arrived and Dr. Russell highlighted the
3 issues that we had, I went to him and said, I need help
4 getting people in to help me deal with the issues across
5 the board. He said, I can help you -- I had heard any
6 time a school had a problem when the presidents would
7 meet; if one has a particular problem they can say, I'll
8 send someone from over here.

9 And Dr. Russell would decide that, he would
10 get with the president and if you had enough people they
11 would send them to you. When I went back to him and
12 said, okay, this is what I found, I need help getting
13 people to help deal with these issues. He said, okay, I
14 can try to find you consultants.

15 He told me to go to Midlands Tech, which I
16 talked to their CFO, and he told me to go to a person up
17 in upper state. They never called me back. So I called
18 him back and said Midlands man said they can't let
19 anybody go, he doesn't have anybody to send, and you
20 know, we have to get this stuff done.

21 He never did -- I consulted with the people on
22 my board, told them what was going on and they said,
23 well, do you know anybody? I said, yes, I know groups
24 that can come in and get this fixed. They told me move
25 forward. I talked to Mr. Harden, the Chairman, he said

1 go call each of them individually. He would have me,
2 after I talked to him, he said, now, call Mr. Martin who
3 became Chairman of State Tech, I would call them on the
4 phone, talk with them and explain the issues, they all
5 said go forward, get the people in and let's quietly fix
6 it.

7 Q. He said call them individually -- who was
8 them?

9 A. Each of the board members.

10 Q. Of the Denmark Tech area commission?

11 A. Yes, sir.

12 Q. And did you do that?

13 A. Yes, sir, every time.

14 Q. And was that reflected in the minutes?

15 A. I don't know. Sometimes it was, I didn't do
16 the minutes.

17 Q. Okay. I know that, I understand that.

18 A. One of the issues that we had was with a
19 woman, Ms. Jackson. A lot of times -- she had been
20 there a long time but she would lose things and not do
21 things the right way. And the board members would fuss
22 about them. That happened when I first came, but I
23 didn't have minutes with me, they were kept at the
24 school.

25 Q. And you mentioned that before you did any

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1 contract such as this you would first go to Mr. Bonnett,
2 you would describe to him what you wanted, and it was
3 his job to find out how to do that?

4 A. That's correct. And again, I don't want to
5 leave out this step. From the very beginning most of
6 the time I was there, I dealt directly with Dr. Russell.
7 We would sit and I filled him in on everything. He
8 would talk to me -- he met with the presidents that way.

9 And I would say, Barry, we have this or that
10 problem; and I would say I need to put Mr. Bonnett with
11 your person, and he would say, okay, that's fine. And
12 Mr. Bonnett would call -- every VP at Denmark Tech,
13 regardless of the issue, if it was contracts or
14 anything, they would call -- and I would generally tell
15 them this -- call the vice president at State Tech, talk
16 to them and if you have to, call budget and control.

17 If you check the records from the phones in
18 Mr. Bonnett's office you will no doubt see that he has
19 made those phone calls.

20 Q. How would you know that other than just by
21 seeing the numbers?

22 A. Well, you could call the people and ask them.
23 They should be willing to say that he's had
24 conversations with them.

25 Q. After Mr. Bonnett did his work, whatever it

00251

1 was, was he supposed to check with anyone else?

2 A. No, sir. We put in place a system where he
3 had been with these people. So having been a vice
4 president for business at Denmark Tech for 13 years, the
5 audit didn't reflect that he had these problems. He
6 largely put the problems on Dr. Boyd Scotland and the
7 people who worked in the office.

8 He would say, you know, everything was run
9 with a real tight ship, so we did it this way. But he
10 was working, well, trying to do -- he would tell me
11 we're doing what they're telling us to do.

12 Q. Let me back up a minute. You have a situation
13 that you want to employ Edusystems?

14 A. That's correct.

15 Q. And you want to employ Edusystems because of
16 their expertise in these areas set forth in Exhibits 1
17 and 2?

18 A. That's correct.

19 Q. And other special expertise that they have in
20 areas of higher education and accreditation, and even in
21 food service?

22 A. Anything to do with higher education, they had
23 complete expertise in those areas.

24 Q. So you go to Mr. Bonnett, tell him this is
25 what you want to do, and you rely on him to do it?

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1 A. That's correct.

2 Q. And you rely on him to verify his work with
3 anybody else?

4 A. No, he would come back and say I've talked to
5 State Tech, I've talked to --

6 Q. Was he supposed to talk to State Tech?

7 A. Yes.

8 Q. And was part of the process then to talk to
9 your legal counsel?

10 A. Yes, that's correct. That was part of the
11 entire process. He knew to follow those steps and he
12 would come to me and say I have done all these things
13 and he would bring documents.

14 Q. Did you have legal counsel on retainer all the
15 time that you were there?

16 A. Yes, sir.

17 Q. Who was the legal counsel?

18 A. Duff, Turner & White.

19 Q. Mr. Duff whose office we're in today?

20 A. Yes, sir. But he wasn't there, they had young
21 staff persons, young women who were there.

22 Q. Did they review the Edusystems contract?

23 A. Mr. Bonnett said they did.

24 Q. Do you know their names, the staff people?

25 A. I don't know.

1 Q. Were you present when they reviewed them?

2 A. No.

3 Q. Did you rely on Mr. Bonnett to go through
4 whatever process that was required to get their contract
5 approved?

6 A. Yes, sir.

7 Q. And you indicated, or I heard earlier that it
8 was placed under emergency status; what was the
9 emergency facing Denmark Technical College when you got
10 there?

11 A. There were a variety. When I got there
12 Dr. Russell and Mr. McConnell said that they had a
13 significant issue. Mr. McConnell met with me privately,
14 and he shared with me significant issues that he had
15 been trying to raise with the financial aid area of
16 Denmark Tech and getting information from their audit.

17 He said that Mrs. Pate and Mrs. McDowell had
18 not been cooperating with him in getting files and
19 information, and he asked would I call and talk to them
20 about getting information. Again, there were a
21 variety -- Dr. Russell articulated the fact that there
22 was declining enrollment for three years.

23 He said that Mr. Danny Black, the head of the
24 South Carolina Alliance, the president over the Economic
25 Development, he said that he was very concerned about

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1 Denmark Tech because its curriculum was outdated, that
2 the technology used -- that the manufacturers from the
3 region needed to attract industry and maintain
4 industry -- was almost non existence. He said there was
5 no business relationship between Dr. Boyd Scotland and
6 the vendors, and they had no relationship so that
7 business folk felt comfortable working with Denmark
8 Tech.

9 So with the budget cuts coming, you had
10 Orangeburg Tech, 35 miles away to the north, you had
11 Aiken Tech 40 miles to the south -- that they were going
12 to have to make some very difficult decisions about
13 going forward and that I needed to fix that.

14 In addition, there was major federal issue on
15 the table for many years about disability at the college
16 where State Tech said that they had not met the federal
17 mandate in terms of fixing the -- I think you had to
18 have stairwells and things coming into the building, and
19 they had loads of documentation where they had talked to
20 Dr. Boyd Scotland and Mr. Bonnett, and they said they
21 had not done this.

22 And this was a vice president as well, who
23 worked under Dr. Russell. So all of these issues, and
24 then here comes Mr. McConnell saying that, well, you
25 know, financial aid is messed up, you can't find any

1 files. There were checks in the vault that should have
2 been sent back to the government for years that were
3 still sitting there.

4 Some of the checks were still missing. He
5 said when I go talk to Ms. Pate, Ms. Pate won't give me
6 the information or work with me to get these things
7 done. So I said Mr. McConnell, I don't understand.
8 When I look at your prior audits I don't see anything
9 but one or two minor findings. Why isn't any of this
10 identified?

11 You all haven't identified any of this. So
12 Barry and I agreed that we would put in place this
13 system, because we didn't trust the expertise of Denmark
14 Techs vice presidents and lower level staffers, that by
15 leveraging them and holding their hands with State Tech,
16 we would get done the processes that we needed to get
17 done.

18 And when Dr. Russell couldn't get me the
19 people -- remember, he was going to get me consultants
20 from the other technical colleges. When he didn't do
21 that, I still had to get work done. We had to get
22 people in. They said do you know anyone, I said fine,
23 talked to Dr. Russell -- they said, okay, go forward. I
24 got those people not because they were the first choice
25 but because we weren't responded to.

00256

1 Q. Is it fair to say they were the only choice?

2 A. Yes, sir.

3 Q. And were you pleased with that choice?

4 A. Oh, they did a brilliant job.

5 Q. There's an allegation that you had a long-term
6 relation with Denton and May?

7 A. Yes.

8 Q. Did you have any relationship with them at all
9 at Allen University?

10 A. Yes, sir.

11 Q. You didn't hire them, did you?

12 A. I didn't hire them, I worked with them as a
13 lower level employee, I was the vice president. So I
14 was the one they put to interact with them.

15 Q. And did you work with them at the school in
16 Texas?

17 A. Yes, sir.

18 Q. Paul Quinn?

19 A. Yes, sir.

20 Q. And the one in Virginia?

21 A. Yes, sir.

22 Q. And you hired them there, did you not?

23 A. Yes, sir.

24 Q. Why did you hire them there?

25 A. Because they had similar issues. Most of the

1 historical Black private colleges have a unique set of
2 issues. Accreditation issues, general administrative
3 issues, financial issues, and they have certain things
4 that their accreditation requires be done on a daily
5 basis; the systems that have to be set in place.

6 It's hit or miss with many of the employees.
7 You don't get the quality of employee that you would get
8 at University of South Carolina, Florida State or
9 Harvard. So a lot of times they may not be able to,
10 even though, like I said, Dr. Boyd gave the people in
11 the business office a training. Yeah, she paid for it,
12 but the reality is at the end of the day they couldn't
13 anymore implement that and activate that system and get
14 information up to State Tech. It was wasted money.

15 So they were able, between them and the other
16 consultants, bring people in that can move issues. You
17 try to find someone to come in and fill the vacuum and
18 go forward from there.

19 Q. And you mentioned earlier that Dr. Denton was
20 on a board of -- an accreditation board?

21 A. Well, Dr. Denton was on the head board of the
22 Southern Association of Colleges and Schools. This is
23 the board that decides the fate of the colleges and
24 universities. He was on the top review panel, so when
25 schools like Allen University, and others, get in

1 trouble, they were the ones who made the formal
2 decisions and looked at the criterion.

3 If you got to that board you were considered
4 an expert, because that meant you understood all the
5 criterion in the manuals that SACS and accreditation
6 groups expected an institution to know. So they had a
7 unique perspective and understood, not only what the
8 issues were for accreditation and how an institution
9 operates, but they were able to articulate, to come in
10 and meet with the staff, and say, now, this is what
11 you're doing now, this is what you need to do.

12 And then they would meet with individuals in
13 each area of the college and help put together a system
14 and stabilized it so it was in place. We call that
15 being systematic and continuous; then they leave.

16 Q. And the Southern Association of Colleges and
17 Schools, can they bring pressure on a college that's not
18 up to their standards?

19 A. Yes, sir, they can close a college.

20 Q. And were you threatened with SACS sanctions
21 when you were at Denmark Tech?

22 A. Yes, sir. They did not have a formal letter,
23 they were kind of like at the early stages of a new
24 accreditation process. But the issues with financial
25 aid that the auditor identified, declining enrollment

1 statistics, the issues with STAR and all the STAR
2 programs with Ms. Gathers, the issues with accreditation
3 with the Nursing Board, all of these kind of things, the
4 issues with accreditation for cosmetology, all of these
5 things could lead to a visit and warning, slap, from the
6 Accreditation Agency.

7 And the important thing is it effects your
8 financial aid. If the Accreditation Agency comes in,
9 they could, on a moments notice, and shut you down.

10 Q. And if they shut you down, you can't get any
11 federal money?

12 A. That's correct.

13 Q. And even if you lose your accreditation, what
14 happens to your federal funding?

15 A. You can't get federal funding.

16 Q. Dr Waddell, at Denmark Technical College you
17 held the position of president, right?

18 A. Yes, sir.

19 Q. Did you have authority to sign contracts?

20 A. Yes.

21 Q. And is that authority displayed or printed in
22 the policies, purchasing policies and procedures for
23 Denmark Technical College?

24 A. Yes, sir.

25 Q. And that was granted to you by the area

1 commission?

2 A. Yes, sir.

3 Q. And, in fact, does the area commission even
4 have authority to enter into contracts themselves?

5 A. No, sir.

6 Q. And were there any limitations on your ability
7 to contract?

8 A. Yes, sir, one of the issues -- now, let me say
9 this. One of the issues that we dealt with at Denmark
10 Tech was that one or two of the area commissioners who
11 were very much involved, not just in the policy aspect
12 of the institution, but the management aspect of it,
13 they would come in and want you to do a contract with
14 someone. For example, where some of the problems
15 started we had one area commissioner, Mr. Calvin
16 Wright. He wanted us to hire his wife to teach, and
17 there was an application, he wanted us to hire her -- he
18 had directed that to Ms. McGay as a professional
19 courtesy.

20 Ms. McGay would not do that. And he told me
21 on the phone to get rid of her; I would not do that. So
22 you had political pressure. He also had a sister
23 working there, so there was great pressure and undue
24 influence on contracts at Denmark.

25 Q. And speaking of that, did you get any

1 direction from the area commission with regard to
2 employees that were on Terry Plans?

3 A. Yes, sir. There was significant concern.
4 When we had the entire process occur, we had to talk
5 about what to do, many of them would go to the board
6 because they had these long-term relationships with
7 board members. So they were listed on a list to have to
8 go, whatever, they would go to the board member.

9 The board member would call me and say, no,
10 let's don't look at that person. So there was a lot of
11 that kind of conversations.

12 Q. Did you get a direction from the area
13 commission with regard to people on Terry plans, like
14 Mr. Bonnett?

15 A. They wanted me to keep -- they wanted me to --
16 at the end of the day they wanted me to let Mr. Bonnett
17 go, at the end of the day.

18 Q. "They" meaning your area commission?

19 A. Yes, sir.

20 Q. And did your area commission also give you
21 instructions about your legal firm?

22 A. No, sir. Not area commission. Dr. Russell at
23 State Tech gave me instruction.

24 Q. Okay. Tell me about that.

25 A. During the time of the budget cut, we were

1 Technical College?

2 A. Yes, sir.

3 Q. Did all presidents do that?

4 A. Yes, sir; all presidents.

5 Q. Have you had any contact with Denmark since
6 you left there?

7 A. No, sir. And there was never any problem with
8 99 percent of the other ones.

9 Q. Yeah. Did you enter into any other sole
10 source contract while you were there?

11 A. Not that I recall.

12 Q. Did you enter into anymore Title III
13 contracts?

14 A. I think there were a number because they dealt
15 with -- I can't tell what they were but there was a lot
16 of contracts that we entered into.

17 Q. And you have seen Mr. Bonnett's Affidavit,
18 have you not?

19 A. I'm not sure.

20 MR. DUFF: Are you marking this?

21 MR. QUINN: Yeah, I'll mark it.

22 (Plaintiff's Exhibit Number 1 marked for
23 identification.)

24 THE WITNESS: I reviewed it.

25

00263

1 BY MR. QUINN:

2 Q. And you reviewed Plaintiff's Exhibit 1 for
3 purposes of this deposition?

4 A. Yes, sir.

5 Q. And in that article it says -- on the
6 Affidavit, rather, it says that you had no conversation,
7 or Bonnett had no conversation you with you with regard
8 to the proper hiring of Edusystems?

9 A. Not only is it untrue, it's a lie. It's a lie
10 documented by the fact that even in the original exhibit
11 shown earlier, Mr. Bonnett signed off on -- it's many,
12 but one that was included, I saw his name. I can't
13 imagine that a person that had been a vice president of
14 business 13 years, whatever, would sign off on a
15 document, a DEV, whatever it was called, for a group
16 that he didn't agree to hire and knew nothing about.

17 Q. Well, I'm show you what has been marked as
18 Exhibit 9 -- Exhibit 8, specifically page 2. Does
19 Bonnett's signature appear on that?

20 A. Yes, sir. On others as well.

21 MR. DUFF: Wait a second, something's wrong
22 here because this number 8 on page 2 does not have
23 Bonnett's signature.

24 MR. QUINN: Let me take a look. Try page
25 three.

00264

1 MR. DUFF: Still, mine doesn't have it.

2 MR. QUINN: Are we looking at the same thing?

3 MR. DICKEY: Are you talking about the second
4 line right here; is that what you're talking about?

5 MR. QUINN: Yes.

6 MR. DICKEY: Okay. We've got it, we're good.

7 THE WITNESS: And I assure you that a state
8 institution, Mr. Bonnett would not pay anybody a
9 check for \$10,000 walking in off the street that he
10 had never seen before.

11 BY MR. QUINN:

12 Q. Would he have done that unless the check was
13 cleared to write that?

14 MR. DUFF: Object to the form.

15 A. Absolutely not.

16 BY MR. QUINN:

17 Q. By him doing that, did that indicate to you
18 that he had done what he was supposed to do with regard
19 to that check?

20 A. Absolutely, due diligence referred not to just
21 that payment, but all payments.

22 Q. And I'm also showing to you Exhibit 9, page
23 two. Do you know whose initials those are?

24 A. Looks like Mr. Bonnett. He had a unique F in
25 his signature.

00265

1 Q. I'm also going to show you the same document,
2 Exhibit 9, page four, page six and page four from last
3 and page two from last. Are those also Mr. Bonnett's
4 signatures?

5 A. Yes, sir.

6 Q. Does that indicate, Dr. Waddell, all of those
7 payments to Edusystems went through Bonnett in some
8 fashion?

9 A. Yes, sir.

10 Q. Does all those payments indicate that Bonnett
11 approved those?

12 A. Yes, sir.

13 Q. Now, the question to you earlier, or the
14 statement was made that Edusystems did no work or they
15 did work of no importance pursuant to the contract. And
16 I'm showing you Exhibits 1 and 2 again, which you've
17 seen, and those are the two contracts that are in
18 question here.

19 I'm just going to ask you questions about
20 these, and the contract which is Exhibit 1 consists of
21 three segments: Nursing and Allied Health; did
22 Edusystems consult with regard to those two programs?

23 A. Yes, sir.

24 Q. And in the course of their consulting, what
25 did they do for Denmark Technical College?

00266

1 A. They came in on the early part and helped us
2 to understand what the accreditation process was
3 requiring; they worked with anyone, Ms. McGay and
4 others, to help them understand and help me gauge
5 strategically where their minds were; in essence, did we
6 have the right people with the ability to get this job
7 done?

8 They also were able to help layout, not only
9 understand what the process required, but to help lay
10 all of those pieces on the table. We had to have a
11 facility developed with a certain number of beds, we had
12 to buy up-to-date state of the art bodies for the rooms.
13 There were many requirements to get it accredited.

14 In addition to that, the important thing they
15 had to do then was train the head person of the area to
16 be sure she could articulate this to the accreditation
17 body. They also attended the State Nursing Board
18 meetings; and more important, Dr. Denton, in one of his
19 former roles, one of the key people at the State Nursing
20 Board knew Dr. Denton from his work at SACS, and from
21 his work at the University of South Carolina, and she
22 stated to me that that was a staff of credibility for
23 Denmark Tech.

24 Q. The staff of credibility would be your
25 association with Dr. Denton?

1 A. Denmark Tech's association with Dr. Denton to
2 get the job done in the right way. So it was his
3 contacts that made sure -- and his -- even to the extent
4 of beating me up a little to say, John, you're not doing
5 that right, this is what needs to happen this way. He
6 pushed me around a good bit sometimes to say, it's got
7 to be like this.

8 So yes, they did it to a level of excellence.

9 Q. How about with Allied Health?

10 A. Yes, sir, same thing.

11 Q. And also, I've noticed that the Edusystems did
12 a lot of e-mailing and documentation to you; is that
13 correct?

14 A. Yes, sir.

15 Q. In fact, I see over behind Mr. Duff's chair is
16 the documents in question, did they do over 1,000
17 documents to you with regard to their consulting
18 functions?

19 A. I don't know exactly how many, but there were
20 a lot of documentation. But again, I don't know if they
21 count phone calls. It was nothing for me to call them
22 any time and say, I need your help, I need to talk to
23 Bonnie about the nursing visit coming up. And the
24 reason that's important is a lot of times people are
25 afraid of a president or can't feel comfortable speaking

1 to me about a certain issue.

2 A lot of times if I need to pop somebody,
3 whereas Dr. Boyd Scotland, her style was to hit them in
4 the face and move them; my style was to send the
5 consultants to do it.

6 Q. As a result of the involvement of Edusystems,
7 did you get your nursing program off the ground?

8 A. Fully accredited, yes, sir, and they brought
9 in over millions of dollars.

10 Q. You had no nursing program, is that correct?

11 A. We were the only school in the system that did
12 not have it.

13 Q. Edusystems designed one, told you how to do it
14 and you put it together?

15 A. Yes, sir.

16 Q. That program did subsequently get accredited,
17 did it not?

18 A. Yes, sir.

19 Q. And it graduated its first cohorts a year or
20 so later?

21 A. Yes, sir.

22 Q. And I believe they graduated all except one?

23 A. I'm not sure, but I know they've graduated a
24 lot; they had a very high pass rate.

25 Q. The only one that did not graduate was forced

00269

1 back into the school by one of your faculty, Ms. McGay?

2 MR. DUFF: Object to the form.

3 BY MR. QUINN:

4 Q. Are you familiar with that?

5 A. Could you say that again?

6 Q. Forget it. The second segment of the program
7 is to examine the feasibility of developing an
8 agricultural, agri-business degree program?

9 A. Yes, sir.

10 Q. Tell us about that.

11 A. Well, it was a wonderful opportunity. This
12 was one of the kind of things that Mr. Duff mentioned
13 that would come up from State Tech. For some reason --
14 I'm a USC guy, they had the State Farmers Market behind
15 the football stadium. For some reason they moved it
16 somewhere in West Columbia. The people who developed --
17 in my work as a State Tech President and with different
18 political parties, one of the relationships we had built
19 was with State Department of Agriculture and the US
20 Department of Agriculture.

21 We also had a relationship with the National
22 Black Farmers who had just gotten a billion dollar
23 settlement from the US Department of Agriculture. When
24 the State Farmers Market people moved out, they were
25 moving, going out to this new site, one of the people

1 out there, the state people in the agriculture office
2 and with State Tech, they were looking to bring a
3 college, one of the technical colleges out there to put
4 a curriculum out there at that time. Nobody else seemed
5 interested in doing it.

6 We said see how we can collaborate and get a
7 lot of students because Denmark was in a rural area. So
8 we were going to try and see how to put a program there,
9 it would draw people to the farmers market,
10 entrepreneurial type curriculums, that kind of thing.
11 So they spent a lot of time working with that and
12 helping us design that.

13 Q. And did that come into fruition?

14 A. I think I left by that time. They didn't
15 follow through, but they did a lot of designing of it,
16 we had a lot of meetings, yes, sir.

17 Q. And did you develop close contacts with the
18 Black Farmers Association?

19 A. Very much so.

20 Q. And did they get -- was there a problem with
21 them getting funding with this project?

22 A. Yes, sir. Dr. Denton and them were
23 extraordinarily helpful in getting a political strategy,
24 getting funded with that national organization. They
25 had a significant problem with -- originally they had

00271

1 received a settlement a number of years ago, but what
2 happened, a lot of farmers had not been able to meet
3 some of the deadlines in the settlement and they claimed
4 some discriminatory practices occurred.

5 When they went back to Congress to get those
6 people put back into the suit, they would not do it, so
7 they were having a problem getting some of the people in
8 Congress get involved again. Edusystems was very
9 helpful in talking with them, helping them to come up
10 with a strategy that would not only involve the Black
11 caucus but would also involve the other side of the
12 aisle, which that strategy helped them get a majority
13 vote and they ended up getting a 1.2 billion dollar
14 settlement, which there's been a lot of talk about in
15 recent months.

16 Q. Did Edusystems provide their function as to
17 that segment of the first contract? Did they do what
18 they were supposed to do?

19 A. Very much so, yes, sir.

20 Q. And the third segment of this is the analysis
21 of the STAR program, for review by the South Association
22 of Colleges and Colleges?

23 A. Yes, sir.

24 Q. Did they do that?

25 A. Very much so, yes, sir. They were able to go

00272

1 in, there was issues that the auditor raised and
2 problems with how the program was being administered.
3 They were able to go in and conduct a program the right
4 way and change how that program was operating.

5 Q. And also as a result of deficiencies in the
6 STAR program -- that is Student Teaching And Retention
7 Program, is that what it is?

8 A. Yes, sir.

9 Q. Were you in danger of losing accreditation of
10 that?

11 A. Yes, sir, like the audit, these issues could
12 lead to accreditation problems. Many employees would
13 get upset about that because there would be push back,
14 the way they were confronted about how to correct some
15 of these deficiencies.

16 Q. Tell me that again, now?

17 A. A lot of the employees, when doing some of the
18 things we're talking here, because remember a lot of
19 them had been there a long time, in Dr. Boyd Scotland's
20 system, she largely she sat up here and did a lot of
21 that work for them. But when accreditation people
22 come -- you can't do that. The way it's set up, they
23 come in and meet with everyone around the table.

24 The worst thing you can do is ask that person
25 a question -- because they're not going to let me be in

1 the room -- and the person just looks at them. So what
2 they did, they would force the person outside of their
3 comfort zone to learn how the program was to be
4 administered and many times, employees who had been
5 there a long time would become angry because they had,
6 Dr. Boyd Scotland would do the thinking for them.

7 Q. So existing employees, some of them, were
8 angry because the new guys were invading their turf?

9 A. Right. Across the institution, so many times
10 they didn't like it and wouldn't say nice things about
11 Edusystems.

12 Q. Would the nursing program, for example, have
13 gotten off the ground and then accredited were it not
14 for Edusystems?

15 MR. DUFF: Object to the form.

16 A. Absolutely not, over a million dollars.

17 BY MR. QUINN:

18 Q. Tell me that.

19 A. I said that was over a million dollars of new
20 money brought into the institution.

21 Q. How did that happen?

22 A. Because of the nursing, they received money
23 from -- State Tech system had been receiving money for a
24 nursing program. Denmark Tech had not been getting that
25 money, so what State Tech does when it gets pots of

1 money, if you don't apply for the money, you aren't
2 getting -- they divide the money up and they kind of
3 leave you out to the side. Denmark Tech was then able
4 to apply for these pots of money and get the money.

5 Q. Dr. Waddell, look at the second contract, and
6 we'll do it the same way. But the strategic
7 initiatives, they're is a listing under segment one,
8 there's a whole itemization, some of which we discussed
9 briefly. Did Edusystems go through each of these
10 initiatives with you, did they control each of those
11 initiatives, and accomplish their consulting as required
12 for each of them?

13 A. I won't say "controlled" it, but they did
14 everything else. They were very much engaged, they
15 were -- as we begun to talk about what had to happen,
16 they helped frame the issues put in place.

17 Q. And you corrected me when I said controlling,
18 and that was good, because they can't control them, can
19 they?

20 A. They can't. In this the process called shared
21 governance, they have to teach them how to do that job
22 and articulate that back to whoever would ask them.
23 That was part of what they had to do, so they can't
24 control it. What they have to do is teach that person
25 how to do it.

00275

1 Q. So the task of a consultant at any time is to
2 work themselves out of a job?

3 A. Exactly.

4 Q. They have a segment two, Nursing and Allied
5 Health, we went through that, that created a million
6 dollars for them?

7 A. Plus, yes, sir.

8 Q. And they had the number three, Review and
9 Analysis of opportunity for Academic and Advancement;
10 what was that about?

11 A. That was about in addition to dealing with
12 issues with the STAR Program, issues with cosmetology,
13 issues with farming and agri-business, looking for new
14 academic opportunities that the college could deal with.
15 The big key that we talked about was also exploring
16 opportunities with the Savanna River Plant.

17 Here we're sitting in a county with the big
18 issue Denmark Tech faced, and I got in trouble with
19 State Tech about, Denmark Tech, we were receiving \$7,000
20 less than the cost of one full scholarship for a student
21 from all of our three counties and from State Tech.
22 Yet, there were other institutions -- we were one of 16
23 institutions and the only historically Black designated
24 institution. Yet, there were three institutions smaller
25 than us all receiving \$250,000 to millions of dollars.

1 semi-technical college over in Barnwell, so they were
2 subverted some of the grants from -- that should have
3 been coming to Denmark, the grant funding was going to
4 the South Carolina Alliance.

5 So we ended up applying for the same programs
6 and they were doing more work with the two year schools
7 in Allendale. So I said to them, you said to us if we
8 got the enrollment up and we kept our promise, now
9 you've not given us the funding. How can we go from
10 \$3,000 to \$500 and other counties don't give us anything
11 when we've sent enrollment up a thousand students, built
12 a state of the art technology center in Barnwell, got
13 funding to do a new center in Allendale that had not
14 existed. So I said to them keep your promises and next
15 thing, I was out the door.

16 Q. You've got a segment for identifying the
17 Existing Workforce Development Efforts?

18 A. Yes, sir.

19 Q. That was by with Edusystems?

20 A. That had to do with two things. One of the
21 great things Dr. Denton did, I had them to do an
22 assessment to look at general requirements. They were
23 working with Dr. Skubal to look at the state funding
24 formula which was how state technical colleges received
25 funding.

00277

1 One of the things that we discovered was that
2 Denmark Tech had not been reporting credit hours for
3 students taking these kind of courses, we were not
4 getting any credit for that. So Dr. Denton asked Dr.
5 Skubal -- he brought to my attention and he said we need
6 to figure out how we're reporting, we're missing money
7 based on the formula.

8 So when I went to Dr. Skubal she became very
9 upset because we talked about not just current year
10 money but we wanted to go back and look at a three to
11 five-year period and what was reasonable. And we said,
12 give us our money because the funding formula didn't
13 address what we had done and she said that led to legal
14 issues and we couldn't that and this, that and the
15 other.

16 But it was that kind of thing, as well as
17 helping us to build relationships with the businesses in
18 those areas. We put together a committee and a team to
19 deal with what Mr. Black talked about. I joined the
20 Alliance Board, we put together a team that went to
21 every business in Bamberg, Allendale and Barnwell
22 Counties, and we asked them what kind of curriculum
23 would you need to see us implement for you? In
24 addition, they talked to us and we tried to do some of
25 that.

00278

1 We updated the technology on the campus so
2 that they could get what they needed, a new state of the
3 art facility. If you go to the Barnwell newspaper it
4 was a big deal made of it. Yet, again, we didn't get
5 credit for it. So they played a significant role in the
6 strategy and implementation -- a lot of times they
7 traveled with me to places to talk about the kind of
8 things we needed to do.

9 Q. You just said a moment ago that the person in
10 charge of that program, Dr. Skubal, I believe, was not
11 giving proper credits for it, or not taking credits for
12 it, and as a result was losing money?

13 A. Yes.

14 Q. Why is that?

15 A. Because the data they were sending up was
16 inaccurate.

17 Q. Sending to where?

18 A. To the State Technical College System. They
19 were fudging, in a sense, the reports weren't accurate
20 in terms of student data and how things were calculated.
21 Rather than just sending what was there -- and a lot of
22 times they just didn't deal -- anything dealing with
23 funding streams they didn't have a good grasp of that.
24 For example, the foundation is a part of that.

25 Denmark Tech's foundation was non existent for

00279

1 many, many years. Dr. Russell and I talked about this.
2 Nowhere else in that State Tech system would he have
3 allowed college not to have an active foundation. We
4 reinvigorated the foundation, my last year there we were
5 able to get a coach from South Carolina State who was
6 well known in South Carolina and was a friend of my
7 father, Coach Jeffries, he came in and did a function
8 for us raised \$29,000.

9 So this work dealt with funding streams across
10 the board and helping us get more funding out of the
11 State Tech formula.

12 Q. Who uncovered that?

13 A. Dr. Denton.

14 Q. And also, in the same fashion there was a
15 notation in one of the emails that Mr. Duff was talking
16 about, about 218?

17 A. Oh, goodness, that saved the institution and
18 why it's operating today. One of the problems that we
19 had -- I almost don't want to say this but I have to
20 share it. There was a private tussle, it had to do
21 with -- and I'll come back to that, it's the same answer
22 but I need to say what was going on there. There was a
23 struggle when we were dealing with the audit getting
24 done.

25 One of the things that I had -- Dr. Denton had

00280

1 a major background in finance. To make sure nobody was
2 tricking me, Dr. Denton, please forgive me, I couldn't
3 trust anybody. Even though I hired everybody, my job
4 was to get it done. So what you do as president, what I
5 did was I had Mr. McConnell and all these people working
6 that had failed, but when they would get to a certain
7 aspect of the audit or something, I wouldn't just let
8 the auditor do it, I would say, okay, now, pass that to
9 WPG and pass that to Dr. Denton.

10 You had a system of checks and balances that
11 all the different eyes would look at it, and at the end
12 of the day I would meet with each one individually and
13 say, what did you see? What happened was there with the
14 with the 218, when they were getting down to the budget
15 issue and the auditors and Mr. Johnson were doing the
16 final numbers, they had done the work-up, it didn't come
17 out right and balance.

18 What Dr. Denton discovered was that there was
19 something like \$218,000, they had made some incorrect
20 calculations and adjustments, the auditor, in the
21 process. And so Dr. Denton insisted that this was done
22 and so I brought them together and said this has to be
23 fixed. That's when I totally went whistle-blower to Dr.
24 Russell, and said this is just wrong.

25 We kept going back to the auditor, we couldn't

1 to come in and tell us what was going on. But Mr.
2 McConnell couldn't calculate the numbers, he was trying
3 to do it, made a bad error, they couldn't -- because
4 they couldn't see what he was doing.

5 So what happened was they were \$218,000 off.
6 We went to visit with Marlon at his office in Ms. Pate's
7 private business, even though she was the comptroller at
8 Denmark, her business was off the main street across
9 from Lizards Thicket next to Brookland Cayce High
10 School.

11 We sat with him, and I just said, I told Dr.
12 Russell and them, this is too much for me. How can you
13 have the auditor, being the auditor, being paid as the
14 consultant -- he was also being paid as the consultant
15 to keep the books going and the audit, before I got
16 there.

17 And yet, you've got -- and the fight between
18 Ms. Pate and Mr. McConnell -- Ms. Pate, when he and her
19 fell into it, she didn't want to let him let Marlon get
20 the books done. So that's where all of that -- and
21 Dr. Denton was able to help us get that ironed out, get
22 Marlon back on board, get the books done correctly and
23 move forward from there.

24 But I reported it to the board, I whistle-blew
25 it to Dr. Russell; they fired Ms. Pate.

00282

1 But they also promised me they'd be able to
2 clean it up and go on, and they didn't keep their
3 promise. And the board, Dr. Russell, all of them knew
4 about all these problems, I talked to them individually,
5 Dr. Russell at State Tech, board chairman, Mr. Harden,
6 all of them -- and I have evidence that he said that he
7 knew about it, and other board members knew about it and
8 told me, they gave me the go ahead to quietly clean it
9 up, to do that.

10 But they knew all of this, that Ms. Pate had
11 her person in a private firm doing the school's books.

12 (Break taken)

13 BY MR. QUINN:

14 Q. Dr. Waddell, when you arrived at Denmark
15 Technical College, you observed certain things that were
16 going on, you observed certain other things, and you
17 found out as a result of that you felt there was an
18 emergency, correct?

19 A. Yes, sir.

20 Q. And as a result of that you felt there was an
21 emergency and you ended up hiring Edusystems?

22 A. That's correct.

23 Q. And why particularly them? You've already
24 talked about their expertise --

25 MR. DUFF: Object to the form.

00283

1 BY MR. QUINN:

2 Q. Tell me why you chose them?

3 A. Because of the emergency status, I had already
4 spoken with State Tech and followed that procedure.

5 They didn't send me anyone. We were under a deadline to
6 get the job done. They were the closest ones that I
7 knew that had that expertise to help get the job done.

8 Q. Dr. Waddell, did you at any time have a plan
9 or scheme with Edusystems to get money out of Denmark
10 Technical College?

11 A. Absolutely not.

12 Q. And you've never had any financial interest in
13 Edusystems, have you?

14 A. No.

15 Q. Are you aware of Denmark Technical College
16 losing any programs or losing any educational projects
17 as goals as a result of the involvement of Edusystems?

18 A. No, any programs or goals as a result of the
19 development? No.

20 Q. How about loss of monies dedicated to the
21 operation of the college?

22 A. No, they had more.

23 Q. Meaning that Edusystems created more monies?

24 A. Created new money that didn't exist.

25 Q. So in your opinion was money spent on

00284

1 Edusystems well spent?

2 MR. DUFF: Object to the form.

3 A. Exceptionally well spent. They brought in at
4 least two million in new money.

5 BY MR. QUINN:

6 Q. The two contracts in question are Exhibits 1
7 and 2 that we talked about way too much today, and those
8 two contracts grew into other projects for Edusystems;
9 is that correct.

10 A. Yes, sir.

11 Q. Are the two written documents that we have,
12 one and two, did Edusystems perform under each one of
13 those satisfactorily in your opinion?

14 A. Yes, sir, and there was an understanding by
15 the board that they knew the issues existed and that we
16 would find new issues, they were concerned that we get
17 people who could deal with any issues that we came up
18 with and resolve them. They knew new things might come
19 up.

20 Q. I'm looking here at the answer filed by
21 Denmark Technical College, and the answer says that
22 Waddell, Denton, May knowingly and intentionally failed
23 to perform or complete these consulting services
24 contractor form. I don't know why you're in there, but
25 did Denton and May fail to fulfill any contracting

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1 services?

2 A. No, they were highly successful, and I was
3 highly successful in leading the team.

4 Q. Have you ever conspired with Edusystems to
5 cheat, connive, steal from Denmark Technical College?

6 A. No.

7 Q. The contracts set forth in Exhibits 1 and 2,
8 we've discussed that, if the contracts were completed
9 according to your satisfaction on both of those issues,
10 and documents were flowing through you, was the contract
11 completed by Edusystems?

12 A. Yes, sir.

13 Q. Was anyone else other than yourself at Denmark
14 Technical College today familiar with the efforts of
15 Edusystems and good work that they did?

16 MR. DUFF: Object to the form.

17 A. Sure. All the people there, Mr. Bonnett, the
18 nursing people in particular, I think there were people
19 who worked with continuing education who knew about some
20 of the business things that we were doing with the clock
21 hours, there were many people familiar with their good
22 work.

23 BY MR. QUINN:

24 Q. Well, I know there are. Is there anybody
25 there that would tell the truth under oath as to the

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1 services performed by Edusystems?

2 A. If I would were there they would grab me, hug
3 me, love me, probably not now because they know they
4 would be fired if they said the truth.

5 Q. Is that the culture within the college?

6 A. Yes, sir, particularly with the board. You
7 have one or two board members, good people, but they
8 play hardball, try to frighten people, rather than
9 empower people and fix problems. They want to
10 intimidate and the people are not free to become the
11 best they can be.

12 MR. QUINN: I have no further questions.

13 MR. DUFF: I have one or two brief ones.

14 BY MR. DUFF:

15 Q. Dr. Waddell, are you aware that it was Barry
16 Russell in, I think, June of 2009, who sent Mandy Kibler
17 and her team down to Denmark to attempt to investigate
18 the mess that the college was in in June of 2009?

19 A. Absolutely not.

20 Q. You were not aware it was Barry Russell?

21 A. There was no due process. Dr. Russell had me
22 thinking that he agreed with all of our work and that
23 everything was going well. He's never talked to me
24 about any problems about that.

25 Q. Are you aware that when Dr. Boyd Scotland

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1 departed from the college, that there was about
2 8 million dollars in the general fund, and when you left
3 most of that money was gone?

4 A. I think you would have to look -- I'm not
5 aware of that. I think you have to look at audits and
6 documents before that. They said a lot of things that
7 were not true.

8 Q. Now, Denmark Tech was your first job as
9 president of a public institution, correct?

10 A. That's correct.

11 Q. And basically, without Denton and May, you
12 really weren't sure how to handle that job?

13 A. No, I felt comfortable because of the system I
14 put in place, because it was, again, this notion of
15 shared governance that we do in higher education. We
16 work with the head of the State Tech system, the vice
17 president for business, so we're working as a team.

18 Q. And you really couldn't function without
19 Denton and May, could you?

20 A. Oh, I could, but we functioned in shared
21 governance, we loved to have them. Would have loved to
22 have some legal counsel from Duff.

23 Q. How did I not give Counsel?

24 A. We did not see you. Part of have process was
25 that legal Counsel should have been helping, they would,

1 for example, have been able to say to Ms. Pate, you
2 cannot have your private firm handling the books.

3 Q. Did you ever recall telling me that Ms. Pate
4 --

5 A. I kept the calling you, Mr. Duff, I could
6 never get you or Ms. White. Dr. Boyd Scotland, when I
7 came -- just like Mr. Griffin is here today, there's no
8 other person here. And that's how I've always had it at
9 the colleges I've been at.

10 But when we called, I called, I kept saying I
11 need to meet with the top person, we have budget cuts.
12 I don't know the junior people. All I know is the
13 review didn't get done because they didn't have the
14 appropriate legal counsel at the time.

15 Q. So without Peachtree and Denton and May, you
16 basically didn't know how to do your job?

17 A. Team play is how I go.

18 MR. GRIFFIN: Object to the form of the
19 question; argumentative.

20 MR. DUFF: Nothing further.

21 (The deposition ended at 4:30 p.m.)

22

23

24

25

00289

STATE OF SOUTH CAROLINA

COUNTY OF BAMBERG

Dr. Robert W. Denton and Dr. John May,
D/B/A Edusystems, a general partnership,

Plaintiffs,

v.

Denmark Technical College,

Defendant, Counterclaim Plaintiff
and Third-Party Plaintiff,

v.

Dr. John K. Waddell,

Third-Party Defendant.

IN THE COURT OF COMMON PLEAS
SECOND JUDICIAL CIRCUIT

C.A. No. 2011-CP-05-00160

**DEFENDANT DENMARK TECHNICAL
COLLEGE'S MEMORANDUM OF LAW
IN SUPPORT OF ITS MOTION FOR
SUMMARY JUDGMENT AND IN
OPPOSITION TO PLAINTIFFS' MOTION
FOR SUMMARY JUDGMENT**

FILED
BAMBERG COUNTY
2012 JAN 11 PM 1:35
JAMES R. HARRIS
CLERK OF COURT
BAMBERG, SC

Defendant/Counterclaimant, Denmark Technical College ("DTC College"), submits this Memorandum in support of its Motion for Summary Judgment and in opposition to the Motion for Summary Judgment of Plaintiffs, Dr. Robert W. Denton and Dr. John May, d/b/a Edusystems, a General Partnership (collectively "Plaintiffs" or "Edusystems"). The parties' cross-motions for summary judgment address Plaintiffs' Complaint, not DTC's Counterclaim.

I. INTRODUCTION

Plaintiffs filed this contract action against DTC alleging that the College breached a consulting agreement with Plaintiffs by terminating its relationship with Edusystems and refusing payment of Plaintiffs' invoices for the contract balance of \$42,000. DTC has filed a Counterclaim against Plaintiffs seeking recovery of consulting fees paid to Edusystems in the amount of \$130,000. The pending cross motions for summary judgment address only Plaintiffs' claim for contract damages of \$42,000, not DTC's Counterclaim of \$130,000.

Plaintiffs' claim is based on a letter agreement, which Plaintiffs allege is a valid contract, between Edusystems and DTC for educational consulting services. The letter agreement was prepared by Edusystems on May 1, 2008, but was not signed by Denton and May on behalf of Edusystems, and Third-Party Defendant, John Waddell, then-President of DTC, until October 13, 2008. See copy of agreement, Affidavit of Dr. Walt Tobin, Exhibit B. The alleged agreement covers the 12-month period from October 1, 2008, until September 30, 2009, and calls for a professional fee per month of \$10,500, or \$126,000 over the life of the contract.

In its Answer and Counterclaim, DTC alleged that Plaintiffs, acting in concert with Third-Party Defendant Waddell, with whom they had long-term prior relationships, fraudulently entered into the agreement, in knowing and intentional disregard of State and College procurement requirements. Those requirements mandate that consulting agreements, particularly of the size of the instant contract, be obtained through a competitive process and be certified at the State level. After Waddell was relieved of his duties, the incoming Interim President, Dr. Walt Tobin, looked into the relationship between Plaintiffs and the College when serious questions were raised regarding the origins of the contractual arrangement and the value of the services delivered.

In mid-July 2009, DTC terminated its relationship with Plaintiffs because the College believed that Edusystems had failed to provide services of value and thereby had breached any contractual arrangement it had with DTC. At that time, Plaintiffs had been paid their monthly consulting fee of \$10,500 through the end of June 2009. In this action, Plaintiffs seek to recover the unpaid contract balance, the monthly fees for four months, totaling \$42,000.

Plaintiffs maintain that they are entitled to summary judgment on their claim because, based on the facts and the law, they had a valid contract with DTC, which the College

breached. Plaintiffs contend that the May 1, 2008, agreement is a valid "sole source" contract, which the College cancelled without justification four months before its end. Based on undisputed facts, Plaintiffs' contention is erroneous, as a matter of law. The alleged contract is in violation of the State's and the College's procurement codes and, therefore, is deemed null and void. Under State regulations, no further payments can be made under a contract procured in violation of law. Accordingly, Plaintiffs are not entitled to summary judgment on their claim for the contract balance and, conversely, it is DTC which is entitled to summary judgment in its favor on that claim.

Even if Edusystems had a valid contract with DTC, Plaintiffs would not be entitled to summary judgment. In its Answer and Counterclaim, the College asserted that Plaintiffs, in failing wholly or substantially to perform or complete the consulting services contracted for, breached the agreement and thereby discharged DTC of any remaining obligation to pay. There is, at the very least, a genuine issue of material fact regarding Plaintiffs' performance, which requires denial of their motion.

II. ARGUMENT

A. The Agreement Is Invalid As A "Sole Source" Contract

There is no question that the agreement upon which Plaintiffs sue was not awarded on a competitive basis. Plaintiffs attempt to validate the agreement as a "sole source" contract. Sole source contracts are a narrow exception to the competitive processes under procurement requirements. The criteria for a sole source contract are extremely stringent, and clearly were not satisfied here. Despite the fact that sole source criteria clearly were not met in this case, Plaintiffs attempt to argue that determination as to the validity of a sole source procurement lies within the sole discretion of a College President. See Supplement to Plaintiffs'

Motion for Summary Judgment, attachment of DTC's purchasing policy on sole source procurement (the form justifying a sole source procurement is "to be forwarded to the college president for final determination and approval"). Plaintiffs argue that then-President Waddell "signed off" on the sole source forms, thereby validating the agreement as a sole source contract. Plaintiffs' contention borders on the ridiculous.

The fact that the policy provides that a sole source justification must be submitted to DTC's President for final determination and approval does not mean that the underlying criteria for a sole source procurement may be disregarded. If such were the case, the administrative head of every state agency, if he desired a particular vendor or consulting firm, could circumvent competitive procurement requirements by labeling any contract "sole source." Regardless of what Plaintiffs may contend that Waddell, or anyone else on behalf of DTC, said about the attempted sole source justification or compliance with procurement requirements generally, "all persons are in law held to have notice of the extent of [a public official's] powers, and therefore, as to matters not really within the scope of his authority, they deal with the officer at their peril." Ahrens v. South Carolina Retirement System, 392 S.C. 340, 709 S.E.2d 54, 61 (2011); see Service Management, Inc. v. State HHS Finance Commission, 298 S.C. 234, 379 S.E.2d 442, 444 (Ct. App. 1989) ("...parties entering into agreements with the state assume the risk of ascertaining that he who purports to act for the state stays within the bounds of his authority.") Waddell had no authority or power to ignore or circumvent procurement requirements.

Under Section 11-35-1560(a) of the State Procurement Code and DTC's procurement policies (Tobin Affidavit, Exhibit E p.7), the five circumstances under which a sole source contract is permitted are: where the compatibility of equipment, accessories, or

replacement parts is the primary consideration; where a sole supplier's item is needed for trial use or testing; where a sole supplier item is to be procured for resale; where public utility services are to be procured; and where the item is one of a kind. On their face, the sole source criteria only apply to physical "items" or goods (e.g., equipment, parts), and not to "services" (except "public utilities"), including consultant services. Very arguably, under DTC's policy, services of any type cannot qualify for sole source procurement.

In any event, it is clear as a matter of fact and law that the type of educational consulting services provided by Edusystems do not satisfy the standard for a sole source procurement. As stated by Dr. Walt Tobin, the Interim President of the College, upon his review of the situation, the services described in the contract and as performed by Plaintiffs "amounted to standard, run-of-the mill consultant services in areas such as strategic planning, workforce development, and program development. Such services do not meet State or College requirements for a sole source procurement." Tobin Affidavit ¶12. Sole source means that the "item be one of a kind and available from only one supplier. Educational consultant services of the nature and type that Denton and May were providing were not unique or available only from one source of supply. I [Tobin] personally know of several consulting firms that can offer the same type of consultant services as Edusystems was providing DTC." The fact that Plaintiffs may think they are the "best" at what they do, does not mean they are the only ones! Tobin also states, based on his review of the paperwork, that "the documentation [of sole source procurement] itself was after-the-fact and incomplete in several respects [t]here was no sole source or other documentation validating the procurement of services of Denton and May for the contract period October 1, 2008, to September 30, 2009." Tobin Affidavit ¶12; see Exhibit C p. 2 to the Affidavit.

Plaintiffs may seek to argue that contracts funded by Title III of the Federal Higher Education Act of 1965, as amended, referred to as "HBCU Title III programs," are somehow an exception to State procurement requirements or are automatically considered "sole source." Such is clearly not the case. Section 11-35-40 of the State Procurement Code, to which DTC is subject, states that the Code "applies to every procurement or expenditure of funds by this State under contract acting through a governmental body . . . irrespective of the source of funds, including federal assistance monies" S.C. Code Ann. §11-35-40(2). The statute goes on to provide: "Where a procurement involves the expenditure of federal assistance, grant, or contract funds, the governmental body shall also comply with federal laws (including authorized regulations) as are mandatorily applicable and which are not reflected in this code." §11-35-40(3). Thus, where federal funds are used, the more restrictive requirements (federal or state) apply. There simply is no genuine issue of material fact that Plaintiffs' contract, even if funded by Title III, was clearly subject to the Procurement Code and the College's requirements for sole source procurement.

B. The Agreement Also Violates The Certification Requirement For Contracts Above \$50,000

The agreement also violates the State and DTC procurement requirement that all contracts over \$50,000, including contracts for consultant services, must be submitted to the Materials Management Officer of the Budget and Control Board for certification. See Tobin Affidavit ¶13; see State Procurement Regulation, sec. 19-445.2020 and analogous DTC procurement policy, Exhibit E p. 6 of Tobin Affidavit. The \$50,000 limit applies to the total potential commitment of a purchasing transaction.

Plaintiffs' agreement with the College calls for payment of fees totaling \$126,000 over a one-year period. There is no dispute of fact that this agreement was not submitted by

Waddell or anyone else to the Budget and Control Board for certification. Tobin Affidavit ¶13. Therefore, separate and apart from the failure to satisfy sole source requirements, the contract on which Plaintiffs sue violates the certification requirement of the State Code and the College's purchasing policies.

C. The Failure To Comply With Procurement Requirements Renders The Contract Null And Void, And No Further Payments May Be Made Under A Void Contract

State procurement regulations address a situation, such as here, where a State employee has made an unauthorized award of a contract or when the contract is otherwise in violation of law. The relevant regulatory provisions are found at State Regulation sec. 19-445.2015 (copy at Exhibit E, p. 10 of Tobin Affidavit). That regulation provides that, unless the unauthorized contract has been properly ratified under specific criteria, which did not happen,¹ the contract is void, and "[n]o further payment shall be made under the contract" Sec. 19-445.2015.D. The regulation further provides that, "[r]egardless of its ratification and affirmation of a contract, the State shall be entitled to any damages it can prove under any theory including but not limited to contract and tort." Sec. 19-445-2015.E. See Service Management, Inc., 379 S.E.2d at 444 ("A private party has no right to public funds received as a result of the unauthorized conduct of a government employee.") Accordingly, since no further payments can be made under a contract which is void for failure to comply with procurement requirements, Plaintiffs cannot, as a matter of law, recover on their claim. Plaintiffs' motion for summary judgment, therefore, must be denied, and DTC's summary judgment motion granted.

D. Even if Plaintiffs Had A Valid Agreement, Their Summary Judgment Motion Must Be Denied Because, At A Minimum, There Is A Material Issue Of Fact Regarding Their Performance Under The Contract

¹ See Tobin Affidavit ¶14.

Assuming Plaintiffs could establish that the agreement on which they sue was validly procured, which as a matter of law it was not, they nevertheless would not be entitled to summary judgment on their claim for the contract balance. It is black letter law that material nonperformance by one party to a contract excuses further performance by the other party. See Restatement Second of Contracts, §237 (“... it is a condition of each party’s remaining duties to render performances to be exchanged under an exchange of promises that there be no uncured material failure by the other party to render such performance due at an earlier time.”); 14 Williston on Contracts, §43.5 (“... the party first in default under a bilateral contract cannot recover for the subsequent failure of the other party to perform.”); Silver v. Aabstract Pool & Spas, Inc., 376 S.C. 585, 658 S.E.2d 539, 594 (Ct. App. 2008) (“Where a contract is not performed, the party who is guilty of the first breach is generally the one upon whom all liability for the nonperformance rests.”). Plaintiffs’ failure to perform the contract, by rendering services of little or no value, discharges any further obligation of DTC to pay. Moreover, Plaintiffs in fact have been paid for all services performed to the date of their termination. See Tobin Affidavit ¶s 16-17.

In this case, in its Answer and Counterclaim, DTC raises significant issues related to Plaintiffs’ performance. It denied the averment of Plaintiffs’ Complaint alleging that Edusystems “performed” under the contract in question. See Complaint ¶11; Answer ¶11. Further, DTC asserted as affirmative defenses both failure of consideration and Plaintiffs’ breach of contract, as constituting a discharge of DTC’s remaining obligation. See Answer, Fifth and Sixth Defenses. In its Counterclaim, DTC alleged that Plaintiffs “knowingly and intentionally failed wholly or substantially to perform or complete the consulting services contracted for.” See Counterclaim ¶F. DTC also asserted in its Counterclaim that Plaintiffs “were unable to

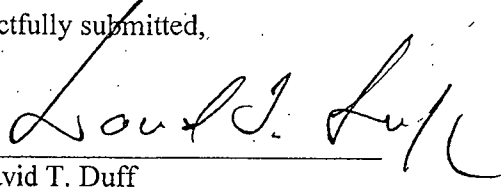
provide a satisfactory explanation regarding the services they had rendered and what had been achieved under the alleged agreements. See Counterclaim ¶1. Such allegations are sufficiently supported by Dr. Tobin's Affidavit (para. 15) to at least raise a triable issue as to the adequacy of Plaintiffs' performance and thus to require that their summary judgment motion be denied.

III. CONCLUSION

For the foregoing reasons, Plaintiffs' motion for summary judgment on the claims of their Complaint must be denied, and DTC's cross motion for summary judgment on the Complaint granted. There is no genuine issue of material fact and, as a matter of law, the contract on which Plaintiffs sue was entered upon in violation of State and College procurement requirements and thus is null and void. By State regulation, no further payment can be made on a void contract. If no further payment can legally be made, Plaintiffs' motion must be denied and DTC's granted. Plaintiffs' motion also ignores the fact that the inadequacy in a material way of their performance has been put in issue. A material breach of one party to a contract excuses further performance of the other party. At the very least, there is a triable issue as to Plaintiffs' performance, which requires denial of their summary judgment motion on that ground alone.

[SIGNATURE BLOCK ON NEXT PAGE]

Respectfully submitted,

By: 

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Attorneys for Defendant Denmark Technical
College

November 16, 2011
Columbia, South Carolina

0 299

Affidavit of R. W. Denton in support of Motion for Summary Judgment dated May 5, 2011

appears in this Record on Appeal at Page 68:

**Portions of the Deposition of Dr. John K. Waddell dated December 16, 2011 appears in this
Record on Appeal at Page 205.**

From: R DENTON (drrwdenton@yahoo.com)
 To: drjohnwaddell@aol.com;
 Date: Fri, January 11, 2008 1:57:28 PM
 Cc: Johnm@moore.sc.Edu;
 Subject: Re: work in progress

we are always excited about creativity

drjohnwaddell@aol.com wrote:

Pete:

Forgive the typo in my last e-mail. The screen jumped quickly.

I have another grant for \$24k related to Allied Health Curriculum. I need your assistance with immediately.

I will call today.

JKW

-----Original Message-----

From: R DENTON <drrwdenton@yahoo.com>
 To: Dr. John Waddell <DRJOHNWADDELL@AOL.COM>
 Cc: John May <Johnm@moore.sc.Edu>
 Sent: Fri, 11 Jan 2008 10:38 am
 Subject: work in progress

Happy New Year John
 Hope the holidays were grant for you and family

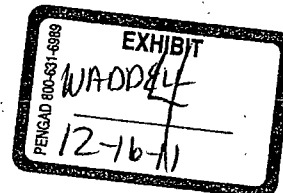
I assume you placed paper work in system for payment we used at lunch.

Looking for last minute shopping deals? Find them fast with Yahoo! Search.

More new features than ever. Check out the new AOL Mail!

Never miss a thing. Make Yahoo your homepage.

0 302



<http://us.mg4.mail.yahoo.com/dc/launch?gx=1&.rand=2r3as4qtc0615>

6/28/2010

Sent: Mon, 18 Feb 2008 2:28 pm
Subject: Re: campus meet

OH JOHN

She must have been too busy with her cell phone [smile]
I feel we did creditable job in justifying EDUSYSTYEMS as SS provider.
Allied Health is area for DTC development and she told you 'money is in the account'

Our logic was that we do this work on Title III and then more Mid April thru Summer----this could be paid either title III or general fund and would continue as sole source.
Then we could have title III write us in grant for next year and then no further fuss or special paper work by anyone.

Sounds to me like you need to call and chat with fed program officer just like we did at SPC.

JM and I asked Ms Jackson if she could have us back Wednesday to see head academic lady and then meet and lunch with you. We should not wait until you return from Japan

When we meet:

- A. We have report for Nursing to date and would like to get first scheduled payment
- B. We would like to get payment for two December invoices we gave you at the Capital City lunch. We will have duplicates with us if needed.
- C. We have third deliverable of Cosmo complete and ready to give you. It would be good if we could get check on it at same time.

Please let us know about Wednesday ASAP. We or one of us will try to meet with Nursing group while you are in Japan

Any idea what happened to Bonnie to derail our meeting?

Pete

drjohnwaddell@aol.com wrote:

Dear Pete:

Sorry I am just answering this e-mail. I will also need a new separate grants person. Let us discuss.

Interestingly, the current one suddenly has new issues with the sole source for Allied Health. She will be out on pregnancy leave soon.

JKW

-----Original Message-----

From: R DENTON <drwdenton@yahoo.com>

0 303

Pete

Dear Pete:

Interestingly, the current one suddenly has new issues with the sole source for Allied Health. She will be out on pregnancy leave soon.

JKW

From: R DENTON <drrwdenton@yahoo.com>
To: Dr. John Waddell <DRJOHNWADDELL@AOL.COM>
Cc: John May <johnandemmiemay@yahoo.com>
Sent: Sun, 17 Feb 2008 6:16 pm
Subject: campus meet

I spoke with Bonnie Stroman today

Perhaps just as well and in meantime we can meet with Academic VP
Much of what we need to cover really can be done with her----I am looking at process and
records to support. And then we want to get arms around new allied health needs
Would you have Ms Jackson schedule us with her say @10:30

Pete

More new features than ever. Check out the new AOL Mail!

0304

-----Original Message-----

From: R DENTON <drwdenton@yahoo.com>
To: Dr. John Waddell <DRJOHNWADDELL@AOL.COM>
Cc: John May <johnandemmiemay@yahoo.com>
Sent: Sun, 17 Feb 2008 6:16 pm
Subject: campus meet

John

I spoke with Bonnie Stroman today
She seems stressed and now has too much on plate tomorrow to see us other than a brief moment to reschedule

Perhaps just as well and in meantime we can meet with Academic VP
Much of what we need to cover really can be done with her-----I am looking at process and records to support. And then we want to get arms around new allied health needs
Would you have Ms Jackson schedule us with her say @10:30

We look fwd to seeing you tomorrow.....and it will be even sweeter if first check on sole source agreement could be ready.

Pete

Looking for last minute shopping deals? Find them fast with Yahoo! Search.

More new features than ever. Check out the new AOL Mail!

Looking for last minute shopping deals? Find them fast with Yahoo! Search.

0 305

From: R DENTON (drrwdenton@yahoo.com)
To: DRJOHNWADDELL@AOL.COM;
Date: Fri, October 26, 2007 2:35:46 PM
Cc: Johnm@moore.sc.Edu;
Subject: denmark contract as developing institution

Greeting Dr. Waddell

John

I am putting in mail a contact outline along lines we have discussed.

The concept is conceptual in that several activities are envisioned. Each stands alone and can be contracted individually based upon highest and best need of institutional resources and efforts. The very nature of this work embraces the nature and mission of title III funding for a developing institution. I would expect utilization of the institutional operating budget for a pilot project. If more than one is budgeted and desired that decision could be made after completion of the pilot project. In this way neither the institution or EDUSYSTEMS is obligated beyond the segment contracted.

If the relationship, concepts and work products reflect institutional value to embrace the continuation into holistic academic enhancement, we would then expect such to be written into title III grant.

As so often is the case this sort of work is started before a contract is in place. In fairness to all parties we need to push to closure.

Dr May and I are eager to assist your team in moving to the next level.

Best Regards

R W Denton

Do You Yahoo!?

Tired of spam? Yahoo! Mail has the best spam protection around
<http://mail.yahoo.com>

0 306

4.mail.yahoo.com/dc/launch?.gx=1&.rand=2r3as4qtco615

6/28/2010

Fwd: Re: contracts and more

From: R DENTON <drwdenton@yahoo.com>

[View Contact](#)

To: John May <drjpmay@yahoo.com>

Tue, May 13, 2008 8:53:49 AM

fyi

P

[drjohnwaddell@aol.com](#) wrote:

To: drwdenton@yahoo.com
Subject: Re: contracts and more
Date: Tue, 13 May 2008 06:35:29 -0400
From: drjohnwaddell@aol.com

Pete:

Thanks for FYI. Back in place next week to discuss.

JKW

-----Original Message-----

From: R DENTON <drwdenton@yahoo.com>
To: Dr. John Waddell <DRJOHNWADDELL@AOL.COM>
Cc: John May <drjpmay@yahoo.com>
Sent: Sun, 11 May 2008 2:28 pm
Subject: contracts and more

Greeting John

John May will be sending you contract proposals that I/we believe capture well our discussions of last visit.

Should we send both email and snail mail?

Pls also ask again for copy of SACS info as to last visit and QEP-STARs Center for our benchmarking and info. We have informally requested from both Acad and IR Leaders. It will be interesting to see which one gives it to you first or what ones includes that the pther omitted. ☺

Pete

Be a better friend, newshound, and know-it-all with [Yahoo! Mobile](#). [Try it now.](#)

Plan your next roadtrip with [MapQuest.com](#): America's #1 Mapping Site.

Be a better friend, newshound, and know-it-all with [Yahoo! Mobile](#). [Try it now.](#)

0 307

DTC

From: R DENTON <drwdenton@yahoo.com> View Contact
To: Dr. John Waddell <DRJOHNWADDELL@AOL.COM>
Cc: John May <djpammay@yahoo.com>

Mon, July 14, 2008 5:53:19 PM

Greetings John

J May is meeting w/ Bonnie tomorrow early.
He must be back at USC early also

We both plan to be back on campus July 23

We will start with meeting Nursing @ 930

Then we would like meeting with STARS at 11----if now politically correct

We last spoke about Cleveland Sellers as being at a cross road. Why not try for a group meeting with him and the three of us. He needs help and fall enrollment \$\$\$ are soon to roll. Hopefully some hot spots have shown need for us. Let me know what you think?

Title III should be done by now and EDUSYSTEMS firmly named in contract. We are in great need of regular cash flow both for summer to date and regular action for next fed year so both you and us can do our jobs better w/o fretting about administrative trivia.

Hope all else is going well in your camp

Pete

0 308

<http://us.mg4.mail.yahoo.com/dc/launch?gx=1&rand=e9ei6tpak9hcc> 6/17/2016

No page 8

From: John May (drjpemmay@yahoo.com)
To: drjohnwaddell@aol.com;
Date: Wed, October 1, 2008 4:52:21 PM
Cc: drrwedenton@yahoo.com;
Subject: Oct 1 meeting

John, I had a good, long, and productive meeting with Bonnie Stroman from 9:45 ish to right at 2. We have drafted more than 50% of the State Board of Nursing Approval document. I am scheduled to meet again on October 13 and 20 when we should have the draft completed. After that we will be combing through it for final check on accuracy and assigning evidence for each criteria.

Several interesting items you need to be aware of -

1. The student who did not pass the NCLEX exam is the same one McGay forced back into the program after she failed out. I believe this is evidence enough of letting the nursing faculty make all the academic calls for admission and retention. Without her interference DTC would have 100% success rate on this first cohort. Also, the admission process should include only nursing faculty or who they want to include. They have proved to be good at what they do.
2. As of today none of the offices have sent copies of evidence to Bonnie. As you will recall, we sent a memo to all concerned in July requesting evidence and Bonnie sent one out 3 weeks ago with an Oct 10 deadline. May I send EDUSYSTEMS 2nd memo requesting evidence. I gave you copies and at that time you asked that I hold off - time is flying by. If Bonnie doesn't get what she needs I recommend Pete and I set up meetings with McGay, Skubal, McDowell, Library person, HR person, and business and let us make them find and produce what we need on the spot.
3. Bonnie needs to establish a substitute nursing instructor pool. The best way to accomplish this is to run classified ads in service area newspapers - she needs approval to do so.
4. Also, she needs copies of Position Descriptions for each of her faculty - apparently she has not been allowed to have them (which is strange to me), again she needs approval.
5. The new revised nursing approval criteria are very specific about the duties the dean/nurse administrator is to have in her position description. I will draft the content of the PD and sent to Bonnie but she believes McGay will be resitant. I'll copy you with my draft so it can be reconfigured and satisfy the criteria. Should I send this draft to McGay also?? Again approval is what she needs.

I came by to get Oct 1 08-Sept 30 09 contract but you were with Carl and others regarding audit. Ms. Jackson did not have it. I will remind you and stop by Monday Oct 13 to get it.

Onward and upward - DTC should very proud of the PN success; next in line after offical approval - 2 year RN program jpm

0 309

Pete

-- On Fri, 10/31/08, John May <drpeummay@yahoo.com> wrote:

From: John May <drpeummay@yahoo.com>
Subject: As requested
To: "John Waddell" <drjohnwaddell@aol.com>
Cc: "Pete Denton" <drpddenton@yahoo.com>
Date: Friday, October 31, 2008, 1:34 PM

John, Attached is the pre title III new federal fiscal year invoice for contract peroid July 2008 through September 2008. jpm

McCain or Obama? Stay up to date on the latest from the campaign trail with [AOL News](#).

Mon, November 3, 2008 10:48:37 AM

Re: As requested

From: R DENTON <rdwinton@yahoo.com> View Contact
To: drjohnwaddell@aol.com
Cc: john may <drjpmay@yahoo.com>

John

Our AM chat was on the money.
We have a plan--

JM will work with Nursing beginning @ 9:30 and Cosmo beginning +/-11.
I will help here as to required audit answer and other advice if needed.

You and I will spend time to understand current and future budget and plan for Bd meet on 11-17 which I will attend.

We will have division of duties for the unity of DTC future.

In an abundance of caution, I am in agreement with the discussed payment stream.

Pete

-- On Mon, 11/3/08, drjohnwaddell@aol.com <drjohnwaddell@aol.com> wrote:

From: drjohnwaddell@aol.com <drjohnwaddell@aol.com>
Subject: Re: As requested
To: rdwinton@yahoo.com
Date: Monday, November 3, 2008, 7:47 AM

Pete:

Thank you. I agree and hear you clearly. You put it on the money.

Very concerned and I will hold decisions today and we can do part of this work/Budget Wednesday.

What is your guess on their thoughts about these findings?

JK W

-----Original Message-----

From: R DENTON <rdwinton@yahoo.com>
To: drjohnwaddell@aol.com
Cc: john may <drjpmay@yahoo.com>
Sent: Sun, 2 Nov 2008 8:38 pm
Subject: Re: As requested

John

You are great friend and colleague

I know you have many balls to juggle

I will carry your water anytime. Please never assume that I am to busy to do what you need. Scheduling on short notice causes all of us issues, but we do what we need to do.

I will always fit for strategic issues. I fret to think where we would be if I did not carve out time to drive year end fiscal to professional position and understanding of statements to prevent 218 ambushing.

Ask these guys why you should stretch out paying first invoice of fiscal year? Also ask them if they have accounting system set to make regular payments on annual contract that is grant specific or if you have to deal with it over and over and over for 12 times. I wonder if strength is dealing with little ole colleges that have no money or if it is in doing professional acts. Please remember I have considerable CFO knowledge in public systems.

I am not in the loop on strategic methods used to solve current budget crisis. But I have concerns that solutions presented to you by 218 and JS and others with agendas for themselves rather than DTC advancement can leave you with structural budget problems two years down the road. And please remember that after this year all problems are on your shoulders---not the prior prez. YOU will be judged later by these actions. The cabinet is all yours now. Then key positions are all yours now. The decisions are all yours now. If all is done well there will be many behind you taking credit, but if it is not well done there will be no one to say 'I lead him wrong' and your brilliant career will be in jeopardy.

You will not be judged by little ole college thinking folks, but by those who expect you to be mainstream in fiscal activities. Goodness knows that is the soul of our Governor and the B&C board.

I know I am asking a lot but please reread this email carefully and TEST ME and all others you depend upon. I look forward to seeing you Wednesday.

0 311

11

Pete

--- On Sat, 11/1/08, drjohnwaddell@aol.com <drjohnwaddell@aol.com> wrote:

From: drjohnwaddell@aol.com <drjohnwaddell@aol.com>
 Subject: Re: As requested
 To: drwdenon@yahoo.com
 Date: Saturday, November 1, 2008, 8:07 PM

Pete:

H No. You and John represent my trump card. Always have been. Do not get sensitive on me now (smile). It is like the day to day thing. I was simply unsure you were available for the meetings the past few weeks.

I agree and am a bit eyeful of Don's decision on Carl. I told him he holds a lot in his hands. He reminded me that he has been providing wise counsel for many years. He also sits among the politicos in my culture.... higher and other.

His primary job is to watch my back. I am concerned that we were not able to slow A down on # of findings. They chalk it up to A being afraid WPG would take his contract. It did not work out the way I thought it would on that front. hmmm....

Don has assured me that he will. I am also concerned that A asked Don to use him for Columbia contracts. That is strange. Don said he told him H NO. We will see. There are still more quarters in the game. We will know after the Nov.17 Board meeting. If we find collusion then.....

On budget, the reduction piece was to get the \$1.3 million.. State part was \$600k. I have to make some decisions Monday. Just received final sub-committee recommendations Friday. I understand your venting. We are always together. I know the great work we have done and will continue to do. Let us chat about this. I will call late Sunday evening after Church. We will have the invoice caught up by the 15th. One half (15k) Monday, the other by the 15th. I look forward to your visit Wednesday.

JKW

John

Computers have so many surprises!!!
 Maybe it will open for you in this forwarding from my system

John May is to be on your side of town midday and he will also drop off copy at your house. He will call you home/cell to say delivered if miss you all.

We also look fwd to seeing you on Wednesday.

I have been thinking all nite with little sleep the idea of contract out--recommended by the same guy who asked me to lobby YOU to keep him, and the same guy who finds JS grand and the same guy who is known as 218. And his boss Don is also working you to take him off his payroll. And our team was most important in balancing the budget and at NO COST TO DTC rather than modest payments to John and Joe. We work so well together and do so many great things that would take more energy and more money to come close to same. We are a super team together and we are poised to break the CEO pattern on Board Room wall, but I would be less than honest if I did not say it hurts my feelings and reminds me of cold day once in an October not long ago when I got a call that my check had been stopped payment after I had paid creditors, bankers and distributed shares ---what a night mare and we both know the ending of that sad story.

You can not put a price on advice I gave you as to SC Procurement and grant expenditures. I lead the balance of last year while Carl watched. I kept 218 from killing you. I bring you talent options that can win in this system. We gave you advice as to TERI and employee at will. We are your change agents. Goodness I was CFO for more than two decades and some say I ran USC during those years. I know SC finance and offer great help in crisis. Kinda funny in reflection, I was major player in last year fix, but little input in current budget. Did I do something to displease you? If so please know it was innocent and tell me and forgive me!

By the way if your budget balancing was to use all Title III, we are building crisis for next year that will be yours---We can place current issues on back on prior admin and state crisis, but further we get from this as time line the more all problems become YOURS. Please think carefully and globally about this. Such future land-minds can put you in jeopardy.

What did you do with special health funds, I would think our nurse accreditation work could be charged to those funds.

John thank you for allowing me to vent. and thank you for having us as part of your team success. And please think about the talent bank we represent that is not even part of our contract but rather it part of a great team effort and spirit.

Pete

0 312

Mon, December 22, 2008 7:22:01 PM

Re: DTC

From: R DENTON <drwdenton@yahoo.com> View Contact
To: drjohnwaddell@aol.com
Cc: John May <drjpemmay@yahoo.com>

JKW

My mother taught me that there was no humor at someone else's expense.
As we go fwd, the idea of weekly board meet even via phone is great excess.
That is not governance that is administration. You will soon see reason to get away from that and reason to inform Gov of crazy things that happen.

Keep the faith and some of the high price consultants

Pete

--- On Mon, 12/22/08, drjohnwaddell@aol.com <drjohnwaddell@aol.com> wrote:

From: drjohnwaddell@aol.com <drjohnwaddell@aol.com>
Subject: Re: DTC
To: drwdenton@yahoo.com
Date: Monday, December 22, 2008, 12:54 PM

Pete:

Friday was some meeting... MY Meeting. Calvin started again on the soapbox. A lot was stoked by McGay, the old BScotland Group, a few faculty and those on the LIST.

I then challenged Harden and Hayes to tell the truth about my attempts to get meetings and the numerous conversations and meetings that we had about the details, people and process etc.; that Wright could not or did not attend. Despite C's talk, I also said we had an obligation to talk with State Tech and the Board and would be respectful of both.

Wright even tried to say we did not bring the RIF plan up Wednesday. ENOUGH I shared that I told them numerous times that we were ready to present the info at that meeting but he was not prepared to receive it. After jumping across the table and slapping my fist at C and his integrity, Hayes and Harden finally too said enough! They told him that I did try to share it and that they were at some level of fault for not meeting. I also said that I had spoken with the Chair in detail. C talked about high priced consultants and folk who he thought should have been in question. He simply had an AGENDA.

I then accepted responsibility for the furlough pay timing. We left moving FORWARD. NO CHANGES TO RIF WHATSOEVER! RIF is totally approved by State Tech and BC Board. Area C will reflect on docs reviewed and we will meet January 8 to discuss. We will start back with our weekly meetings in January that Calvin stopped because he could not attend or call in.

I was told that it was perceived as a Mark S. Jr... type move against our people. I had built a lot of equity so they knew it was just a mistake. We had to reverse the pay, spread the furlough out until June 30 and pay everyone a full check on Dec 31.... My original decision and FAIR ENOUGH....

Though I would like to tell you it was simply their response to an honest mistake, it was a beating of a Black Republican considered a friend of the Gov so they could all get a laugh. I am sorry you all had to see it. Though a bit tired, we go forward.....New Auditor, New Future....

YOU and JOHN Have a MERRY CHRISTMAS!!!!!!

My Best,

JKW

-----Original Message-----

From: R DENTON <drwdenton@yahoo.com>
To: Dr. John Waddell <DRJOHNWADDELL@AOL.COM>
Cc: John May <drjpemmay@yahoo.com>
Sent: Sat, 20 Dec 2008 9:13 am
Subject: DTC

Good Morning John

John May woke this AM reading about unemployment records and wondering which Calvin Wright attended Fridays meeting

I woke reading email from USC biz school begging for money with the pitch that what we do is prepare leaders to follow in our footsteps. This is good framing our our role and mission. DTC once allowed students to fail and did not think about their future. Your leadership is to allow them the opportunity of success vs a daily handout of underemployment.

As to my impression of watching Mr Wright he may be related to those leaders in Africa who try to one up each other in mass genocide of their countrymen or sale of them into slavery.

May we all continue to made a difference for a better world.

0 313

Re: Cancellation Clause

From: R DENTON <drwdenton@yahoo.com> View Contact
To: djohnwaddell@aol.com
Cc: john may <dijpemmay@yahoo.com>

Mon, December 22, 2008 9:23:57 PM

We are winning

what was Pate settlement

Stay warm tonight

P

--- On Mon, 12/22/08, drjohnwaddell@aol.com <drjohnwaddell@aol.com> wrote:

From: djohnwaddell@aol.com <djohnwaddell@aol.com>
Subject: Re: Cancellation Clause
To: drwdenton@yahoo.com
Date: Monday, December 22, 2008, 12:24 PM

Dear Pete:

Thanks for the information.

Someone quietly placed the RFP and contract on my Chair Friday evening (smile)!!!!!! This Language WAS in both the RFP and the Auditor's contract.

I will handle this immediately. This RFP is different than the one Bonnett /Business Office/Secil finally, finally, finally found and gave me. It was also dated 2 months earlier. I will mail you a copy.

P.S. On Pate today, She accepted settlement. On Auditor tomorrow. Yes.... I believe there is a Santa (Smile).

JKW

-----Original Message-----

From: R DENTON <drwdenton@yahoo.com>
To: Dr. John Waddell <DRJOHNWADDELL@AOL.COM>
Cc: John Campbell <jhc@sc.edu>
Sent: Mon, 22 Dec 2008 11:46 am
Subject: Fw: Cancellation Clause

Greeting JKW

Below is exact wording from State Auditor.
He does not have copy of DTC RFP or provider proposal.

I am not too bothered that we do not have our hands on our RFP and Reggie proposal.
Rich says the term State Auditor would not appear in agency RFP and rather it will read DTC.

So a letter [via regular mail and certified mail with signature return request] by CEO to contract holder reading as follows:

Dear Mr. CPA

In accordance with terms of your contract, this is to advise you that DTC is terminating your contract beginning with this fiscal year.

Sincerely
JKW

After the holidays we will send out new RFP and encourage competition in an effort to obtain a good proposal pool.
Happy holidays

Pete

--- On Mon, 12/22/08, CAMPBELL, JOHN <JHC@mailbox.sc.edu> wrote:

From: CAMPBELL, JOHN <JHC@mailbox.sc.edu>
Subject: Cancellation Clause
To: drwdenton@yahoo.com
Date: Monday, December 22, 2008, 10:59 AM

0 314

Fw: DTC 2009 Audit

Mon, January 26, 2009 8:56:51 AM

From: R DENTON <drwdenton@yahoo.com>
To: John May <djpemmay@yahoo.com>

[View Contact](#)

fyl

P.

-- On Mon, 1/26/09, R DENTON <drwdenton@yahoo.com> wrote:

From: R DENTON <drwdenton@yahoo.com>

Subject: DTC 2009 Audit

To: "Connie" <cannon@bellsouth.net>

Cc: "Dr. John Waddell" <DRJOHNWADDELL@AOL.COM>, "George Wise" <conchester@yahoo.com>

Date: Monday, January 26, 2009, 8:55 AM

Good Morning Connie

I am excited about the prospects of working together.
George will be proud for Dr Waddell and of us.

Dr Waddell wants to meet you and plans to personally pick up the proposal around noon.
Please note his schedule is often subject to adjustment, so outside chance something will pull him away, but unless your body chemistry is screaming
I would appreciate it if you would not go to lunch until he arrives.

Also please email me copy of proposal for my files.

I truly regret giving you such a short time to prepare a proposal.
I also know the trust and respect you place in me when I represent DTC to you sight unseen. Thank You. Be assured the fondness will grow. Both
DTC and I will earn it.

Pete

Fwd: catalog bid

Sat, Jun 13, 2009 8:21:51 AM

From: "djohnwaddell@aol.com" <djohnwaddell@aol.com> View Contact
To: djpemmay@yahoo.com

-----Original Message-----

From: djohnwaddell@aol.com
To: dnrwdenton@yahoo.com
Sent: Sat, Jun 13, 2009 8:20 am
Subject: Re: catalog bid

Pete:

The Era of Skubalization is over. Terminated Bonetta; Skubal and McGay yesterday. McGay chose to leave rather than accept non-executive position.

Skubal raised legal issues.... That is why I told John not to worry about the catalog. The Obstruction - in all areas - had to be faced.

Let me get past the Board meeting. We can run now.

JKW

-----Original Message-----

From: R DENTON <dnrwdenton@yahoo.com>
To: John Waddell <djohnwaddell@aol.com>; John May <djpemmay@yahoo.com>
Cc: Whatseall@denmarktech.edu
Sent: Sat, Jun 13, 2009 7:47 am
Subject: Re: Fw: catalog bid

Told you!!!!!!!!!!!!

She must be close kind to Dilbert

P

--- On Fri, 6/12/09, John May <djpemmay@yahoo.com> wrote:

From: John May <djpemmay@yahoo.com>
Subject: Fw: catalog bid
To: "Pete Denton" <dnrwdenton@yahoo.com>; "John Waddell" <djohnwaddell@aol.com>
Cc: Whatseall@denmarktech.edu
Date: Friday, June 12, 2009, 2:41 PM

fyi - I had her but she wiggled out by using those 5 important words
... "I talked to the president" - if I don't keep jabbing at her when

she gets back this thing will go into August where it will be one year since she first gathered the information from deans, vp, etc. to make a new version of the catalog. I will meet with her Tuesday June 30 and continue my pursuit of getting the catalog out. What a girl! A
djpem

----- Forwarded Message -----

From: Jacqueline Skubal <skubal@denmarktech.edu>
To: John May <djpemmay@yahoo.com>
Sent: Friday, June 12, 2009 2:27:37 PM
Subject: RE: catalog bid

That's correct. We will get the information to the printers for bidding, but we will make sure that everything is correct in the document before it is sent to the printer. We won't hit July 1, but it will be early in July.

From: John May [mailto:djpemmay@yahoo.com]
Sent: Fri 6/12/2009 12:50 PM
To: Jacqueline Skubal
Cc: John Waddell; Pete Denton
Subject: Re: catalog bid

So in other words, the request for bid is not being let today and we are not going to be able to go to press on July 1?? John may

0 316

Re: DTC saga

Sun, October 4, 2009 11:45:44 AM

From: R DENTON <drwdenton@yahoo.com>  View Contact
To: DRJOHNWADDELL@aol.com
Cc: john may <djpemmay@yahoo.com>

fools never flip correctly
job search will drag until you get suit results made public
.....and that means working/winning w/lawyer is a job burt with delayed payday

Pete

From: "DRJOHNWADDELL@aol.com" <DRJOHNWADDELL@aol.com>
To: drwdenton@yahoo.com
Sent: Saturday, October 3, 2009 7:11:17 PM
Subject: Re: DTC saga

Pete:

Well said. She is key and her report will make the difference. The Title III adjustments and Edusystem payments need to be made.

I also need help getting a job (amile). State Tech and the HBCU/UNCF/W Peachtree folk have blocked me. I can not believe Mandy would let that happen to Vince. Will they put DTC Board in check now?

They need to flip and put us back in.

JKW

0 317

<http://us.m4.mail.yahoo.com/dc/launch?cv=1&rand=chhKiQvco2f52>

6/21/2010
17

vince whetsell

From: R.DENTON <rdwinton@yahoo.com> View Contact
To: Dr. John Waddell <DRJOHNWADDELL@AOL.COM>

Tue, October 20, 2009 12:14:51 PM

Greeting John

I spoke with Vince the other day and he told me he did not have copy of contract.
I know you told him you gave him a one year contract
I know you told me that was the deal
I told him that was the deal

Yes that is different that a lot of STC buraracy but very common for professional talent
and I know Vince was concerned about that issue going in.

If you could find copy of that agreement/offer it would be of great help to him and help correct an injustice

Pete

0 618

<http://us.me4.mail.yahoo.com/dc/launch?px=1&rand=chn6i9vsn8f58>

6/21/2010
18

Re: merry Christmas

Sun, December 27, 2009 11:20:06 AM

From: "ddjohnwaddell@aol.com" <ddjohnwaddell@aol.co... View Contact
To: ddjpmmay@yahoo.com

My Dear Friend(s) Pete/John:

Thank you SO Very much for thinking of me and my family during the holiday season. It has surely been a tough five months.

I saw my buddy Pete and hope that he has shared that I had to return to Virginia but landed well at the #1 HBCU, Hampton University. I am the new Executive Director of their Branch campus, The College at Virginia Beach.

Hampton has a \$238 million dollar endowment and several hundred million dollar NASA and other federal grants. They will open a \$220 million dollar Proton Therapy Center in March of 2010. Great place for a progressive thinker and friends....

My major goal is to get enrollment up by August. I will call to chat. Until then, thanks for all! Happy holidays to your family.

My Best,

JKW

0 319

http://us.m4.mail.yahoo.com/dc/launch?_ex=1&_rand=chn6i9vsn8f58

6/21/2019

From: drjohnwaddell@aol.com (drjohnwaddell@aol.com)
To: drrwdenton@yahoo.com;
Date: Wed, May 5, 2010 3:11:58 PM
Cc:
Subject: RE: News

Pete:

Very interesting news in Mississippi. Are there any live contacts with Gov there?

Head of Big MS HBCU, Jackson State left under seige because he tried to merge 3 HBCU's - Alcorn St & Miss Valley State into larger Jackson St. Alums at others went crazy.

Pres Mason was on WH Hse Board with me. Good guy. He is now head of the Southern University system in LA. I will call soon.

My Best,

JKW

-----Original Message-----

From: R DENTON <drrwdenton@yahoo.com>
To: drjohnwaddell <drjohnwaddell@aol.com>
Sent: Thu, Apr 15, 2010 10:06 pm
Subject: Re: tuesday meet

we want to win any battle that must be fought

From: "drjohnwaddell@aol.com" <drjohnwaddell@aol.com>
To: drrwdenton@yahoo.com
Sent: Thu, April 15, 2010 4:07:00 PM
Subject: Re: tuesday meet

Pete;

Thanks. It makes a lot of sense. I had started that initially. I will draft something this weekend.

JKW

-----Original Message-----

From: R DENTON <drrwdenton@yahoo.com>
To: Dr. John Waddell <DRJOHNWADDELL@AOL.COM>
Cc: John may <drjpemmay@yahoo.com>
Sent: Thu, Apr 15, 2010 1:54 pm
Subject: tuesday meet

John

I am sure you have a long list of issues at dco
But it would be helpful to lawyer if

0 320

You gave him abstracted history of events

EG

hired for change agent
problems with ST and Barry

problems with commerce and ST
re workforce development

board members interference with administration

board member behavior esp CW

conflicts of interest

improper student aid --involvement of bd, barry et al
to Wesley PT

bad BO --cbo and auditor
bd interference with contracting back old auditor

role with gov on white paper
leak to mandy[?]

m martin role

Involvement of BR all the way

Budget cuts-board resistance

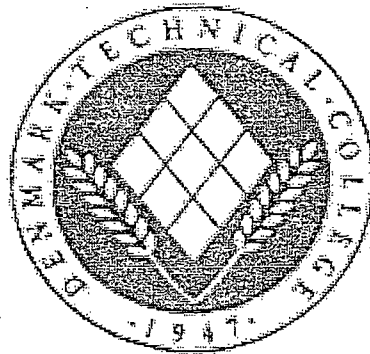
this is not very well structured and is done PDQ-----but it makes point of how you need to be better
org'd at meet
with LC

It will help present story and shorten the 'clicking of that ole money clock machine'

Petc

0 321

DENMARK TECHNICAL COLLEGE



PURCHASING POLICIES AND PROCEDURES

(REVISED 8/2007)

1126 SOLOMON BLATT BOULEVARD
POST OFFICE BOX 327
DENMARK, SC 29042
TELEPHONE: (803) 793-5125

0 322 --

DENMARK TECHNICAL COLLEGE DRUG-FREE POLICY

It is the policy of Denmark Technical College to provide a drug-free, healthful, safe and secure educational and work environment for its students and employees. Students and employees, respectively, are required and expected to report to class and work in an appropriate mental and physical condition to meet the requirements and expectations of their classes and positions.

For Employee Assistance, Contact:

Director of Personnel
Blatt Hall
(803) 793-5193

For Student Assistance, Contact:

Dean of Student Services
William L. McDuffie Building
(803) 793-5185

Denmark Technical College, P.O. Box 327, Denmark, South Carolina 29042-0327
PH: (803) 793-5193 Fax: (803) 793-5942

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- II. State of South Carolina Purchasing Requisition
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- IV. Justification for Emergency Procurement
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- VI. Approval/Request for Consultant Services Form
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DENMARK TECHNICAL COLLEGE

Purchasing Policies and Procedures

GENERAL INFORMATION

Purpose of Manual

This manual is provided as a guide to all departments of Denmark Technical College for the procurement of materials, supplies, equipment, and services required for their respective operations and for budgetary control of the costs of purchases.

These procedures apply regardless of the source of funds.

Although this manual is not intended to completely cover the internal operations of the college's Purchasing Department, certain phases of its operation are included to clarify procedures.

Denmark Technical College adheres to the provisions of the South Carolina Consolidated Procurement Code.

Responsibilities of the Purchasing Department

Under the authority delegated to Denmark Technical College (DTC) by the South Carolina Act Number 654, By-laws of the DTC Area Commission in conformity with provisions, regulations and policies of the State Board for Technical and Comprehensive Education, the Purchasing Department under the supervision of the Chief Business Officer has the exclusive responsibility for:

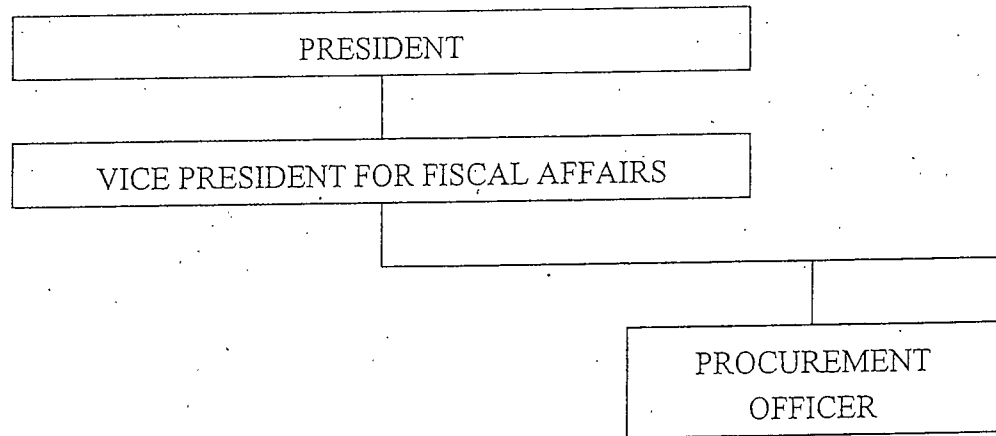
- A. Supporting the educational mission of the college by procuring the materials, supplies, equipment, and services required for the college's operation.
- B. Providing Purchasing services to all departments and locations that are a part of the college.
- C. Procuring such commodities and services in the most efficient, economical, and responsible manner.

Ethical Standards

Denmark Technical College adheres to the Code of Ethics as adopted by the National Association of Education Buyers for the purchasing official.

1. Give first consideration to the objectives and policies of the college.
2. To strive to obtain the maximum ultimate value of each dollar of expenditure.
3. To cooperate with trade and industrial associations, governmental, and private agencies who promote and develop sound business methods.
4. To demand honesty in sales representation whether offered through a verbal or written statement and advertisement, or a sample of the product.
5. To decline personal gifts.
6. To grant all competitive bidders equal consideration; to regard each transaction on its own merits; to promote fair, ethical, and legal trade practices.
7. To use only, by consent, original ideas and designs devised by one vendor for purchase comparisons.
8. To be willing to submit to arbitration any major controversies.
9. To accord a prompt and courteous reception, in so far as conditions permit; to be friendly to all who call on legitimate business missions.
10. To counsel and cooperate with all organizations and individuals who enhance the development of governmental and educational purchasing.

ORGANIZATION



PURCHASING POLICIES/PRACTICES

General

A contract is defined as a binding agreement based upon the genuine consent of two or more parties to perform a service or provide a product under established conditions for defined consideration.

From the inception to the consummation of a contract, many important issues are involved. Therefore, the proper handling of these issues and the administering of the business features connected with them are vital factors in the successful completion of a contract.

For these reasons, the authority and responsibility of purchasing rests with the Purchasing Department. This places the responsibility on those who have the interest and the skill to do the work properly and whose primary concern is in the performance of this special task. Under these conditions, the Purchasing Department can establish uniform policies with respect to seller relationships. Such policies are summarized as follows:

A. Departmental Solicitation by Sales Representatives

Many items used by the college must be obtained under state contracts or by competitive bidding vendors, so departmental solicitation of business is of little productive value to a sales representative. However, the Processing Department serves as a screen from salesmen, but not a barrier.

B. Correspondence with Vendors

Following the transmittal of a purchase order to the vendor, all correspondence in connection with the fulfillment of the contract is to be handled by the Purchasing Department.

C. Adjustments

The Purchasing Department will conduct all adjustment negotiations.

Unauthorized Purchases

The Purchasing Department is the only unit of the college authorized to procure goods and services for the college, except as provided for in the policy on petty cash. Unauthorized procurements and D.E.V.'s shall become the responsibility of the individual making such procurement.

All unauthorized purchases must be ratified by the President of the College up to the College's procurement certification limit. Any unauthorized procurement above the College's certification limit will be ratified in accordance with Regulation 19-445-2015 of the South Carolina Consolidated Procurement Code.

Budgetary Control

Each department, using materials and services as described in this manual, is responsible for confining its expenditures within the limits of its fiscal budget.

If a departmental budget is overspent, requisitions will not be processed for that particular department unless deemed in the best interest of the College.

Authorization for Purchasing

All procurement or obligations shall require the following levels of approval:

1. Originator
2. Program Coordinator or Division Chairperson
3. Dean
4. Chief Financial Officer
5. President

a. All requisitions and D.E.V.'s

Miscellaneous Policies

A. Restricted Specifications

Section 11-35-2750 of the code states that all specifications be non-restrictive. This rule applies to each solicitation and includes, among other, all specifications prepared by architects, engineers, designers, draftsmen, and land surveyors for state contract.

B. Retention of Records

All procurement records of Denmark Technical College shall be retained and disposed of in accordance with records retention guidelines and schedules approved by the Department of Archives and History as stated in Section 11-35-2430 of the Code.

C. Warrant and Quality

All items must be warranted for a period of one year unless otherwise indicated. Any item offered or shipped shall be new and in first-class condition.

D. Advance Notification of Needs by Users

All users should schedule their needs well in advance so proper procurement procedures can be followed.

E. Sample Submission

When required, a sample must be submitted free of expense to the college and will be non-refundable.

F. Confirmation Orders

No confirmation orders shall be issued by any person other than the Procurement Officer, except in emergency situations.

PURCHASING PROCEDURES

Purchase Requisitions for Supplies/Services

The standard college requisition form is to be used for requesting expendable supplies or services. Examples of these are: instructional and office supplies, maintenance and repair services, and membership fees.

The purchase requisition is the most important form of communication between the various departments and the Purchasing Department. This document notifies the Purchasing Department that a department desires a specific commodity or service. Usually it is the only document submitted; therefore, the purchase requisition must present specific and complete details on the commodity or service desired.

The following information should be furnished when submitting a purchase requisition (See attachment I.)

1. Date: Enter the date on which the requisition is prepared.
2. Budget to be Charged: Enter the accounting code from your department or program budget.
3. Department: Enter the department or program name.
4. Special instructions: When applicable, enter any specific instructions regarding the processing of your requisition. For instance, if you need to pick up the items listed, please indicate. If you have a required mailing or delivery date, please indicate. Avoid "ASAP" "Immediately", or "Rush." If we feel that we cannot meet your date, we will advise you so that you may choose another course of action or obtain a more realistic date.

5. Quality: For each item, enter the amount required.
Unit: For each item, list unit such as pounds, dozen, each.
6. Description: The description should be specific and complete so that the commodity or service can be easily identified.
 - a. Commodity-description should include manufacturer, model number, and order number, color, and size if applicable, etc.
 - b. Service-description should include type of service.
7. Unit Cost: Include the actual cost, your best estimate of what you think the item will cost, or the amount you are willing to spend. This information can be obtained from price lists, catalogs or prior purchases.
8. Total: Enter the total amount of the item including sales tax (if applicable).
9. Vendor and Address: Enter complete address including zip code. If vendor is an individual, enter name and, if applicable, complete address.
10. Telephone Numbers: Enter the telephone number of vendor.
11. Quoted By: If the prices on your requisition are quoted, enter name of person quoting the prices and a number where they can be reached. If it's a fax quote, attached the quote to the back of the requisition.
12. Originator's Signature: The requisition must be signed and dated by the person originating the request for purchase.
13. Division Chairperson/Program Coordinator: All requisitions should be approved and dated by the Division Chairperson or Program Coordinator.
14. Dean: All requisitions should be approved and dated by the appropriate Dean or Institutional Officer.
15. Approved: All requisitions must be authorized by the President

Any attachments should be stapled to the requisition.

Requisitions should be carefully reviewed before being sent to the Purchasing Department. Accuracy is important. Make sure that the requisition is fully legible. Incomplete or inaccurate requisitions may be returned for revisions. This will result in unnecessary delay in the processing of your request.

The Purchasing Department maintains a limited catalog library to assist departments in preparing

requisitions.

Equipment Purchase Requisition

The State Requisition form is to be used for all equipment when unit cost is \$300 or more, including freight and tax (See attachment II.)

The following information should be furnished when submitting an equipment requisition:

1. Date: Enter the date on which the requisition is prepared.
2. Department: Enter the department name.
3. Name of item: Enter the name of the equipment being requested. Include item number, quantity, and units of measure.
4. Description: The description should be specific and complete so that the particular equipment can be easily identified. Description should be nonrestricted. Four photo copies of items requested must be attached.
5. Name of Manufacturer: Enter the name of the manufacturer that you recommend.
6. Model Number: Enter the specific model number that you prefer.
7. Quote: Enter the unit cost, discount, sales tax, and total cost of the item.
8. Delivery Lead Time: Include the estimated delivery time after the vendor receives the order (ARO) and special delivery instructions.
9. Name of Sales Representative: Enter the name of the sales representative you contacted.
10. Company: Enter the complete address, including zip code and telephone number.
11. Department Head or Program Coordinator and Dean. The requisition must be signed and dated by the Department Head or Program Coordinator and Dean.
12. Approved: All equipment requisitions must be authorized by the President.

Processing of Completed Requisition

Upon receipt in the Purchasing Department, the requisition is dated and verified for approval. The requisition is then reviewed for adequate specifications and other pertinent information.

The Procurement Officer will review the budget for adequate funds. If funds are not available requisition would be forward to the Senior Accountant and/or Chief Financial Officer. A blanket purchase order may be issued to local vendors on a rotating basis. Such purchase orders will be issued to vendors in Barnwell, Bamberg, and Allendale Counties.

Each such blanket purchase order will have an authorized spending limit of \$750. After items have been purchased up to the authorized limit on a purchase order, the department must provide the Business Office with a receipt governing all items charged against the blanket purchase order. All agreements must adhere to the provisions provided in the State of South Carolina Procurement Code.

Note: The President's Office is the only office authorizes to use blanket purchase orders.

Term Contracts

It is mandatory that the college utilize term contracts established by the Materials Management Office. A list of these contracts is maintained in the Purchasing Office. Various sheets are forwarded to appropriate departments for reference when ordering.

Processing the Purchase Order

An official purchase orders is typed from the information on the requisition. The purchase order is signed by the Vice President for Fiscal Affairs.(Attachment III)

The purchase order is a four (4) part form and is distributed as follows:

- a. Copy-Vendor (Original)
- b. Copy-Purchasing
- c. Copy-Inventory/Accounts Payable
- d. Copy-Requestor

State Purchase Orders

State Purchase Orders are received from the Finance Division of the State Board of Technical and Comprehensive Education. The receiving copy is forwarded to the Receiving Division and the other copy is retained in the Procurement Office.

Receipt of Orders

All shipments will be received by the Receiving Department unless otherwise specified. The Property Inventory Control Specialist will verify receipt of all materials, get the receiving copy of purchase order signed by the requestor, and forward it to the Business Office. Also, the requestor and the Property Inventory Control Specialist must date the receipt of materials or services.

Furthermore, no partial payment will be made for partial shipments unless prior approval by the Chief Financial Officer has been obtained.

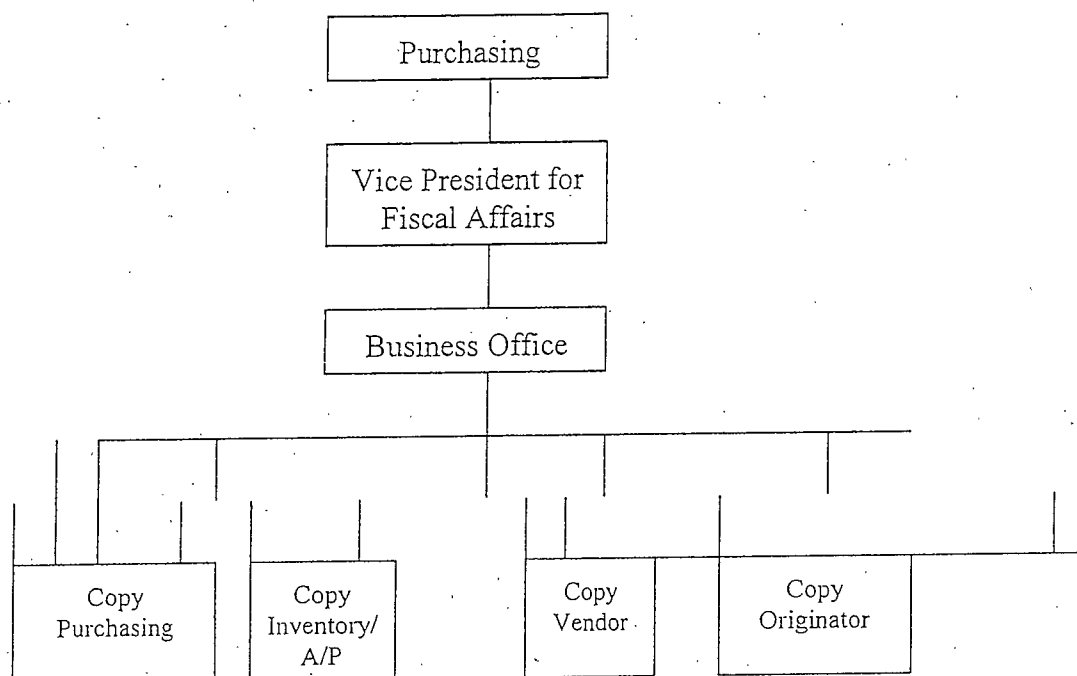
It is the responsibility of the using department to immediately notify the Receiving Department upon receipt of any items that are shipped directly to the using department. It is also the responsibility of the requestor to ensure the items are correct before signing off on all purchase orders.

Equipment Tagging

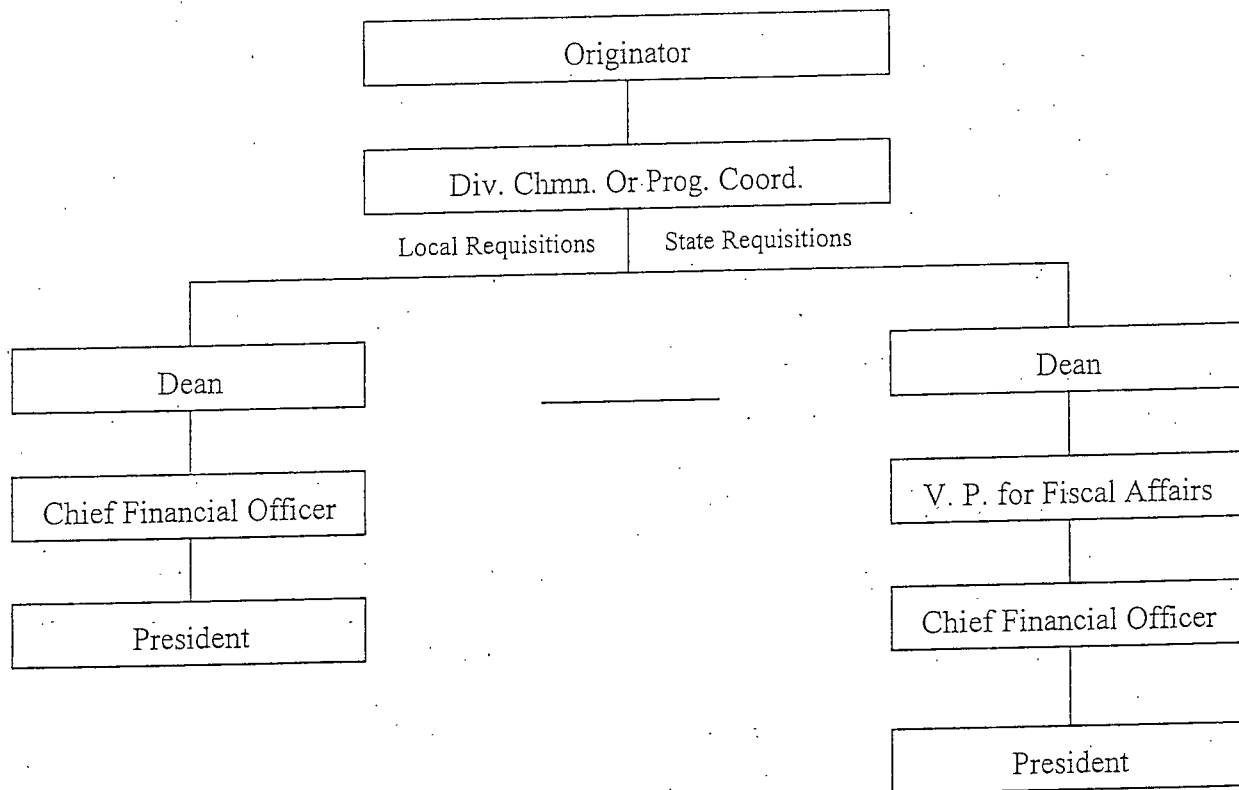
Upon receipt equipment designated as capitalized, non-capitalized or pilferable shall be tagged and scanned as received in accordance to the South Carolina Technical College System guidelines. Reference State Equipment Manual for procedures.

State purchase orders for equipment are forwarded to the Finance Division of the state Board for Technical and Comprehensive Education for payment.

THE PURCHASING ORDER



SUPPLIES/SERVICES REQUISITIONS



Substitution Purchases

All purchase orders must be strictly adhered to. In the event of an item listed on the original purchase order not being available at the time the requestor picked up the item, he/she would be allowed the opportunity to substitute one item for another. The purchase price of this item must not exceed \$2.00 over the original item.

In the event of you having to substitute an item on your original purchase order you must also provide a written justification for your purchasing a different item not originally listed on the purchase order. If a change has been made to the original purchase order and a justification has not been done, this will obtain as an unauthorized purchase.

Invoice processing

Invoice processing is handled by the Business Office. It involves an audit of the purchase order, the receiving report, and the invoice. The audit verifies the receipt of materials or services rendered, the correctness of pieces, the accuracy of extensions, and other pertinent factors. Any discrepancy is referred to Accounts Payable and Purchasing for resolution.

- A. A variance letter must be issued for all invoices that exceed the total purchase order by five (5) percent.
- B. The variance letter must be submitted for approved to the Chief Financial Officer. A copy must also be forwarded to the Procurement Officer with the Chief Financial Officer approval signature.

Emergency Procurement

The determination for an emergency procurement is made in writing and authorized by the President. Emergency procurements are permitted only when there exist an immediate threat to public health, welfare, or safety, such as may arise by reason of floods, epidemics, riots, equipment failures, fire loss, or such other reason as may be proclaimed by the President. Emergency procurements shall be made with as much competition as is practical under the circumstances. Emergency commitments are made in accordance with emergency procurement procedure. (See attachment IV.)

Lead Time

In determining lead time for processing of purchase orders, the following factors should be taken into consideration:

- A. If no bids are required, the Purchasing Department normally requires a minimum of 3 working days to process the order.
- B. If bids are required, an additional 7-15 calendar day will be required for processing.
- C. If competitive sealed bids are required, additional 20 to 30 calendar days will be required for processing.
- D. If the order has to be sent to Central State Purchasing, processing time will require a minimum of 60-90 days.

Note: All quotes must be current (no more than 30 days old).

Competition Requirements

- A. Purchases of \$2500 or less, do not require competitive quotations if the prices are considered to be fair and reasonable by the Procurement Officer.
- B. Purchases from \$2501 to \$10000 require solicitations of verbal or written quotes from a minimum of three qualified sources.
- C. Purchases from \$10001 to \$50000 require written quotes, bids or proposals. The procurement must be advertised at least once in the South Carolina Business Opportunities publication or through a means of central electronic advertising approved by the Office of General Services.
- D. Purchases from \$50001 will be sent to the Central State Purchasing for processing.

In computing the total dollar amount to determine one of the bidding categories, the amount will include any shipping, handling, packing, and installation charges, excluding S.C. Sales Tax.

Note: S. C Tax is excluded when determine the bidding category; however, is included when determine if items are applicable for the equipment category.

1. In-State Bidder's Preference

These are the only conditions under which any in-state preference is shown.

Competitive procurements shall be made from a responsive and responsible vendor resident in South Carolina:

A. For procurements under \$10,000.00 if such bid does not exceed the lowest qualified bid from a nonresident vendor by more than two percent of the latter bid, and if the resident vendor has made written claim for such preference at the time the bid was submitted.

B. For procurements in excess of \$10,000.00 if such bid does not exceed the qualified bid from a nonresident vendor by more than one percent of the latter bid, and if the resident vendor has made written claim for such preference at the time the bid was submitted. a vendor shall be a resident of this state is such vendor be an individual, partnership, association or corporation that is authorized to transact business within the state,

maintains an office in the state, maintains a representative inventory of commodities on which the bid is submitted and has paid all taxes duly assessed. Preferences under this subsection shall not apply to either prime contractors or subcontractors as relates to the construction industry nor to a vendor or goods whether in quantity or not when the price of a single unit of the time involved is more than \$4,999.99.

2. Unsigned Bids

Unsigned bids shall be rejected unless a representative of the company who has the authority to sign is present at the bid opening; and if discovery is made prior to the reading of any bids for that procurement, the representative may be allowed to sign the bid.

3. Correction Creates Low Bid

To maintain the integrity of the competitive sealed bidding system, a bidder shall not be permitted to correct a bid mistake after bid opening that would cause such bidder to have the low bid unless the mistake in the judgment of the Procurement Officer is clearly evident from examining the bid document; for example, extension of unit prices or efforts in addition.

4. Award

The contract shall be awarded to the lowest responsible and responsive bidder whose bid meets the requirements and criteria set forth in the invitation for bids.

5. Protests Against Awards

Any actual or prospective bidder, offerer, contractor, or subcontractor who is aggrieved in connection with the solicitation or award of a contract may protest to the Chief Business Officer. The protest, setting forth the grievance, shall be submitted in writing within ten days after such aggrieved persons knows or should have known of the facts giving rise thereto, but in no circumstance after thirty days of notification of award of contract. The appropriate head of a purchasing agency or designees thereof shall have authority, prior to the commencement of an administrative review, as provided in this article, to settle and resolve a protest of an aggrieved bidder, offeror, contractor or subcontractor, actual or prospective, concerning the solicitation or award of a contract. This authority shall be utilized in a manner consistent with regulations or laws governing the procurement of supplies, services and construction for the state. If the protest is not resolved by mutual agreement, the appropriate chief procurement officer shall promptly issue

a decision in writing within ten days. The decision will state the reasons for the actions taken. a copy of the decision shall be mailed or furnished immediately to the Protestant and any other party intervening.

A decision shall be final and conclusive, unless fraudulent, or unless any person adversely affected by the decision requests a review, in writing, setting forth the grievance, to the procurement Review Panel, within ten days of the decision. The protester may also request an interview with the panel.

In the event a professor should have been awarded the contract under a solicitation but is not, then such party may apply to the Review Panel, the reimbursement of the actual costs, not to exceed five thousand dollars incurred in connection with the solicitation including bid preparation. Upon receipt of such application, the Review Panel may order the computation of a reasonable reimbursement amount and make such recommendations to the board as it deems equitable, including reimbursement of bid preparation costs, not to exceed five thousand dollars, and other relief.

Sole Source Procurement

In accordance with Section 11-35-1560 of the Consolidated Procurement Code, sole source procurement is permitted when a requirement is available from only one Supplier. The following are examples of circumstances which could necessitate sole source procurement:

1. Where the compatibility of equipment, accessories, or replacement parts is the primary consideration;
2. Where a sole supplier's item is needed for trial use or testing;
3. Where a sole supplier item is to be procured for resale;
4. Where public utility services are to be procured; and
5. Where the item is one of a kind.

To obtain approval for a sole source procurement, the using department must complete a AJustification for Sole Source Procurement@ form to be forwarded to the college president for final determination and approval. These forms may be obtained from the Purchasing Department. (See attachment V.)

Return of Merchandise/Equipment, or cancellation of an Open Purchase Order

- a. Legal Aspect - a purchase order formally issued to a vendor constitutes a legal contract. Therefore, permission must be obtained from the vendor to return merchandise that meets the specifications stated in the order or to cancel an order prior to delivery.
- B. Merchandise to be Returned - Anyone who received ordered merchandise and decides it is not needed or not suitable may request permission from the Procurement Officer to return it.

Receipt of Damaged Material or Shortages

Upon discovery of a shortage or damaged goods in the initial inspection, the Procurement Officer should note the discrepancy on the way-bill (a document containing a list of goods and shipping instructions relative to a shipment) before signing it.

In the event that concealed damage or shortage is discovered (a shortage or damage of apparent from external appearance), the department head must notify the Procurement Officer immediately.

In either case, a description of the damage must be given along with the name of the transportation company and its way-bill number, if known. All packing material and cartons or cases must be retained pending inspection by a claims agent.

South Carolina Sales and Use tax

Other than for those categories of items exempt by law, all purchases are subject to the inclusion of seven (7) percent sales tax as part of the cost.

- a. Exempted items
 1. Items purchased for resale by agencies which collect the sales tax when the sale is made. Purchase requisitions covering such items should bear the notation ATax Exempt-Purchases for Resale@.
 2. Purchases of services.
 3. Library books and magazines.
 4. Labor portion of charge for repairs to equipment.
 5. Maintenance contracts for equipment (parts not included in such contracts are taxable).

6. Rental of Real Property.

7. Effective July 1, 1984, the maximum tax applicable to the sale of single motor vehicle is \$300.00.

Purchase of Airline Tickets and Lodging Accommodations

Tickets for commercial air travel or lodging accommodations that are paid by the college are procured only on authority of an approved travel request. Upon receipt of an approved request from the President, the Business Office will issue a purchase order for the tickets or lodging accommodations.

Transportation to and from points of arrival and departure will be accomplished by the most economical method.

Lodging reservations for state business travel within the state will be made in accordance with the Director of Hotel/Motel Discounts, available in the Purchasing Office.

Petty Cash Purchases

The use of petty cash funds for reimbursement of small operational expenses is a viable method eliminating paperwork yet acquiring needed supplies for accomplishing the college's mission. Single reimbursement of these funds shall not exceed \$25.00.

To obtain reimbursement, original purchase invoice or similar documentation must be stapled to a completed Petty Cash Voucher signed by the requester. This voucher may be obtained from the Business Office. Expenditures will be reviewed to prevent abuse.

Surplus Property

a. Purchase

The state has surplus property for sale to state agencies and institutions, located at the warehouse located on Boston Avenue in West Columbia. Departments interested in obtaining items from surplus property should call the Purchasing Department.

B. Disposal

All surplus property shall be disposed of in accordance with the State of South Carolina Procurement Code. The state has surplus property for sale to state agencies and institutions, located at the warehouse located on Boston Avenue in West Columbia.

Information Technology Purchases

The Coordinator of Management Information System (MIS) is the single point of contact for computer resources within the college. The Coordinator should advise the Chief Financial Officer on all requisitions associated with acquisition of computer devices including work processors, modem, etc. These restrictions apply to software as well as hardware. Also, the college is not certified in this area, and therefore, procurement that exceed \$25,001 must be submitted to State Purchasing. In addition to this, IT plans must be prepared annually.

Purchase of Consultation and Other Professional Services

All consultants must be procured in compliance with the Procurement Code and Regulations unless specifically exempted by the Budget and Control Board.

A. Evaluation Specifications

1. The Program Coordinator is responsible for preparing specifications for program evaluation in accordance with program guidelines.
2. The Program Coordinator submits the specifications to at least three (3) prospective consultants.
3. The Program Coordinator will review consultant evaluation proposals and make recommendations for institutional concurrence.

B. Approval/Request for Consultative Services

1. The Program Coordinator prepares an Approval/Request for Consultative Services with the following information. (See Attachment VI).
 - a. Consultant name and address
 - b. Purpose of consultation/need for consultation
 - c. Consultant qualifications (must include copy of resume):
 1. Professional fee
 2. Travel
 3. Per Diem
 4. Preparation
 5. Miscellaneous
 6. Total

2. The Program Coordinator approves as the initiating individual and obtains the approval signatures of the Dean responsible for the program and the college President.

C. Consultant Contract

1. Based on the Approval/Request for Consultative services, the Program Coordinator prepares a Consultant Contract containing the following information: (See Attachment VII.) A Purchase Order Number is not required for payment of consultant contracts. However, approval to pay must be written on the invoice or in memo form before payment can be made.

- a. Name of consultant and purpose of consultative services
- b. Dates of services
- c. Fees documented by executed Approval/Request for Consultative Services

2. The Program Coordinator will obtain the signatures of the consultant and the college President or designee.

3. The Program Coordinator will provide copies of the executed contract as follows:

- a. President
- b. Consultant
- c. Dean responsible for program
- d. Chief Financial Officer
- e. Coordinator

Purchase of Construction and Related Professional Services

Denmark Technical College will adhere to guidelines established by the Office of the State Engineer in conjunction with Procurement Code requirements for construction procurements.

Printing

All printing services must be procured in accordance with the South Carolina Consolidated Procurement Code, the State Procurement Regulations and the South Carolina Government printing Service Manual. Also, procurements that exceed \$10,000 must be advertised in the South Carolina Business Opportunities.

Although the length of time required for the procurement process may vary, sixty (60) days is the average time frame required for procuring printing services (including delivery).

Printing specification sheets must be filled out and typed in detail, along with a purchase requisition. (See Attachment VIII).

Assistance to Minority Businesses

The state encourages the involvement of minority business in the economic mainstream. The college is supportive of this effort, and quarterly progress reports are submitted to the State Board for Technical and Comprehensive Education (Purchasing Department). The statement of policy and regulations may be found in Article 21 of the South Carolina Consolidated Procurement Code.

Items Exempted From Procurement Code

(See Attachment XVI.)

REPAIR AND MAINTENANCE OF EQUIPMENT

Repair to any equipment assigned to a department or individual should be accomplished by submitting a requisition for repair. The Purchasing Department should also be notified by phone.

Equipment Transfer

Equipment transfer forms must be completed before any equipment can be transferred to new location or department for repairs or storage.

Equipment Turn-In

All equipment for turn in must be processed on a turn in document and approved by Department Head and President prior to forwarding to the South Carolina Technical College System Office for final approval for disposition.

Maintenance Contracts

All maintenance contracts for equipment are the exclusive responsibility of the Purchasing Department. These contracts must adhere to S.C. State Procurement Code.

Purchase Order Exemptions

I. Direct Expenditure Voucher (D.E.V.) (Attachment

(1) The D.E.V. (Exhibit) is a finance document whose purpose is to allow the division to encumber funds in those cases where a Purchase Order is not required. The DEV should not be used for repayment of travel advances or purchases of equipment.

(2) The D.E.V. document is valid when typed or computer generated and appropriately signed.

(3) When a D.E.V. is used, it must be approved by all levels of approval before it can be processed by accounts payable.

(4) The D.E.V. does not supersede the Procurement Code and associated regulations in cases where they are more restrictive.

(5) The D.E.V. is used in cases where items are exempted from the requirements of a Purchase Order (see Purchase Order Exemptions). The following is a list of typical, but not comprehensive uses of the D.E.V.:

1. Utility Bills - such as water and sewage, (52130)
2. Subscription to publications, (53010)
3. Travel reimbursements to individuals, except in the case where they received a travel advance.
4. Rental payments for office space, (54130, 54150)
5. Legal services - attorney, court reported, etc., (52210, 52400)
6. Membership dues, (54170)
7. Office Equipment Repairs, (52010, 52300)
8. Temporary Services, (52360) need state contract number on invoice
9. Freight, Express, or Delivery, including G&H Mail Service (52150)
10. Direct Billings for Lodging, (55020, 55120)
11. Instructors, (52070, 52280)
12. Consultants, (52220)
13. Reimbursement to Individuals for supplies purchased (required prior approval)
14. Gasoline Credit Card (24010); Diesel Fuel (24130)
15. Payments to Other State Agencies
16. Airline Tickets
17. Travel advance to individuals

II. Items Exempted from the Requirement of a Purchase Order.

The following items are exempt from the requirement of a Purchase Order:

1. Published books, periodicals and technical pamphlets where pre-printed forms are available.

2. Postage charges
3. Invoices for gas and electricity, water and sewer services provided by public utilities.
4. U.S. Post Office box rentals
5. Oil company credit card purchases for gas, oil, and jet fuel charges
6. Professional dues and registration and membership fees.
7. Attorneys, subject to approval by Attorney General's Office with documentation attached in voucher file.
8. Certified Public Accountants and Public Accountants engaged to perform financial and/or compliance audits subject to approval by the State Auditor's Office in voucher file.
9. Doctors, nurses, hospital and medical clinic services
10. Advertising (Job Posting)
11. Contract Items
12. Vendors that do not accept purchase orders

PROCUREMENT OF VARIOUS SERVICES

Supplies

Many of the expendable supplies that are used on a regular basis by college personnel can be obtained from Central Supply. Supply request forms are available in the Bookstore.

Supplies are charged to departmental budgets monthly. These supplies are not available for student purchase.

Telephone

A telephone request for services is submitted on the requisition form. It must follow the normal approval process. Long distance calls are charged to departmental budgets monthly. The telecommunications department is responsible for completing and issuing a monthly statement to the Business Office and to each department.

Postage

Postage requests are processed on postage forms. They must follow the normal approval process.

Textbooks

Requisition(s) for textbooks are to be submitted six (6) weeks prior to the beginning of the quarter for which the texts are to be used. Instructors should request desk copies on the same requisition(s).

(See Bookstore Policy).

Food Service

Food services are requested by using a requisition form. Food Service requests follow the normal approval process two (2) weeks prior to the day of the event.

Equipment Leases

Lease, lease/purchase, installment purchases, or rental agreements must be justified in writing and require the use of the State of South Carolina Standard Equipment Agreement. Exceptions are made only in the case of rentals where the value of the equipment is \$10,000.00 or less and the rental agreement does not exceed 90 days. Rentals, lease and lease/purchase agreements of \$10,000.01 or more require solicitations from at least three qualified sources. The justification, copies of such solicitations, and the completed agreement forms must be forwarded to the Materials Management Office by the Purchasing Department for review.

Installation purchases must be submitted to the Materials Management Office on a purchase requisition along with a written justification for processing.

Lease and/or Rental of Office Space and Other Real Property

All requests for leases of office space or other real property must be directed to the Office of General services, Real property Management Section for negotiations.

Legal Services

Procurement of such services shall be made in accordance with the Procurement Code. Prior to the award of any state contract for the services of attorneys, approval for such services shall be obtained from the State Attorney General.

Auditing Services

Prior to the award of any state contract for auditing or accounting services, approval for such services shall be obtained from the State Auditor. Procurement of such services shall be made in accordance with the Procurement Code.

VENDOR COMPLAINT PROCEDURES

Complaints About Vendors

Complaints should be sent to the Purchasing Department in writing, and complaints will be full investigated. A phone call to the Vendor made by the Procurement Officer will often clarify the problem. However, if it does not, a state complaint form will be initiated to solve the problem.

Complaints By Vendors

Verbal complaints will be resolved informally. Written complaints will be handled in accordance with the 1976 South Carolina Code of Law, Title II, Chapter 35, Article 17.

This article contains the basis for processing and resolving any and all protest by vendors; contractors. These procedures apply in three areas: (1) Protests of solicitation or award; (2) Department or Suspension; (3) Contract and Breach of Contract controversies.

All protests relating to procurement activities that cannot be resolved by the Procurement Officer will be referred to the Chief Business Officer for further action.

PROCEDURE FOR QUARTERLY REPORTING OF EMERGENCY, SOLE SOURCE, TRADE-IN SALES, AND INFORMATION TECHNOLOGY

Section 11-35-2440 and 11-35-3830 (3) require governmental bodies to submit quarterly a record listing all contracts made under Section 11-35-1560 (Sole Source Procurement), and a listing of all Trade-In Sales (section 11-25-3830). Reports must also be submitted on Information Technology Purchases.

Procedures

Adherence to the following procedures is required when filing quarterly reports to Sole Source, Emergency Procurement, Trade-in Sales and Information Technology:

- A. All quarterly reports must be completed on MMO Forms #100 (sole source), #101 (emergency), #10 (trade-in-sales), and Information Technology forms.
- B. Reports are due in the State Purchasing Supervisor=s Office no later than the 15th day of the month following the end of the quarter. Information Technology reports are also due in the Information Technology Office no later than the 15th day of the month.

The Chief Financial Officer is authorized by the President to sign all State Purchasing Quarterly Reports.

DENMARK TECHNICAL COLLEGE
POST OFFICE BOX 327
DENMARK, SOUTH CAROLINA 29042

[illegible]

REQUESTED BY _____

APPROVED BY _____ Date _____

APPROVED BY _____ Date _____

APPROVED BY _____ Date _____

Date _____

Date of P.O. 1951

State of South Carolina  Purchasing Requisition

Req. No. _____

① Date: _____

Vendor (MMO Use Only)		Code	

Invoice To:		Code	

Ship Or Deliver To:		Code	

Term ☐ Non-T ☐ SPL ☐ Buyer No. _____

Delivery Date 8

F.O.B. Dest. ☐ Other _____

Discount Terms _____

Contract No. _____

Agency Accounting Information:

2

S	R	D

☐ Confirmation Order Dated _____ Pre Pay Freight & Add To Invoice ☐

[illegible]

Phone No. of Requestor

Requested Delivery Date:

Title (11)

Requisitos _____ Fecha _____

Page 12

Authorized _____ Date _____

Title _____

Approved

(Must Be Signed)

Special Delivery Instructions
Installed ☐ 8

The approver certifies that the items indicated hereon are for the exclusive use of the public agency named, that they are exempt from Federal Excise Tax and if the items are used otherwise than stated hereon such facts will be reported by the undersigned to the manufacturer as required by law and that failure to do so will subject the undersigned and all guilty parties to a fine of not more than \$10,000.00 or to imprisonment for not more than five years, or both, together with cost of prosecution.

Memorandum

9

10

Original Purchasing



SOLOMON BLATT BLVD.

DENMARK, SC 29042

ACCOUNTS PAYABLE

SHIP ALL ITEMS F.O.B.

PREPAID DESTINATION

DEPT. INSPECTION REQUIRED

DATE ORDERED	DATE REQUIRED	F.O.B.	SHIPPED VIA	TERMS

V. R. D. N. E.

S
 A
 T
 P
 R
 T
 O
 C
 O
 L
 S

VENDOR USE ONLY:

VENDOR USE ONLY:
PURCHASE ORDER NUMBER MUST APPEAR ON ALL PACKAGES, INVOICES, CORRESPONDENCE, AND SHIPPING NOTICES.
FEDERAL IDENTIFICATION NUMBER MUST APPEAR ON ALL INVOICES AND CORRESPONDENCE. COLLEGE IS NOT RESPONSIBLE FOR UNAUTHORIZED CHARGES WITHOUT PROCUREMENT APPROVAL.

[illegible]

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SIGNATURE

VICE PRESIDENT FOR FISCAL AFFAIRS

JUSTIFICATION FOR
EMERGENCY PROCUREMENT

Based upon the following determination, the proposed procurement action described below is being procured pursuant to the authority of Section 11-35-1570 of the South Carolina Procurement Code and 19-445.2110 of the Rules and Regulations, 1976 South Carolina Code of Laws.

This governmental body proposes to procure _____

(1)

as a emergency procurement from _____

(2)

The basis for this emergency determination and the reason no other vendor is suitable is: _____

(3)

DATE

GOVERNMENTAL BODY

AUTHORIZED SIGNATURE

TITLE

NOTES: (1) Enter description of goods or services to be procured.
(2) Enter name of emergency contractor.
(3) Enter the determination and basis for emergency procurement.

THE DRUG FREE WORK PLACE ACT APPLIES TO ALL EMERGENCY PROCUREMENTS OF \$50,000 OR GREATER.

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JUSTIFICATION FOR
SOLE SOURCE PROCUREMENT

SOLE SOURCE CHECKLIST

- Yes No A) Is the item needed due to compatibility with equipment, accessories, or replacement parts?
Yes No B) Is the item one of a kind or unique and only available from a single source?
Yes No C) Has the market been researched with the results confirming the criteria for a sole source?
Yes No D) Has the market been tested recently on the applicability of a sole source? If so, when? _____

Based upon the following determination, the proposed procurement action described below is being procured pursuant to the authority of Section 11-35-1560 of the South Carolina Procurement Code and 19-445.2105 of the Rules and Regulations, 1976 South Carolina Code of Laws.

This Board proposes to procure _____
(1)

as a sole source procurement from _____
(2)

Explain any answer noted as YES on the checklist and provide additional information, either below or with an attachment, on the proposed sole source procurement.

DATE	GOVERNMENTAL BODY	AUTHORIZED SIGNATURE	TITLE

- NOTES:
- (1) Enter description of goods or services to be procured.
 - (2) Enter name of sole source contractor.
 - (3) Enter the determination and basis for sole source procurement.

The Drug-free Work Place certification must be obtained for sole source procurements greater than \$50,000.

The effective date of the contract/order must be after the effective date of the proposed justification and the justification must be approved by a person with delegated procurement authority.

ADDITIONAL RESOURCES

Materials Management Office-State Procurement Office
Chief Information Office
Office of the State Engineer

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DENMARK
TECHNICAL COLLEGE

APPROVAL/REQUEST FOR CONSULTANT SERVICES

1. Consultant's Name and address _____

2. Purpose of Consultant/Need for Consultation: _____

3. Consultant's Qualifications: _____

4. Estimated Cost for Consultant:

a. Professional Fee	\$ _____
b Travel	\$ _____
c. Per Diem	\$ _____
d. Preparation	\$ _____
e. Miscellaneous	\$ _____
f. Total	\$ _____

5. Requested:

Initiating Individual _____ Date _____

Recommended:

Dean of the Division _____ Date _____

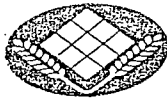
Approved:

Vice President for Fiscal Affairs _____ Date _____

Approved:

President _____ Date _____

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DENMARK
TECHNICAL COLLEGE

CONSULTANT CONTRACT

1. _____ has agreed to serve as
consultant to Denmark Technical College for the purpose(s) outlined below:

2. Services will be administered on the following date(s):

3. A professional fee of \$_____ has been agreed upon and an expense voucher
outlining additional costs will be submitted by the consultant upon completion of
services.

Consultant Signature

Social Security Number

College Agent's Signature

Account Number

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THE SOUTH CAROLINA GOVERNMENT PRINTING SERVICES MANUAL, IS MADE A PART OF THIS
BID/CONTRACT BY REFERENCE.

DESCRIPTION: _____ AGENCY: _____

CONTACT AFTER AWARD: _____ (3) _____ PHONE NUMBER: _____ (4) _____

QUANTITY (per issue): 5 ISSUES PER YEAR 6 SIZE: flat 7 finished

PAGES: 8 ☐ PLUS COVER ☐ SELF COVER ☐ OTHER _____

STOCK: Text: _____ ⑨ Other: _____

INK: Text— ☐ 1 Color _____ ☐ 2 Color _____ ☐ 3 Color _____ ☐ 4 Color Process _____

☐ Screens (No.) ☐ Reverses (No.) ☐ Bleeds (No.) ☐ Other

Covers 1 & 4 ☐ 1 Color _____ ☐ 2 Color 10 ☐ 3 Color _____ ☐ 4 Color Process _____

☐ Screens (No.) ☐ Reverses (No.) ☐ Bleeds (No.) ☐ Other

Covers 2 & 3 ☐ 1 Color _____ ☐ 2 Color _____ ☐ 3 Color _____ ☐ 4 Color Process _____

☐ Screens (No.) ☐ Reverses (No.) ☐ Bleeds (No.) ☐ Other

MECHANICAL: ☐ Composition provided by Printer ☐ Composition Provided by Agency ☐ Negatives Furnished

⑪ ☐ Type Faces _____ / _____ ☐ Other _____

☐ Layout provided by Printer ☐ Camera Ready ☐ Other _____

HALFTONES: ☒ Minimum size (No. _____) ☐ 1/2 page (No. _____) ☐ Full page (No. _____)

DUOTONES: ☒ Minimum size (No. _____) ☐ 1/2 page (No. _____) ☐ Full page (No. _____)

SEPARATIONS: ☐ Provided by Printer. Min. size (No.____) ☐ 1/2 page (No.____) ☐ Full page (No.____)

⑦ ☐ Provided by Agency: Min. size (No.) ☐ 1/2 page (No.) ☐ Full page (No.)

Agency will provide: ☐ Transparency ☐ Print ☐ Art ☐ Other _____

Type of Proof: ☐ Match print ☐ Chromolin ☐ Color keys ☐ Other _____

PROOFS: (15) ☐ Galley (Set) ☐ Page (Sets) ☐ Bluelines (Sets) ☐ Other

SPECIAL APPLICATIONS: ☐ Die Cut ☐ Scoring ☐ Perforations (No.) ☐ Embossing ☐ Foil Stamping

⑬ ☐ Other _____

FOLDING: ☐ Letter ☐ Accordion ☐ Half ☐ Parallel ☐ Gate ☐ 6-page ☐ Right Angle

⑪ ☐ Other _____

BINDING: ☐ Saddle Stitch ☐ Perfect Bind ☐ Side Staple ☐ 3 Hole Drill ☐ Collated

18 ☐ Plastic Bind (Color _____) ☐ Wire Bind ☐ Other _____

PACKAGING: ☐ Boxed _____ per box ☐ Wrapped 19 per pkg. ☐ Shrink Wrap _____ per package

Date copy will be ready for pickup by contractor: _____ (20) _____

Delivery Date Required _____ (21) ☐ Inside Delivery

☐ ALL COPY, PROOFS, ETC. MUST BE PICKED UP AND DELIVERED IN PERSON BY CONTRACTOR REPRESENTATIVE WHO IS KNOWLEDGEABLE AND CAPABLE OF DISCUSSING THE CONTRACT.

OTHER: _____

INSTRUCTIONS FOR PRINTING SPECIFICATION SHEET

Below are descriptions of the various items which must be completed on the Printing Specification Sheet. The numbers on the Specification Sheet correspond with the numbers listed here.

1. DESCRIPTION: Name of type of printing.
2. AGENCY: Name and city.
3. CONTACT AFTER AWARD: Name of person the contractor is to contact after notification of award.
4. PHONE NUMBER: Phone number of the contact person listed in number 3.
5. QUANTITY (per issue): If more than one issue, enter only total amount of one issue to be printed during contract period. If only one issue, enter total amount to be printed.
6. ISSUES PER YEAR: Refers to more than one printing. Enter number of issues during the contract period.
7. SIZE: Flat sheet or finished size.

Flat: Trimmed/finished size of sheet before folding. Used only when folding required to complete printed product.

Finished: Trimmed/finished page size after folding and/or binding.

8. PAGES: One side of a sheet of paper.

Plus Cover: Refers to cover of different stock than that of the inside text pages.

Self Cover: Refers to cover of the same paper as inside text pages.

9. STOCK: Name, weight, and color of paper or other materials to be printed.

Cover: Outside surface of a case-bound or soft-cover book.

Text: Body matter of a page or book.

10. INK: Colored liquid material for printing.

Text: Body matter of a page or book.

Cover: Outside surface of a case-bound or soft-cover book. The outside front is cover 1; inside front is cover 2; inside back is cover 3; outside back is cover 4.

13. DUOTONES: A two-color halftone reproduction from a one-color photograph.

No.: Indicate number of duotones by anticipated size.

Minimum Size: Size of duotone to be printed up to 4" x 5".

14. SEPARATIONS: Process of separating full color originals into a set of negatives using the four primary printing colors.

Provided by Agency: Agency to provide separation.

Provided by Printer: Printer to provide separation.

No.: Number of separations.

Minimum Size: Size of separations to be printed up to 4" x 5".

Agency Will Provide: Kind of photograph to be furnished to printer by agency.

Type of Proof: Kind of proof required for checking color separations.

15. PROOFS: Impression of the type image for approval prior to printing.

Galley Proof: Proof taken of type before being made up into pages.

Page Proof: Proof of each page after galley corrections have been made and illustrations, photos and footnotes have been arranged in their proper places.

Blueline: Photoprint made from stripped-up negatives of positives, used as a proof to check position of image elements. Produced with either blue, brown or grey images.

16. SPECIAL APPLICATIONS: Other than normal treatment of various elements of finished printed piece.

Die Cut: Use of sharp steel cutting rules to open an area to the required image or shape.

Scoring: Required on heavier cover weight stocks to produce a clean, accurate fold.

Perforations: Holes cut in stock for the purpose of facilitating separation of individual units. Indicate location of perforation.

No.: Number of perforations, either vertical or horizontal. Indicate if right angle perforation as in a Business Reply Card.

Embossing: A raised surface achieved by pressing the material to be embossed between male/female dies. Embossing may be done as blind embossing on blank

stock or in a plain area, in register with printing or with a foil application. Specify if other than blind embossing.

Foil Stamping: Using a metal die with foils such as gold or silver to impress an image on a surface.

17. **FOLDING**: There are two kinds of folds - parallel and right angle. Using these two types of folds, specialty folds can be created. In designing printing, the different types of folds and the limitations of mechanical folding should be considered at the planning level. Otherwise, one or more folds might end up being a costly hand-folding operation.

¹Parallel Fold: One in which each fold is parallel to the other.

²Right Angle Fold: Two or more folds, with each fold at right angles to the preceding one.

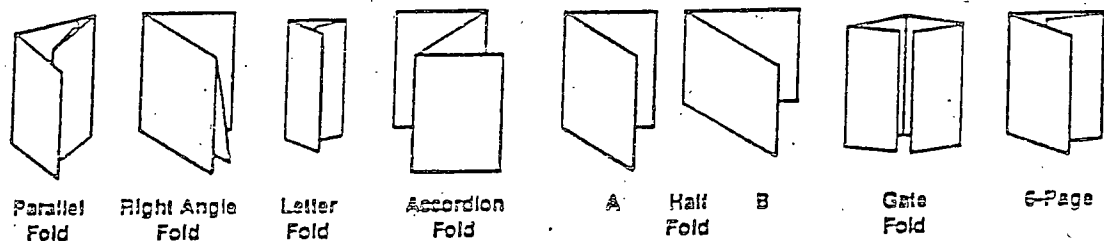
³Letter Fold: Used for letter size printing requiring two parallel folds for mailing.

⁴Accordion Fold: Two or more parallel folds which open like an accordion.

⁵Half Fold: Simplest type of fold, with only one fold, folding either on the (A) long or (B) short dimension.

⁶Gate Fold: Three parallel folds in which two outer folds hinge as in a gate opening.

⁷6-Page: Made with two parallel folds, either (A) regular or (B) accordion.



18. **BINDING**: Method in which printed sheets are to be bound together.

Saddle Stitch: Fastening of a booklet by wiring it through the middle fold of the sheets, usually in two positions.

Perfect Bind: Binding process using flexible adhesive. Should be considered when book goes beyond 100 pages.

Side Stapled: Wiring of the sheets or signature of a magazine or booklet on the side near the backbone, usually in two positions.

3-Hole Drill: Drilling for standard 3-hole binders.

Collated: Assembled in page sequence.

Plastic Bind: Books bound with plastic elements in spiral form, inserted through holes punched along the binding side. Comes in selected colors.

Wire Bind: Books bound with wire elements in spiral form, inserted through holes punched along the binding side.

19. **PACKAGING**: Manner in which completed job must be packaged.

Boxed: Amount per box.

Wrapped: Amount per package, if individual packaging is required. Standard packaging material accepted.

Shrink Wrap: Amount per package if individual clear cellophane is required in packaging.

20. **DATE COPY WILL BE READY FOR PICK UP BY CONTRACTOR**; Exact date that complete copy will be ready for pickup. Complete copy means all furnished material (typewritten manuscript, pictures, artwork, etc.) to be used in the production of the printing.

21. **DELIVERY DATE REQUIRED**: Date completed job must be delivered to agency.

Inside Delivery: Delivery to be made inside of a building to a specified location.

EXEMPTIONS FOR THE SOUTH CAROLINA ACT NUMBER 654

Consolidated Procurement Code

Universal Exemptions Granted That Affect Most State Agencies

07/30/81	1.	The construction, maintenance and repair of bridges, highways and roads; vehicle and road equipment maintenance and repair; and any other emergency type parts or equipment utilized by the Department of Highways and Public Transportation.
07/30/81	2.	The purchase of raw materials by the South Carolina Department of Corrections, Division of Prison Industries.
07/30/81	3.	South Carolina State Ports Authority.
07/30/81	4.	South Carolina Public Railways Commission.
07/30/81	5.	South Carolina Public Service Authority.
07/30/81	6.	Expenditure of funds at State institutions of higher learning derived wholly from athletic or other student contests, from the activities of student organizations and from the operation of canteens and bookstores, except as such funds are used for the procurement of construction, architect-engineer, construction-management and land surveying services.
07/30/81	7.	Livestock, feed and veterinary supplies.
07/30/81	8.	Articles for commercial sale by all governmental bodies.
07/30/81	9.	Fresh fruits, vegetables, meats, fish, milk and eggs.
07/30/81	10.	South Carolina Arts Commission and South Carolina Museum Commission for the purchase of one-of-a-kind items such as paintings, antiques, sculptures and similar objects. Before any governmental body procures any such objects, the head of the purchasing agency shall prepare a written determination specifying the need for such objects and the benefits to the State. South Carolina Arts Commission shall review such determination and forward a recommendation to the Board for approval.

NOTE: Regulation 19-445.2010(B) further clarified this exemption in the following respect:

Before any governmental body procures any art objects such as paintings, antiques, sculptures or similar objects above \$500.00, the head of the governmental body shall prepare a written determination specifying the need for such objects and benefits to the State. The South Carolina Arts Commission acting on behalf of the Board shall have the responsibility to review such determination for approval prior to any acquisition.

07/30/81	11.	Published books, periodicals and technical pamphlets.
02/25/82	12.	Postage.
04/27/82	13.	Invoices for gas and electricity, water and sewer services provided by public utilities subject to rate regulation by the Public Service Commission.
04/27/82	14.	U.S. Post Office box rentals.

04/27/82	15.	Copyrighted educational films, filmstrips, slides and transparencies.
04/27/82	16.	Oil company credit card purchases for gas, oil, and jet fuel charges only.
		04/27/82 04/26/83 04/27/82
	17.	Professional dues and registration and membership fees.
07/13/82	18.	Attorneys, subject to approval by the Attorney General's Office.
07/13/82	19.	Certified public accountants and public accountants engaged to perform financial and/or compliance audits, subject to approval by the State Auditor's Office, with actuarial audits and other accounting services to be procured under the terms of the Consolidated Procurement Code.
07/13/82	20.	Hospital and medical clinic services.
07/13/82	21.	Medical doctors and Psychiatrists.
07/13/82	22.	Optometrists.
07/13/82	23.	Dentists.
07/13/82	24.	Registered nurses.
07/13/82	25.	Licensed practical nurses.
07/13/82	26.	Investment counselors.
07/13/82	27.	Clergy.
07/13/82	28.	Court reporters.
07/13/82	29.	Expert witness services.
08/04/82	30.	Furniture refurbishing services of the Department of Corrections.
08/24/81	31.	Services and/or supplies provided by the Division of General Services to public procurement units.
08/24/82	32.	Printed examination forms used in the administration of state licensing examinations.
08/24/82	33.	Fuel oil and diesel oil (the \$2,500 limit is waived; however, competition should be obtained whenever possible.)
09/14/82	34.	Actuaries.
12/17/82	35.	Professional artists utilized by the South Carolina Arts Commission.
01/11/83	36.	Doctors osteopathy.
03/08/83	37.	Instructional training seminars offered by governmental bodies to state employees on a registration fee basis and those contractual consultant services necessary to provide the professional instruction for the seminars.

- 03/22/83 38. Physical therapist and physical therapy assistants.
- 03/22/83 39. Speech pathologists.
- 09/13/83 40. Occupational therapists.
- 09/13/83 41. Veterinary services customarily obtained on a fee basis rather than by competitive solicitation.
- 09/13/83 42. Health and Human Services Commission when placing funds with recipients as defined in Section 11-35-310(13) of the Code, in administering Title XIX of the Social Security Act (Medicaid), including early periodic screening, diagnostic and treatment program, community long-term care system, and social services block grant program, provided that recipients receiving such funds shall follow the requirements of the Code in the expenditure of such funds.
- 08/14/84 43. The Board authorized an exception to the Procurement Code process under which the division of Information Resource Management is to determine the most advantageous service provider of long distance telecommunications service with the approved filings of the Public Service Commission and the FCC to represent the established lowest responding rates available to the State.
- 11/05/84 44. The Board delegated to the Division of General Services the authority to exempt contracts between State government agencies and for supplies and services provided a cost justifications is submitted to the Division in advance.
- 02/28/85 45. The purchase or continued lease of embedded telephone systems when approved by Information Resource Management as being advantageous to the State.
- 03/12/85 46. Appraisers.
- 06/25/85 47. Health Maintenance organizations (HMOs).
- 08/27/85 48. Historical artifacts, weapons, flags, firearms, etc., which are rare and reasonably priced in the judgement of the Confederate Relic room and Museum staff.
- 10/22/85 49. All governmental bodies from the real property leasing procedure requirements of Part II, Section 5 of the 1985-86 Appropriations Act in the Leasing of the following types of real property:
- State-owned student housing/dorm space;
 - Parking spaces in State-owned garages or lots;
 - State-owned lecture halls, theatres, coliseums, athletic areas, recreation areas and other areas for periods of less than seven days.
 - Non-State-owned real property
 - a. for less than 3 months in a single fiscal year; or
 - b. for a total cost of less than \$5,000 in a single fiscal year;
 - State-owned box or other seats.
- 10/22/85 50. The following governmental bodies from the real property leasing procedure requirements of Part II, Section 5 of the 1985-86 Appropriations Act in the leasing of the following types of real property:
- Department of Agriculture: State-owned farmer's market.
 - Highways & Public Transportation: lands for maintenance and construction purposes.
 - Community Mental Health Centers

Department of Corrections: farm lands
Forestry Commission: forest lands
PRT: State parks and recreation lands
Wildlife Department: game management

- 04/22/86 51. Animals acquired for specific or general research, testing or experimentations.
- 04/22/86 52. Advertisements in professional journals or publications.
- 04/22/86 53. Advertising time or space in newspapers, radio or television. (Note: Consultants obtained to handle advertising campaigns for agencies such as PRT and State Development Board are not exempted.)
- 04/22/86 54. Expenses of evaluation committees required for institutions of higher learning in order to maintain accreditation (i.e., Southern Association of Colleges and Schools).
- 04/22/86 55. License agreements for computer software after such software has been competitively bid as required by the Procurement Code.
- 05/13/86 56. The acquisition of all local and long-distance telecommunications service for or on behalf of the State of South Carolina from the requirement that they be purchased through the respective chief procurement officer's area of responsibility, and authorized the Division of Information Resource Management to secure such telecommunication services upon such term and conditions as are regarded by it to be appropriate.
- 07/14/87 57. Tuition paid to all institutions of higher learning from certain requirements of the procurement code.
- 01/12/88 58. In accord with Code Section 11-35-710, exempted procurements of US Department of Education certified National Diffusion Network programs and related costs to include materials and those contractual consultant services necessary to provide the professional instruction.
- 12/13/88 59. In accord with Code Section 11-35-710, approved an exemption from procurement procedures for the acquisition process for conference facilities, on the condition that staff implements guidelines for the process designed to result in a greater geographic spread of conference sites in-State.
- 12/20/89 60. The following medical items invasive to the human body which would be selected by a patient and doctor: implants, grafts, pacemakers, heart valves, joint replacements, organs, tissue, blood and blood components.
- 06/28/90 61. Approved an increase in the exemption level for commercial leases. Effective immediately, commercial leases, that is, leases of non-state owned property, which commit less than \$10,000 in a single fiscal year are not subject to the lease procurement process. However, agencies must report these exempt leases to the Division of General Services Property Management by copy of the executed lease document. This exemption level was \$5,000. This grants to agencies more responsibility for the negotiations of lower cost leases and, hopefully, makes the process more expeditious.

Notes

1. For the exemption to apply to these categories, the individual or firm involved must be licensed to perform the specific professional service to the requesting governmental body, and the contractual relationship created by the individual or firm and the governmental body cannot be

an employer / employee relationship which would be governed by State Personnel Rules and Regulations; and categories 28 and 29 must be considered independent contractors.

2. The Arts Commission maintains lists of approved artists including painters, sculptors, poets, playwrights, theater groups, craftsmen, etc. which are available to governmental bodies. This exemption includes procurements of these services by all governmental bodies if approved by the Arts Commission.
3. 04/26/83 - The Board clarified that exemptions granted to date are exemptions from the competitive bid procedure only and that all other aspects of the code, specifically the disposition of property procedure and the reporting procedures, must be complied with.
4. 05/27/86 - Clarified the exemption for invoices for gas and electricity, water and sewer services provided by public utilities subject to rate regulation by the Public Service Commission to exclude late payment charges under Section 11-35-45 effective July 1, 1986 thereby allowing public utilities to assess late payment charges under their respective tariffs as approved by the South Carolina Public Service Commission.

DIRECT EXPENDITURE VOUCHER (D.E.V.)

DENMARK TECHNICAL COLLEGE
SOLOMON BLATT BLVD./ POST OFFICE BOX 327
DENMARK, SC 29042

To: _____
From: _____
Subject: _____
Date: _____

Vendor Name: _____
Vendor Address: _____

Invoice Numbers:

Vendor/SS# _____
Minority Business _____
Partial Payment _____
Total Amt. Invoice(s) \$ _____

ACCOUNT

DESCRIPTION

AMOUNT

DIRECT EXPENDITURE INSTRUCTIONS:
A DIRECT EXPENDITURE VOUCHER MUST BE USED IN
ALL CASES WHEN A P.O. IS NOT APPLICABLE.
EVERY DIRECT EXPENDITURE TRANSACTION MUST BE
APPROVED BEFORE SUBMISSION TO ACCOUNTS PAYABLE.
THE ORIGINAL (WHITE) DIRECT EXPENDITURE VOUCHER
WILL BE ATTACHED TO EXPENDITURE DOCUMENTATION
AND FORWARDED TO ACCOUNTS PAYABLE.
YOU MUST MARK "X" IF PARTIAL PAYMENT.

REQUESTED BY/DATE _____

APPROVED BY/DATE _____

APPROVED BY/DATE _____

APPROVED BY/DATE _____

APPROVED BY/DATE _____

0 368

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM BAMBERG COUNTY
In The Court of Common Pleas

Doyet A. Early, III, Circuit Court Judge

Case No. 2011-CP-05-00160

Dr. Robert W. Denton and Dr. John P. May,
d/b/a Edusystems, a general partnership,

Appellants,

v.

Denmark Technical College and
South Carolina State Board for Technical
and Comprehensive Education,

Respondents,

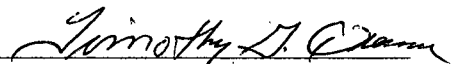
v.

Dr. John K. Waddell,

Third Party Defendant.

CERTIFICATE OF COUNSEL

I undersigned hereby certifies that the Record On Appeal contains all material proposed
to be included by any of the parties and not any other material.


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October 9, 2012

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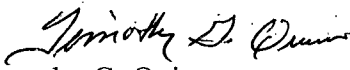
v.

Dr. John K. Waddell,

Third Party Defendant.

CERTIFICATE OF COMPLIANCE

The undersigned hereby certifies that the Record on Appeal is in compliance with
the August 13, 2007 Order of the South Carolina Supreme Court.


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PROOF OF SERVICE

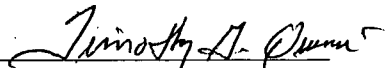
I certify that I have served the Record on Appeal, Certificate of Counsel, and Certificate of Compliance by depositing a copy of it in the United States Mail, postage prepaid, on October 10, 2012, addressed to their attorney of record as follows:

David Duff
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October 10, 2012


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