

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL BRIEF FROM Craig Molloy and Island Group, Inc.

d/b/a Carolina Cleaning

Beaufort County Court of Common Pleas

Honorable Marvin H. Dukes III, Master in Equity

Appellate Case No. 2018-002170

Lower Court Case No. 2016-CP-07-01825

Record on Appeal

BRIEF OF APPELLANT

THE STATE OF SOUTH CAROLINA

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Lower Court Case No. 2016-CP-07-01825

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SC Court of Appeals

Steven Craig Molloy and Island Group, Inc.
d/b/a Carolina Cleaning

Plaintiff

Of which Steven Craig Molloy is the

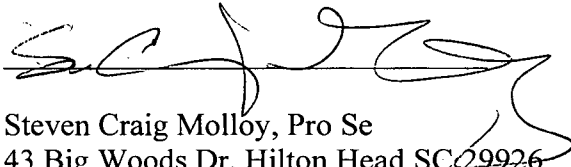
Appellant

v.

Beaufort County Government,
Gary Kubic, Individually, and Beaufort County Administrator;
Josh Gruber, Individually and Former Beaufort County In-House Attorney;
Bryan Hill, Individually and Former Beaufort County Deputy Administrator;
Shannon Loper, Individually and Employee of Beaufort County Parks and Leisure;
Stu Rodman, Finance Chair of Beaufort County Council;
Dave Thomas, Procurement Director, Beaufort County, South Carolina
Beaufort County Disabilities and Special Needs;
Beaufort County DSN Board

Respondents,

January 14, 2020



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Appellant

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Brief of Appellant Record on Appeal

Appellant proposes the following information and all attachments, exhibits and related documents in the Record on Appeal. Pursuant to rule 209 and 212 SCACR Appellant reserves the right to seek supplement to the Record on Appeal.

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STATE OF SOUTH CAROLINA)

COUNTY OF BEAUFORT)

STEPHEN CRAIG MOLLOY and ISLAND)
GROUP INC., d/b/a CAROLINA)
CLEANING;)

Plaintiffs,)

vs.)

BEAUFORT COUNTY; GARY KUBIC,)
Individually and as Beaufort County)
Administrator; JOSH GRUBER, Individually)
and as former Beaufort County In-House)
Attorney; BRYAN HILL, Individually and)
as former Beaufort County Deputy)
Administrator; SHANNON LOPER,)
Individually and as Employee of the)
Beaufort County Parks and Leisure; STU)
RODMAN, as Finance Chair of the Beaufort)
County Council; and DAVE THOMAS,)
Procurement Director for Beaufort County,)
South Carolina; DISABILITIES AND)
SPECIAL NEEDS (NON-PROFIT); and)
BEAUFORT COUNTY DSN BOARD)

Defendants.)

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT
CASE NO.: 2016-CP-07-01825**ORDER GRANTING DEFENDANTS'
MOTION FOR SUMMARY JUDGMENT**

This matter came before the Court upon Defendants' Motion for Summary Judgment ("Motion for Summary Judgment"), which was originally filed on or about July 21, 2017. Defendants supported their Motion for Summary Judgment with the pleadings, as well as affidavits that they had previously filed with the Court in opposition to Plaintiffs' Motion for Temporary Injunction and Temporary Restraining Order. On February 7, 2018, Defendants filed their Supplemental Memorandum in Support of Motion for Summary Judgment and in Opposition to Plaintiffs' Motion for Summary Judgment. On June 25, 2018, Defendants filed their Second Supplemental Memorandum in Support of Motion for Summary Judgment, with supporting documentation and evidence.

Plaintiffs have filed numerous factual and legal responses to Defendants' Motion for Summary Judgment, including:

- August 2, 2017: Plaintiffs filed their Return in Opposition to Motion for Summary Judgment and as many as 37 exhibits in support of their arguments;
- December 4, 2017: Plaintiffs filed their own Motion for Summary Judgment, along with an 8-page Affidavit of Craig Molloy¹;
- March 21, 2018: Plaintiffs filed a 7-page Supplemental Affidavit of Craig Molloy, with 17-pages of exhibits thereto;
- April 30, 2018: Plaintiffs filed numerous exhibits and an Affidavit of Cynthia Bensch;
- May 2, 2018: Plaintiffs filed their Post-Hearing Memorandum on summary judgment;
- May 8, 2018: Plaintiffs filed another 9-page Affidavit of Craig Molloy;
- May 17, 2018: Plaintiffs filed another 9-page Affidavit of Craig Molloy;
- May 25, 2018: Plaintiffs filed numerous exhibits and timelines in opposition to Defendants' Motion for Summary Judgment, as well as another 6-page Affidavit of Craig Molloy.

Plaintiffs have also filed motions (with supporting affidavits and evidence) seeking leave to amend their Complaint (to which Defendants consented) and to disqualify the undersigned (which I have denied). While Plaintiffs oppose summary judgment, among other reasons, because they want to conduct discovery, they have not submitted an affidavit pursuant to South Carolina Rule of Civil Procedure 56(f). ("Should it appear from the affidavits of a party opposing the motion that he cannot for reasons stated present by affidavit facts essential to justify his opposition, the court may refuse the application for judgment or may order a continuance to permit affidavits to be obtained or depositions to be taken or discovery to be had or may make such order as is just."). Plaintiffs have not set forth what relevant evidence they anticipate discovery would reveal. The Court has extended the deadlines for Plaintiffs to submit

¹ Plaintiffs ultimately withdrew their Motion for Summary Judgment.

evidence or argument opposing Defendants' motion. I find that Plaintiffs have had a complete opportunity to research and brief the issues raised in Defendants' Motion for Summary Judgment.

In addition to the parties' comprehensive written submissions, the parties have had the opportunity to fully orally advocate their positions to the Court. On March 23, 2018, the Court held a nearly 3½ hour argument on Defendants' Motion for Summary Judgment, at which the parties had a full and fair opportunity to set forth their positions. The Court conducted telephone status conferences on Defendants' Motion for Summary Judgment on May 11, 2018 and June 27, 2018, to ensure that the record was completed to the satisfaction of the parties.

I have read all of the parties' submissions and have carefully considered the parties' respective arguments. For the reasons that follow, the Court must conclude that Plaintiffs cannot proffer a scintilla of evidence to support their claims and that Defendants are entitled to judgment as a matter of law. Therefore, it is hereby ORDERED, ADJUDGED and DECREED that Defendants' Motion for Summary Judgment be, and hereby is, GRANTED.

INTRODUCTION

A. Factual Background

On October 25, 2010, Beaufort County entered a Contract for Janitorial Services ("2010 Contract") with Plaintiff Island Group Inc., d/b/a Carolina Cleaning ("Carolina Cleaning"), which referenced Request for Proposal ("RFP") # 3910/100566. Carolina Cleaning is owned and operated by Plaintiff Stephen Craig Molloy ("Mr. Molloy"). The term of the 2010 Contract was "for a period of one (1) year . . . ending on October 31, 2011," with four possible one-year year renewals — such that the 2010 Contract would "not exceed five (5) years." The County extended the 2010 Contract through October 31, 2012 and again through November 1, 2013. The County then extended the 2010 Contract on a month-to-month basis.

Over time, the County partially terminated Carolina Cleaning's 2010 Contract as to certain locations and opened those locations for proposals. The County ultimately elected to have certain of its buildings cleaned by Consumers of the Beaufort County Department of

Disabilities and Special Needs ("DSN") — through an internal contract between the County and its DSN department.² The DSN is a department of Defendant Beaufort County whose mission is "[t]o provide quality services and support to our consumers and to facilitate opportunities for them to live productively and inclusively in the community." Among the services DSN provides to individuals with disabilities or special needs (consumers) are residential services, day program services, waiver services, respite services, job coach services, early intervention services, family support services, Camp Treasure Chest and after school programs. DSN also provides people with disabilities assistance with obtaining and maintaining employment through various approaches.

When the remainder of the 2010 Agreement was set to end for non-renewal, the County sought proposals for the cleaning services for all buildings that Carolina Cleaning was still servicing. In this regard, the County issued RFP # 14305, "Request for Proposals to Provide Janitorial Services for Beaufort County, South Carolina," with a closing date of March 5, 2014. RFP # 14305 encompassed Beaufort County facilities located both North and South of the Broad River. Carolina Cleaning submitted a proposal for RFP # 140305. The County awarded the contract for RFP # 140305 to A&B Cleaning Service Inc. of Greenville, North Carolina. On the final scoresheet, A&B had the highest score with 503 points and a cost of \$585,828. Carolina Cleaning, the incumbent on the contract, had a score of 333 points and a cost of \$833,628, finishing in 10th place out of 16 potential vendors. Plaintiff does not dispute Carolina Cleaning's score or that it was not the top proposal for this work. Carolina Cleaning has done no work for Beaufort County since the 2010 Contract expired on June 30, 2014.

² Plaintiffs allege that Defendants have abused DSN Consumers by having them perform janitorial work. Plaintiffs have submitted no evidence to support this claim, and it is not relevant to the issues raised in Defendants' Motion for Summary Judgment.

B. Procedural History

On August 22, 2016, Plaintiffs Carolina Cleaning, Molloy and Jack Wayne Molloy filed their original Verified Complaint, asserting claims against Beaufort County and the following current and former employees or agents:

- Gary Kubic, Individually, and as Beaufort County Administrator;
- Josh Gruber, Individually and as former Beaufort County In-House Attorney;
- Bryan Hill, Individually and as former Beaufort County Deputy Administrator;
- Shannon Loper, Individually, and as employee of the Beaufort County Parks and Leisure; and
- Stu Rodman, Finance Chair of Beaufort County Council.

On February 15, 2017, Plaintiffs (dropping Jack Wayne Molloy) filed their first Amended Verified Complaint, adding Defendant Dave Thomas, Procurement Director of Beaufort County.

On June 5, 2018, with the consent of Defendants, Plaintiff filed their second Amended Verified Complaint, which added Defendants “Disabilities and Special Need (Non-Profit)” and “Beaufort County DSN Board”. This is the controlling and most recent complaint in this matter. Plaintiffs' second Amended Verified Complaint was filed on behalf of Steven Craig Molloy, individually and on behalf of the Beaufort County Taxpayers and Island Group, Inc., d/b/a Carolina Cleaning.³ Defendants' agreement to permit Plaintiffs to amend their Complaint was conditioned upon the Motion for Summary Judgment. remaining pending and applicable to all claims by all Plaintiffs against all Defendants.

In their second Amended Verified Complaint, Plaintiffs allege the following causes of action: (1) breach of contract with fraudulent act/ bid-rigging and non-complaint (sic) BC ordinance/BCDSN Board; (2) intentional interference with prospective contractual relations; (3) coercion; (4) violation of procurement, Article 4 of Consolidated Procurement Code; (5) statute of limitations threshold; (6) bid-rigging/collusion/interference; (7) unjust enrichment and

³ Plaintiffs' claims asserted under taxpayer standing involve the same alleged conduct of the Defendants as his direct claims and those of his company.

violation of S.C. Code § 2-532 (sic); (8) violation of the South Carolina Unfair Trade Practices Act (as to individual defendants); and (9) taxpayer standing to sue.

As set forth above, Defendants' moved for summary judgment more than a year ago. In the interim, the parties have set forth their positions orally and in writing, in full and complete detail. For the reasons that follow, the Court hereby GRANTS Defendants' Motion for Summary Judgment against Plaintiffs as to all claims asserted in this lawsuit.

ANALYSIS

A. Plaintiffs' Claims Fail Because They Cannot Support Any Claim Regarding Carolina Cleaning's Contract or the Procurement Process

Plaintiffs' claims, under whatever legal theory asserted,⁴ boil down to the following two primary contentions: (a) Beaufort County wrongfully terminated (or failed to renew) Carolina Cleaning's 2010 Contract; and (b) Beaufort County engaged in improper conduct with regard to its analysis of the proposal with regard to the 2012 RFP # 3910/120221 or with regard to the selection of DSN Consumers to clean certain buildings. In fact, these two contentions are fundamental elements of all of Plaintiffs' claims. As discussed below, both of these contentions are without factual or legal basis. Therefore, Plaintiffs' claims must fail in their entirety.

1. The Express Language of Carolina Cleaning's 2010 Agreement Precludes Any Claims Regarding Termination or Non-Renewal

Plaintiffs have argued, to a great extent, their claims are proper because they have alleged that the County wrongfully (and "randomly") terminated Carolina Cleaning's 2010 Agreement. However, the plain language of the governing 2010 Contract documents makes clear that the County acted entirely within its contractual rights. As a result, Plaintiffs' claims must fail. Therefore, this Court must grant the County's Motion for Summary Judgment to the extent Plaintiff's claims center around the termination of Carolina Cleaning's contract. It is beyond

⁴ In their Complaints, Plaintiffs have referenced and made allegations concerning an incident in which one of the individual Defendants allegedly assaulted Plaintiff Mr. Molloy's minor son. At oral argument, Plaintiffs' counsel conceded that Plaintiffs are not pursuing such a claim in this lawsuit.

dispute that the 2010 Agreement permitted the County to terminate (or not renew) for any reason. Paragraph 5 of the 2010 Agreement provides:

The term of this Agreement shall be for a period of one (1) year starting on November 1, 2010 and ending on October 31, 2011. There are four (4) one (1) year renewals available on this Contract all at the approval of Beaufort County. The Contract shall not exceed five (5) years.

The 2010 Agreement also states that "Either party may terminate this Agreement upon sixty (60) days' written notice to the other party." The RFP for the 2010 Agreement (which is part of that agreement) also states that "The *County may without cause* terminate this contract *in whole or in part* at any time for its convenience." Carolina Cleaning further "expressly waive[d] any claims for lost profits or consequential damages, delay damages, or indirect costs which may arise from the County's election to terminate this contract in whole or in part for its convenience." Under these provisions, the County was free to terminate (or not renew) all, or part, of the 2010 Contract for any reason at any time. The County exercised this contractual right to terminate Carolina Cleaning's 2010 Contract as to certain locations. As to the remaining locations under the 2010 Contract, the County also properly exercised its right to terminate or not renew. Plaintiff cites nothing in the 2010 Contract that prohibited the County from terminating Carolina Cleaning's agreement at will.

For these reasons, this Court grants Defendants' Motion for Summary Judgment as to all claims based on the County's termination or nonrenewal of the 2010 Contract.

2. Plaintiffs' Claims Regarding the Procurement Process Are Without Merit

Plaintiffs' second Amended Verified Complaint also alleges that Defendants acted improperly in the procurement process for RFP's *other than* the 2010 Contract. Plaintiffs claim that Defendants somehow misused Carolina Cleaning's proposal information or otherwise tipped the scales in favor of DSN or other bidders. These claims fail because, with regard to each relevant RFP, Carolina Cleaning was actually beaten by another bidder *other than* DSN. As a result, irrespective of any perceived unfairness in favor of DSN, Plaintiffs did not sustain any injury that could support their claims. For example, in 2012, the County issued RFP #

3910/120221, entitled "Request for Proposals to Provide Janitorial Services, North of the Broad River, Eight Locations for Beaufort County South Carolina," with a closing date of March 22, 2012. Beaufort County awarded a contract to DSN from responses to RFP # 3910/120221 for all of the locations in that RFP except for the DNA lab. Carolina Cleaning's proposal for the same work was \$88,680, making it the third-place finisher for those nine buildings, behind both DSN and Heavy D's of Beaufort. With respect to RFP # 3910/120221, Plaintiffs present no evidence that they were harmed by any alleged unfair advantage. Carolina Cleaning obtained the contract for the sheriff's DNA laboratory. As to the other locations, Carolina Cleaning was not even the lowest non-DSN bidder.

Additionally, with regard to the proposal process for all of the remaining buildings on Carolina Cleaning's contract, RFP # 14305 ("Request for Proposals to Provide Janitorial Services for Beaufort County, South Carolina," closing date of March 5, 2014), the County awarded that contract to A&B Cleaning Service Inc. of Greenville, North Carolina, *not* DSN. A&B obtained the highest score with 503 points and a cost of \$585,828. Conversely, Carolina Cleaning, the incumbent on the contract, had a score of only 333 points and a cost of \$833,628, finishing in *10th place* out of 16 vendors. Plaintiffs cannot possibly show any harm to them from Defendants' alleged misconduct in the procurement process.

For the foregoing reasons, even assuming that all of Plaintiffs' meritless accusations are true, they cannot conceivably succeed on their claims to the extent they are premised upon allegations of misconduct in the procurement process.

B. Plaintiffs Failed to Pursue Their Remedies Under the Beaufort County Procurement Code and the RFP/Contract Documents

In addition to the foregoing, Plaintiffs' claims fail under any legal theory because they failed to exhaust administrative remedies. The Beaufort County Procurement Code was adopted pursuant to the South Carolina Consolidated Procurement Code, which provides: "All political subdivisions of the State shall adopt ordinances or procedures embodying sound principles of appropriately competitive procurement." *See* S.C. Code § 11-35-50. Beaufort County's

Procurement Code and the relevant contracts/RFPs make clear that Plaintiffs' remedy, if any, must be asserted by a protest filed with the County's Purchasing Director. The Beaufort County Procurement Code requires that pre-litigation steps be taken with regard to any claims by proposers or contractors:

(a) Right to protest. Any actual or prospective bidder, offeror or contractor who is aggrieved in connection with the solicitation or award of a contract under this division may protest to the purchasing director. *The protest shall be submitted in writing 14 days after such aggrieved person knows or should have known of the facts giving rise thereto.*

(b) Authority to resolve protest. The purchasing director shall have authority, *prior to the commencement of an action in court* concerning the controversy, to settle and resolve a protest of an aggrieved bidder, offeror or contractor, actual or prospective, concerning the solicitation or award of a contract.

(c) Decision. If the protest is not resolved by mutual agreement, the purchasing director shall issue a decision in writing within ten days. The decision shall:

- (1) State the reasons for the action taken; and
- (2) Inform the protestant of its right to administrative review as provided in this section.

See Beaufort County Code § 2-551(a)-(c) (emphasis added).

The 2010 Contract incorporates detailed requirements regarding the administrative remedy of a protest as a precedent to a lawsuit filed in court (emphasis added):

14.1 Right to Protest: Any actual or prospective proposer, offeror, or contractor who is aggrieved, in connection with the solicitation or award of a contract, may protest to the Purchasing Director. The protest *shall be submitted in writing fourteen (14) days* after such aggrieved person knows or should have known of the facts giving rise thereto. The protest must be accompanied by a detailed statement, indicating the reasons for such protest.

14.2 Authority to Resolve Protest: The Purchasing Director shall have authority, *prior to the commencement of an action in court concerning the controversy*, to settle and resolve a protest of an aggrieved proposer, offeror, or contractor; actual or prospective, concerning the solicitation or award of a contract.

14.2 Decision: If the protest is not resolved by mutual agreement, the Purchasing Director shall issue a decision, in writing within ten (10) days. The decision shall,

14.2.1 State the reasons for the action taken; and

14.2.2 Inform the protestant of its right to administrative review as provided in this Section.

14.4 Notice of Decision: A decision under Subsection (3) of this Section shall be mailed or otherwise furnished immediately to the protestant and any other party intervening.

14.5 Finality of Decision: A decision under Subsection (3) of this Section shall be final and conclusive, unless fraudulent, or

14.5.1 Any person adversely affected by the decision appeals administratively, within ten (10) days after receipt of decision under Subsection (3) to the County Council in accordance with this Section.

The 2010 Contract documents also provides that "All contract disputes will be referred to Beaufort County Purchasing Director for resolution." RFP # 3910/120221 contains nearly identical provisions.

If Plaintiffs believe that the County (or any Defendant) wronged them with regard to the 2010 Contract or the procurement process relating to any other contract awards, the proper forum for them to complain about such a dispute was the administrative remedy provided by the procurement ordinance. Carolina Cleaning never filed a proper protest concerning the proposals, procurement or contracting for janitorial services in Beaufort County. If Carolina Cleaning believed that the contracting or RFP process was unfair, it could have filed a formal protest in writing. Such protest procedures are provided in the Beaufort County Procurement code and Beaufort County's RFPs for vendors to follow if they have a reason or desire to protest an award.

Therefore, because Plaintiffs failed to exhaust the exclusive remedy under the Beaufort County Procurement Code and the governing contractual documents, Plaintiff's claims are improper.

C. Plaintiffs' Tort Claims Are Time-Barred

The South Carolina Tort Claims Act ("SCTCA") "is the *exclusive* civil remedy available for any tort committed by a government entity, its employees, or its agents except as provided in § 15-78-70(b)." *See Health Promotion Specialists, Inc. v. South Carolina Bd. of Dentistry*, 403

S.C. 623, 635, 743 S.E.2d 808, 814 (2013) (emphasis added); *accord* S.C. Code § 15-78-200 (SCTCA "is the exclusive and sole remedy for any tort committed by an employee of a governmental entity while acting within the scope of the employee's official duty."); *Proctor v. Dep't of Health & Env'tl Ctrl.*, 368 S.C. 279, 290, 628 S.E.2d 496, 502 (Ct. App. 2006) ("The [SCTCA] governs all tort claims against governmental entities and is the *exclusive* civil remedy available in an action against a governmental entity or its employees.") (emphasis added). "Because the Tort Claims Act provides the 'exclusive' remedy for torts committed by governmental employees, unless an exception applies, the statute of limitations contained within the act will apply." *See Loadholt v. Cribb*, No. 2004-UP-238, 2004 WL 6251537, at *3 (Ct. App. Apr. 12, 2004). Under the SCTCA, Plaintiff must have commenced this lawsuit "within two years after the date the loss was or should have been discovered." *See* S.C. Code § 15-78-110.⁵

Because the SCTCA "contains a definition of loss that differs from that of other statutes," the statutory period runs from the date of injury, not when Plaintiff learned what caused his injury. *See Bayle v. South Carolina Dep't of Transp.*, 344 S.C. 115, 121-127, 542 S.E.2d 736, 739-42 (Ct. App. 2001). "Under the Tort Claims Act, however, the statute of limitations begins to run when the plaintiff should know that he might have a potential claim against another, not when he develops a full-blown theory of recovery." *Joubert v. South Carolina Dep't of Soc. Servs.*, 341 S.C. 176, 190, 534 S.E.2d 1, 8 (Ct. App. 2000). The statute of limitations under the SCTCA is governed by a discovery rule:

Actions brought under the Act are subject to the discovery rule. *Joubert v. South Carolina Dept. of Soc. Services*, 341 S.C. 176, 190, 534 S.E.2d 1, 8 (Ct.App.2000). "According to the discovery rule, the statute of limitations begins to run when a cause of action reasonably ought to have been discovered." *Id.* The statute does not necessarily run from the date of the negligent act, but from when the injury resulting from the negligent act is discovered or may be discovered by the exercise of "reasonable diligence." *Id.*, 341 S.C. at 190-91, 534 S.E.2d at 8.

⁵ The period under the SCTCA may be extended to *three* years, "if the claimant first filed a claim pursuant to this chapter." *See* S.C. Code § 15-78-110. There is no evidence that Plaintiffs would be entitled to the benefit of this rule.

“The exercise of reasonable diligence means simply that an injured party must act with some promptness where the facts and circumstances of an injury would put a person of common knowledge and experience on notice that some right of his has been invaded or that some claim against another party might exist.” *Snell v. Columbia Gun Exch., Inc.*, 276 S.C. 301, 303, 278 S.E.2d 333, 334 (1981). “The date on which discovery should have been made is an objective, not subjective, question.” *Joubert*, 341 S.C. at 191, 534 S.E.2d at 9. Additionally, the fact that the injured party does not comprehend the full extent of his injuries is immaterial. *Dean v. Ruscon Corp.*, 321 S.C. 360, 364, 468 S.E.2d 645, 647 (1996).

Knox v. Greenville Hosp. Sys., 362 S.C. 566, 570-71, 608 S.E.2d 459, 462 (Ct. App. 2005). The statute runs at one time for all claims based on the injury. See *Tollison v. B&J Machinery Co.*, 812 F. Supp. 618 (D.S.C. 1993); accord *Cline v. J.E. Faulkner Homes, Inc.*, 359 S.C. 367, 597 S.E.2d 27 (Ct. App. 2004); *McClain v. Jarrard*, 354 S.C. 218, 580 S.E.2d 763 (Ct. App. 2003); *Wiggins v. Edwards*, 314 S.C. 126, 128, 442 S.E.2d 169, 170 (1994).

Plaintiffs' claims of improper conduct in connection with RFP # 3910/120221 involve conduct occurring in 2012. Carolina Cleaning has done no work for Beaufort County since June 30, 2014. Minutes from the May 27, 2014 Beaufort County Council meeting reflect that the contract was *publicly* awarded to A&B Cleaning Services, Inc. of Greenville, not Carolina Cleaning. As a result, Plaintiffs knew or had constructive knowledge of any potential claims against Defendants at that time. However, Plaintiffs did not file this lawsuit until August 22, 2016, more than two years later. Plaintiffs have not presented any evidence of diligence regarding the investigation of their claims. Under the SCTCA's two-year statute of limitations, Plaintiffs' tort claims against the County are plainly time-barred. Therefore, this Court grants Defendants' Motion for Summary Judgment as to all of Plaintiffs' tort claims.

D. Plaintiffs' Claims Against the Individual Defendants Must Fail

Not content to merely pursue claims against the County, Plaintiffs have also sued numerous individual employees and/or agents of the County (and well-meaning public servants), including Gary Kubic, Josh Gruber, Bryan Hill, Shannon Loper, and Stu Rodman. The Court determines that Plaintiffs improperly sued these individual Defendants in violation of the SCTCA. See S.C. Code § 15-78-70(c) (“On or after January 1, 1989, a person, when bringing an

action against a governmental entity under the provisions of this chapter, shall name as a party defendant only the agency or political subdivision for which the employee was acting and is not required to name the employee individually, unless the agency or political subdivision for which the employee was acting cannot be determined at the time the action is instituted. In the event that the employee is individually named, the agency or political subdivision for which the employee was acting must be substituted as the party defendant.”). Therefore, the Court grants summary judgment as to all claims against the individual Defendants.

E. Plaintiff's Claims Are Defective

In addition to the foregoing, Plaintiffs claims all fail on the merits, for reasons that are apparent from the face of the record. These bases are set forth in, *inter alia*, Defendants' July 21, 2017 Motion for Summary Judgment, at pages 21-29, which the Court incorporates by reference.

CONCLUSION

For the foregoing reasons, this Court GRANTS summary judgment to all Defendants against Plaintiffs as to all claims asserted in this lawsuit.

IT IS SO ORDERED:

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2016 CP-07-1825

STEPHEN CRAIG MOLLOY and ISLAND
GROUP

BEAUFORT COUNTY, ET AL.

INC., D/B/A CAROLINA CLEANING
PLAINTIFF(S)

DEFENDANT(S)

Submitted by: John W. Fletcher and M. Dawes Cooke, Jr., Barnwell
Whaley Patterson & Helms, LLC, PO Drawer H, Charleston, SC 29402 –
(843) 577-7700

Attorney for : ☐ Plaintiff ☒ Defendant
or
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRCp; ☐ Rule 41(a), SCRCp (Vol. Nonsuit); ☐ Rule 43(k), SCRCp (Settled); ☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRCp; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☒ See attached order ☐ Statement of Judgment by the Court: For the reasons set forth in the attached Order Granting Defendants' Motion for Summary Judgment the Court hereby enters summary judgment in favor of all Defendants and against all Plaintiffs.

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk : _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		\$
		\$

		\$
If applicable, describe the property, including tax map information and address, referenced in the order:		

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**
E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

Circuit Court Judge

Judge Code

Date

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this _____ day of _____, 20____ to attorneys of record or to parties (when appearing pro se) as follows:

 ATTORNEY(S) FOR THE PLAINTIFF(S)

 ATTORNEY(S) FOR THE DEFENDANT(S)

 CLERK OF COURT

Court Reporter:

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.



Beaufort Common Pleas

Case Caption: Steven Craig Molloy , plaintiff, et al VS Beaufort County ,
defendant, et al
Case Number: 2016CP0701825
Type: Order/Summary Judgment

So Ordered:

s/Marvin H. Dukes III #3069

Electronically signed on 2018-11-27 11:29:31 page 16 of 16

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2016 CP-07-01825

Steven Craig Molloy, et al.

Beaufort County Government, et al.

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: BEAUFORT COUNTY MASTER IN EQUITY

Attorney for : ☐ Plaintiff ☐ Defendant
or
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE 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), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other
- ☐ **ACTION STRICKEN** (CHECK REASON): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (CHECK APPLICABLE BOX): ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court:

This came before me on Plaintiff's "Motion for Reconsideration of the Order Denying Change of Venue and Recusal of Judge", filed July 12th, 2018. This motion first came to my attention after a .pdf copy was e-mailed to me by Plaintiff's counsel on August 15th, 2018.

I can find no record of a copy being provided to the Court pursuant to Rule 59(g).

I have reviewed the motion and hereby deny the same.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

Additional Information for the Clerk : _____

INFORMATION FOR THE PUBLIC INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
N/A	N/A	\$N/A
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**

	3069	
Circuit Court Judge	Judge Code	Date

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this _____ day of _____, 20____ to attorneys of record or to parties (when appearing pro se) as follows:

Lauren L. Martel

M. Dawes Cooke, Jr.

John W. Fletcher

Christopher M. Kovach

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter: N/A



Beaufort Common Pleas

Case Caption: Steven Craig Molloy , plaintiff, et al VS Beaufort County ,
defendant, et al

Case Number: 2016CP0701825

Type: Order/Other

So Ordered:

s/Marvin H. Dukes III #3069

Electronically signed on 2018-08-20 12:03:37 page 3 of 3

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT

Steven Craig Molloy and)
Island Group, Inc. dba)
Carolina Cleaning,)

CIVIL CASE NO.: 2016-CP-07-01825

Plaintiffs,)

MOTION FOR
RECONSIDERATION
OF RECUSAL of JUDGE
VENUE CHANGE

vs.)

Beaufort County)
Gary Kubic,)
Individually, and as Beaufort County)
Administrator;)
Josh Gruber,)
Individually and as former Beaufort)
County In-House Attorney;)
Bryan Hill,)
Individually and as former Beaufort)
County Deputy Administrator; AND)
Shannon Loper,)
Individually, and)
as employee of the Beaufort County)
Parks and Leisure;)
Stu Rodman, as finance Chair of)
Beaufort County Council;)
Dave Thomas, Procurement Beaufort)
County, SC.)
BCDSN)

Defendants.)

THE ABOVE-NAMED DEFENDANTS:

The Plaintiffs are filing a Motion to Reconsider the Form order denying the relief requested by the Plaintiffs to have the Judge recuse himself based on a conflict of interest as described in the Judicial Code of Ethics. This Motion is based on SC Rules of Civil Procedure 59 and other Relief under SCRCP. A Form order was emailed and filed by the Court on July 3,

2018. The Plaintiff is preserving his right to have a hearing on the Motion for reconsideration, as he had originally requested a hearing on his original Motion to Recuse and Change Venue on the following basis:

1. The Plaintiff is informed and believes that it became apparent after certain answers to FOIA requests that a County Ordinance was changed and was not in compliance with State Law. In fact it appears that the Ordinance has not yet been corrected to come into compliance with State law. A material witness in this new evidence is Former County Councilman Weston Newton. This Ordinance and the oversight of it from the State Legislature, by Weston Newton, create a serious concern by the Plaintiffs that the Court has a conflict of interest. In fact, the underlying lawsuit creates the appearance of a conflict, since Beaufort County is a Defendant.
2. The Plaintiffs are informed and believe that the following law applies:

Canon 3 Rules of Professional Conduct for Judges in South Carolina

A Judge shall perform the duties of Judicial Office impartially and diligently.

Judge Dukes is first cousins (related) to Weston Newton who was the Chairman of Beaufort County Council and changed BC ordinance, 46-91; 46-92 in 2011, and Recent 2017 documents signed by Weston Newton showing Mr. Newton taking a different approach with his signature; while Chairman of the SC Legislative Oversight Committee that the BC DSN Board is appointed by the Governor of South Carolina. A complete contradiction and a violation of the rule of law governing the State of South Carolina.

A. Judicial Duties in General. (5) A judge shall perform judicial duties without bias or prejudice. A judge shall not, in the performance of judicial duties, by words or conduct manifest bias or prejudice, including but not limited to bias or prejudice based upon race, sex, religion, national origin, disability or age, and shall not permit staff, court officials and others subject to the judge's direction and control to do so. (7) A judge shall accord to every person who has a legal interest in a proceeding, or that person's lawyer, the right to be heard according to law.* A judge shall not initiate, permit, or consider ex parte communications, or consider other communications made to the judge outside the presence of the parties concerning a pending or impending proceeding except that:(a) Where circumstances require, ex parte communications for scheduling, administrative purposes or emergencies that do not deal with substantive matters or issues on the merits are authorized; provided:

the judge reasonably believes that no party will gain a procedural or tactical advantage as a result of the ex parte communication, and the judge makes provision promptly to notify all other parties of the substance of the ex parte communication and allows an opportunity to respond.

E. Disqualification. (1) A judge shall disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned, including but not limited to instances where: *Commentary:* Under this rule, a judge is disqualified whenever the judge's impartiality might reasonably be questioned, regardless whether any of the specific rules in Section 3E(1) apply. For example, if a judge were in the process of negotiating for employment with

6. *Plaintiffs are informed and believe that Weston Newton is a material witness in this case and will be called.*
7. *Plaintiff's are informed and believe that Mr. Tommy Windsor (the Governor's office Director of Boards) is a material witness to attest to Beaufort County's actions Of removing the Governor's Board Appointments. Also, that to date Beaufort County has not publically changed the Ordinance to return to comply with state law.*
8. *Plaintiffs are informed and believe that the familial connection between Judge Dukes, and Weston Newton, Former Chairman of the Beaufort County Council demonstrates the potential for bias and prejudice against the Plaintiffs in these proceedings. Newton signed an ordinance in 2011 to change [See ordinance above] giving Beaufort County Council the authority to appoint Beaufort County DSN Board, violating South Carolina Code by usurping the appointment authority of the Governor of the State of South Carolina, during the same time, that the Plaintiffs in this case over a period from 2010 to 2014 systematically at the hands of the same Beaufort County Council and BCDSN and BC employees unconscionably, and fraudulently stripped contracted work from the Plaintiffs, under and during the time that Weston Newton was the Chairman of the Beaufort County Council.*
9. *Plaintiffs are informed and believes that Judge Dukes must recuse himself from these proceedings in compliance with Canon Rule 3 for Judges, because Judge Dukes knows that Weston Newton has more than just a de minimis* interest in the proceedings of this case.*
10. *Plaintiffs are informed and believes that failure to recuse is excusing the illegal actions of the Beaufort County Council, Weston Newton in 2011, when Newton changed the*

a law firm, the judge would be disqualified from any matters in which that law firm appeared, unless the disqualification was waived by the parties after disclosure by the judge.

A judge should disclose on the record information that the judge believes the parties or their lawyers might consider relevant to the question of disqualification, even if the judge believes there is no real basis for disqualification. (a) the judge has a personal bias or prejudice concerning a party or a party's lawyer, or personal knowledge* of **disputed evidentiary facts concerning the proceeding**; Commentary: (d) **the judge or the judge's spouse, or a person within the third degree of relationship* to either of them, or the spouse of such a person:** (i) is a party to the proceeding, or an officer, director or trustee of a party; (iii) is known* by the judge to have a more than de minimis* interest that could be substantially affected by the proceeding; (iv) is to the judge's knowledge* likely to be a material witness in the proceeding.

3. *Plaintiffs are informed and believes that the potential for bias and prejudice exist with the Judge's first cousin having signed documents removing the Governor's Board Appointments without Approval.*
4. *Plaintiffs are informed and believes that Weston Newton is a blood relative of Judge Dukes (first Cousins. In fact when Plaintiff called Weston Newton concerning this, he indicated that Plaintiffs should seek a recusal)*
5. *Plaintiffs are informed and believes that the familial connection violates the **Canon Rule 3 of Professional Conduct for Judges. The Court was made aware of this Ordinance in May 2018 and was provided Attorney general Opinions and a letter from the Governors office indicating the problem with the County Ordinance.***

Beaufort County DSN Board appointment from the South Carolina Code appointment by the Governor to Beaufort County DSN Board appointment by Beaufort County Council in clear violation of the law.

11. *Plaintiff's are informed and believe that the Governor's office has recognized the 2011 ordinance change by Beaufort County Council is illegal and the Governor's office has demanded that the ordinance be returned to its original as Governor appointed and Beaufort County has purposefully failed to do this as of the date of this motion and this has not happened as of the date of this hearing.*
12. *Plaintiffs are informed and believes that any decisions rendered in these proceedings be rendered void, and that the Reconsideration on the Motion for Recusal be Granted, and a Change of Venue be Granted*
13. The Plaintiffs have requested in writing the transcript of the conference call on June 27, 2018 wherein the Court heard from both counsel on a phone call.
14. The Plaintiff set out the conflict of interest in his Motion to have the Court recuse himself. The Court should have recused from the case based on said potential conflicts or actual conflicts of interests. The conflicts are all detailed in the Motion and the Affidavit of Craig Molloy.
15. That the Plaintiffs need a transfer of venue to get out of the County that they are suing in order to have an impartial trial;
16. That the Affidavits which demonstrated by preponderance of evidence that procurement, bidding and other financial transactions need independent oversight may not have been taken into consideration and given the weight necessary.

17. That the emails submitted detailing Beaufort County employees' actions were not taken into consideration in the Order from the Court; and these Beaufort County internal emails are material and could never have been known by the Plaintiff's at his release from the contract.
18. That the Plaintiff reserves the right to add to this Motion for Reconsideration and supplement with a Memorandum upon receipt of the Transcript from the Court phone call on June 27, 2018 that was Requested in writing a copy of which is attached to this Motion.
19. That the Plaintiff's do not believe that the facts supporting the Request for relief and the law supporting the request for relief was taken into consideration in the Order dated July 3, 2018.
20. For Such other Relief as may be just and proper to be fair and equitable.
21. The Plaintiff's believe that they would be severely prejudiced if the Judge does not recuse himself and awards Summary Judgment to the Defendants.

WHEREFORE, the Plaintiff requests that the Complaint of the Plaintiff be granted with full financial award fees and costs to the Defendants and attorney fees and any other additional Relief.

Respectfully Submitted:

S/ Lauren L. Martel

Lauren L. Martel, Esquire

P.O. 23101

Hilton Head Island, S.C. 29925

(843) 298-3831

This 11th Day of July 2018

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2016 CP-07-01825

Steven Craig Molloy, et al.

Beaufort County Government, et al.

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: BEAUFORT COUNTY MASTER IN EQUITY

Attorney for : ☐ Plaintiff ☐ Defendant
or
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE 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), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court:This came before me on Plaintiffs' Motion to Recuse and Change Venue, filed June 20th, 2018. After review of the motion and record I hereby deny the motion.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

Additional Information for the Clerk : _____

INFORMATION FOR THE PUBLIC INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
N/A	N/A	\$N/A
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest

	3069	
Circuit Court Judge	Judge Code	Date

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this _____ day of _____, 20____ to attorneys of record or to parties (when appearing pro se) as follows:

Lauren L. Martel

ATTORNEY(S) FOR THE PLAINTIFF(S)

M. Dawes Cooke, Jr.

John W. Fletcher

Christopher M. Kovach

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter: N/A



Beaufort Common Pleas

Case Caption: Steven Craig Molloy , plaintiff, et al VS Beaufort County ,
defendant, et al
Case Number: 2016CP0701825
Type: Order/Other

So Ordered:

s/Marvin H. Dukes III #3069

Electronically signed on 2018-07-02 14:37:46 page 3 of 3

2016 CP0701825

EXHIBIT



HENRY McMASTER
GOVERNOR

May 29, 2018

Mr. Thomas Keaveny, II
Post Office Box 1228
Beaufort, South Carolina 29901-1228

Dear Mr. Keaveny,

It has been brought to my attention that the Beaufort County Disabilities and Special Needs is being appointed by Beaufort County Council.

Pursuant to Section 44-20-375 (A), the county council must pass an ordinance creating a disabilities and special needs board that establishes, "the number, terms, appointment, and removal of board members and provide for their powers and duties in compliance with state law and the process for appointing board members which existed on January 1, 1991, must be preserved in the ordinance." The process of appointment which existed on January 1, 1991, gives appointing authority to the Governor.

Further, the statute permits legislative delegation and the county council to transfer nominating authority from one to the other, not appointment authority.

Beaufort County Ordinance Number 2011/29, Section 46-92 (a) states, "The membership of the Board shall be at least seven (7) members, but not more than eleven (11), and shall be appointed by Beaufort County Council."

It appears that the county ordinance is not in compliance with the state code. Please contact me so that we may discuss this issue.

Yours very truly,

A handwritten signature in black ink, appearing to read "Tommy Windsor".

Tommy Windsor
Director
Boards and Commissions

STATE HOUSE • 1100 GERRARD STREET • COLUMBIA, SOUTH CAROLINA 29201 • TELEPHONE: 803-734-2100

P. 32

Adm	Att	Gen	Inf	Int	Lab	Leg	Off	Rec	Sec	Trk	File

*

2016 CP 0701825

EXHIBIT

South Carolina House of Representatives



Legislative Oversight Committee

HEALTHCARE AND REGULATORY SUBCOMMITTEE

Chairman PHYLLIS J. HENDERSON
The Honorable WILLIAM E. BOWEN
The Honorable MARGARET A. DOUGLAS
The Honorable BILL TAYLOR

Tuesday, October 18, 2017

10:00 a.m.

Room 119-Bldg Building

Pursuant to Committee Rule 6.1, E.C. 57V shall be allowed access for internet streaming whenever technologically feasible.

AGENDA

- I. Approval of Minutes
- II. Discussion of study of the Department of Disabilities and Special Needs
- III. Adjournment

2012 CP 0701825 Exhibit

Healthcare and Regulatory Subcommittee Meeting
Tuesday, October 10, 2017

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2016 CP 0701825
South Carolina Department of Disabilities and Special Needs
Board Governance
October 3, 2017

Exhibit

County	Board Name	Ordinance No.	Year	Authority
Adams	Adams County Board of Disabilities and Special Needs (The Development Center of Adams Co., Inc.)	Ordinance No. 92-12	(1992)	Governor
Anderson	Anderson County Board of Disabilities and Special Needs	Ordinance No. 92-63 (1992); 1992-55 (1992)		Governor
Anderson	Anderson County DSN Board	Ordinance No. 343	(1992)	Governor
Bamberg	Bamberg County DSN Board	Ordinance No. 1-93-1	(1993)	Governor
Beaufort	Beaufort County DSN Board	Ordinance No. 89-9	(1989)	Governor
Berkeley	Berkeley Citizens, Inc.	Ordinance No. 88-8-12	(1988)	County Council
Calhoun	Calhoun County DSN	Act 1127	(1974) (approved 1974)	Governor
Charleston	Disabilities Board of Charleston County	Ordinance No. 805	(1991)	County Council
Charleston	Charleston County DSN Board	Ordinance of 2-31-1993 (Unnumbered)		Governor
Chester/Lancaster	Chester-Lancaster Disabilities and Special Needs Board, Inc.	Ordinance No. 5-1-89 (1989) (Chester); 311 (1998) (Chester-Lancaster)		Governor
Charleston	Charleston County DSNB (CHBSOC Services)	Ordinance No. 90-91-06	(1991)	County Council
Charleston	Charleston County DSN Board	Ordinance No. 11-7	(1991)	County Council
Colleton	Colleton County Board of Disabilities and Special Needs	Ordinance No. 83-8-23 (1983); 93-8-23 (1993)		County Council
Darlington	Darlington County DSN Board	Ordinance No. 91-16	(1991)	Governor
Dorchester	Dorchester County Board of Disabilities and Special Needs	Ordinance No. 90-05	(1990)	Governor
Emerald City Board (Emerald City)	Emerald City (Burton Center For Disabilities and Special Needs)	Ordinance No. 95-96-329	(1995)	Governor
Abbeville	Emerald City (Burton Center For Disabilities and Special Needs)	Ordinance No. 91-11	(1992)	Governor
Edgefield	Emerald City (Burton Center For Disabilities and Special Needs)	Ordinance No. 93-94-314	(1994)	Governor
Greenwood	Emerald City (Burton Center For Disabilities and Special Needs)	Ordinance No. 11-81	(1991)	Governor
McCormick	Emerald City (Burton Center For Disabilities and Special Needs)	Ordinance No. 94-05	(1994)	Governor
Saluda	Emerald City (Burton Center For Disabilities and Special Needs)	Ordinance 79-91	(1991)	Governor
Fairfield	Fairfield DSN Board	Ordinance No. 61	(1983)	County Council
Florence	Florence County DSN Board	Ordinance No. 15-93/94	(1993)	Governor

From: **Craig Molloy** scmolloy@gmail.com
 Subject: **Exhibits to File w/ Craig AFF**
 Date: **May 25, 2018 at 4:23 PM**
 To: **Lauren Martel** martellaw@naigray.com
Craig Molloy
 email: scmolloy@gmail.com
 phone: 843.368.7300

53

36

- March 2015 - Agency submits its **Annual Restructuring and Seven-Year Plan Report**, which is available online.
- January 11, 2016 - Agency submits its **2016 Annual Restructuring Report**, which is available online.
- January 10, 2017 - Full committee votes to schedule the Department of Disabilities and Special Needs for study. Video of the meeting is available online.
- February 9, 2017-March 13, 2017 - Committee solicits input from the public about the agency in the form of an online public survey. The results of the public survey are available online.
- March 2, 2017 - Committee holds public input meeting about Department of Archives and History; DDSN; and John de la Howe School. Video of the meeting is available online.
- May 1, 2017 - Agency submits its **Program Evaluation Report**, which is available online.
- September 18, 2017 - Subcommittee holds meeting to discuss agency history, governance, services, and customers.
- Ongoing - Public may submit written comments on the Oversight Committee's webpage on the General Assembly's website (www.scstatehouse.gov).

2016 CP0701825

Exhibit

Healthcare and Regulatory Subcommittee Meeting Packet 10/10/17 Page 55 of 183

2016 LPO701825

Exhibit

BLINGTON CENTER		#	\$	
Capitalized Contract				
Band B - At-Home ISRAD Waiver		85	\$ 1,104,150	
Band I - At-Home CSW		131	\$ 1,783,172	
Band C - Residential		19	\$ 603,054	
Band D - Residential		9	\$ 176,112	
Band E - Residential		4	\$ 97,198	
Band F - Residential		1	\$ 38,104	
Band G - Residential		37	\$ 2,777,833	
Band M - Residential		50	\$ 7,801,592	
Total Capitalized Contract		379	\$ 13,578,782	
Special Contracts				
Early Intervention		32	\$ 124,618	
Family Support		-	\$ 43,559	
State Funded Follow Along		1	\$ 5,360	
State Funded Community Supports		13	\$ 170,654	
Total Special Contracts		45	\$ 344,191	
TOTAL BLINGTON CENTER CONTRACTS		424	\$ 14,222,969	
SERVICES		# OF CONSUMERS	CONTRACT AMOUNT AS OF 2018	COUNTIES SERVED
Care Management		356	\$ 592,590	Allegheny, Edgarfield, Greenwood, McCormick, Saluda
Early Intervention		37	\$ 126,618	Allegheny, Edgarfield, Greenwood, McCormick, Saluda
Day		273	\$ 8,250,344	Allegheny, Edgarfield, Greenwood, McCormick, Saluda
Residential		160	\$ 9,848,349	Allegheny, Edgarfield, Greenwood, McCormick, Saluda
At-Home Services		216	\$ 1,000,165	Allegheny, Edgarfield, Greenwood, McCormick, Saluda

Healthcare and Regulatory Subcontracted Meeting Packet 10/10/17 Page 38 of 169

2016CP0701825- Ex 405A

JASPER		#	\$
Capitalized Contracts			
Band B - At-Home ID/RO Waiver		19	\$ 246,810
Band I - At-Home CSW		29	\$ 394,748
Band G - Residential		8	\$ 462,504
Band H - Residential		16	\$ 1,947,680
Total Capitalized Contract		72	\$ 2,481,942
Special Contracts			
Early Intervention		17	\$ 63,309
Family Support			\$ 7,236
HASCI - Individual Rehab Supports		5	\$ 45,000
State Funded Community Supports		1	\$ 14,222
Fiscal Agent - ID/RO Attendance Care			\$ 400,000
Fiscal Agent - CS Waiver Attendance Care			\$ 1,675,000
Fiscal Agent - Self-Arranged Attendant Care			\$ 185,000
Fiscal Agent - Respite Payroll Admin			\$ 2,680,000
Fiscal Agent - Respite Payroll Admin			\$ 85,000
Fiscal Agent - HASCI Self-Directed Care			\$ 4,100,000
Total Special Contracts		23	\$ 9,359,267
TOTAL JASPER CONTRACTS		95	\$ 11,758,709
* Denotes Contract amount does not fluctuate as a result of consumers exercising choice of service provider or utilization of authorized service.			
SERVICES	# OF CONSUMERS	CONTRACT AWARD AS OF	COUNTRIES SERVED
Case Management	101	\$ 159,391	Beaufort, Colleton, Hampton, Jasper
Early Intervention	17	\$ 62,309	
Day	70	\$ 821,974	
Residential	24	\$ 1,554,352	Jasper
At-Home Services	49	\$ 172,074	
Fiscal Agent		\$ 9,125,000	Statewide

2016 CP 0701825 Exh: 54

<u>BEAUFORT</u>			#	\$
<u>Capitated Contract</u>				
Band B - At-home ID/RD Walver			67	\$ 889,984
Band I - At-Home CSW			96	\$ 1,306,752
Band D - Residential			7	\$ 136,976
Band E - Residential			1	\$ 24,297
Band F - Residential			1	\$ 38,104
Band G - Residential			20	\$ 1,231,260
Band H - Residential			22	\$ 1,811,756
Band R - Residential			1	\$ 90,529
Total Capitated Contract			215	\$ 5,530,658
<u>Special Contracts</u>				
Early Intervention			90	\$ 330,699
Family Support			-	\$ 27,100
Caregiver Relief			-	\$ 65,000
State Funded Community Supports			7	\$ 99,554
Total Special Contracts			97	\$ 522,353
TOTAL BEAUFORT CONTRACTS			312	\$ 6,053,011
<u>SERVICES</u>				
	<u># OF CONSUMERS</u>	<u>CONTRACT AWARD AS OF 2018</u>	<u>COUNTIES SERVED</u>	
Case Management	224	\$ 368,095	Beaufort	
Early Intervention	90	\$ 330,699	Beaufort, Jasper	
Day	198	2,375,892	Beaufort	
Residential	52	2,785,694	Beaufort	
At-Home Services	183	\$ 560,726	Beaufort	

ORDINANCE NO. 2011 / 28

AN ORDINANCE TO AMEND PART I, CHAPTER 46, ARTICLE III OF THE BEAUFORT COUNTY CODE OF ORDINANCES RELATING TO THE BEAUFORT COUNTY DISABILITIES AND SPECIAL NEEDS BOARD AND PROVISIONS RELATING THERETO

Whereas, Beaufort County Ordinance 2002/33 (General Template) and South Carolina Code Ann. Section 44-20-10 et. seq., establishes the authority for development of County Disabilities and Special Needs Boards; and

Whereas, from time to time it is necessary for County Council to reexamine its codes and ordinances to ensure that they are current in their wording and executions; and

Whereas, it is apparent that certain language contained in Sections 46-91 and 46-92 should be amended to reflect the current processes, characteristics, and purposes of the Beaufort County Disabilities and Special Needs Board

Now, THEREFORE, BE IT ORDAINED, by Beaufort County Council that Part I, Chapter 46, Article III of the Beaufort County Code of Ordinances be amended to read as follows:

Sec. 46-91. -- Purpose.

The purpose of the Beaufort County Board of Disabilities and Special Needs is to advocate for the individuals with disabilities and special needs who are served by the Beaufort County Disabilities and Special Needs Department; to provide assistance and advice to the Beaufort County Disabilities and Special Needs Department staff concerning matters of policy; and to promote community awareness of

Beaufort County Disabilities and Special Needs Department programs and services.

Sec. 46-92. -- Membership; terms of office.

- (a) The membership of the Board shall be at least seven (7) members, but not more than eleven (11), and shall be appointed by Beaufort County Council.
- (b) Board members shall serve a term of office of four (4) years as identified in their appointment letter subject to the following voting requirements for appointment and reappointment:
 - a. 1st Term- Requires an affirmative vote of no less than six (6) Council members.
 - b. 2nd Term- Requires an affirmative vote of no less than eight (8) Council members; and
 - c. 3rd or Subsequent Term- Requires an affirmative vote of no less than ten (10) members of Council
- (c) Members of the Board shall serve without compensation from either the State of South Carolina or Beaufort County, with the exception that limited travel or other expenses may be reimbursed upon prior written approval of the County Administrator.

(d) Any member desiring to resign from the Board shall do so by submitting his or her resignation in writing to the Chairman of County Council and the Chairman of the Board of Disabilities and Special Needs. Members who fail to attend 3 consecutive meetings without prior written notice will be subject to recommendation for removal to County Council.

Adopted this 26th day of September, 2011

COUNTY COUNCIL OF BEAUFORT COUNTY

By

Wm. Weston J. Newton, Chairman

APPROVED AS TO FORM

Larson F. Howell, Staff Attorney

ATTEST

Suzanne B. Rairney, Clerk to Council

First Reading: August 22, 2011

Second Reading: September 12, 2011



M. Dawes Cooke, Jr., Member
mdc@barnwell-whaley.com

John W. Fletcher, Attorney
jfletcher@barnwell-whaley.com

April 11, 2018

VIA EMAIL AND U.S. MAIL

The Honorable Marvin H. Dukes, III
Beaufort County Master-in-Equity
Post Office Drawer 1228
Beaufort, SC 29901-1228
mdukes@bcgov.net

RE: Steven Craig Molloy; Jack Wayne Molloy; and Island Group, Inc. d/b/a
Carolina Cleaning v. Beaufort County; et al.
Case No.: 2016-CP-07-01825
Our File No.: 1.626

Dear Judge Dukes,

We have reviewed Plaintiffs' proposed second Verified Amended Complaint. While we believe that the proposed amendment is untimely, it does not materially change the substance of Plaintiff's claims. Aside from removing some allegations, the principle proposed amendment is the addition of a more explicit articulation of the "bad faith" theory, which we addressed at the March 23 hearing. Therefore, Defendants elect not to oppose the amendment, but instead would ask the Court to consider their pending motion for summary judgment as having been made in reference to the Verified Amended Complaint. We would invite Plaintiff to circulate a proposed order granting her leave to file the proposed Amended Verified Complaint.

It appears that, as with the previous Complaint, the Plaintiffs' claims in the proposed Verified Amended Complaint focus on two themes: (a) Beaufort County terminated (or "dismantled," in the words of Plaintiffs) Carolina Cleaning's 2010 contract with the County; and (b) Defendants engaged in wrongful conduct in the proposal process for subsequent contracts to favor the Department of Special Needs (DSN). Both themes are unsupportable as a matter of law, for the reasons we have previously briefed and that we argued on March 23.

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288 Meeting Street, Suite 200, Charleston, SC 29401
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NORTH CAROLINA OFFICE:
1427 Military Cutoff Road, Suite 202, Wilmington, NC 28403
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REPRESENTING CLIENTS IN ALL COURTS IN SOUTH CAROLINA AND NORTH CAROLINA AND IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

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At the conclusion of the hearing, Your Honor permitted the parties to submit supplemental briefing if necessary. The Defendants submit that our previous briefing adequately covers the issues before the Court, except we offer the following observations concerning Plaintiffs' "bad faith" claim and a couple of other issues that came up at the hearing.

A. Termination of Carolina Cleaning's Contract

There can be no claim for bad faith termination of the 2010 contract because the contract explicitly allowed its termination for any of three reasons: for no reason, by either party upon sixty days' notice; by the County for its convenience; or because of the expiration of its term. While there is a covenant of good faith and fair dealing implied in every contract, "there is no breach of an implied covenant of good faith where a party to a contract has done what provisions of the contract expressly gave him the right to do." *Hotel & Motel Holdings, LLC v. BJC Enterprises, LLC*, 414 S.C. 635, 653, 780 S.E.2d 263, 273 (Ct. App. 2015) (quoting *Adams v. G.J. Creel & Sons, Inc.*, 320 S.C. 274, 277, 465 S.E.2d 84, 85 (1995)); *Williams v. Riedman*, 339 S.C. 251, 274, 529 S.E.2d 28, 40 (Ct. App. 2000) (same); *First Fed. Sav. & Loan Ass'n of South Carolina v. Dangerfield*, 307 S.C. 260, 267, 414 S.E.2d 590, 594 (Ct. App. 1992) (same). Moreover, the implied covenant of good faith is not actionable as a separate cause of action. *See RoTec Servs., Inc. v. Encompass Servs., Inc.*, 359 S.C. 467, 473, 597 S.E.2d 881, 884 (Ct. App. 2004) ("[W]e conclude that the implied covenant of good faith and fair dealing is not an independent cause of action separate from the claim for breach of contract.).

The 2010 agreement expressly states that "[t]he County may without cause terminate this contract in whole or in part at any time for its convenience." (See Thomas Aff. Ex. A, at p.25 ¶ 16.0 of Proposal Notice). Additionally, the 2010 agreement provides that "[e]ither party may terminate this Agreement upon sixty (60) days' written notice to the other party." (See *id.* "Contract for Janitorial Services" art. 9).

The term of this Agreement shall be for a period of one (1) year starting on November 1, 2010 and ending on October 31, 2011. There are four (4) one (1) year renewals available on this Contract all at the approval of Beaufort County. The Contract shall not exceed five (5) years.

(See *id.* "Contract for Janitorial Services" art. 5). The 2010 agreement was extended to November 1, 2013. (See Thomas Aff. Ex. C). The 2010 agreement was subsequently extended on a month-to-month basis, to end on June 30, 2014. (See Thomas Aff. Ex. R). A new contractor was selected to replace Carolina Cleaning at that time. Notably, Carolina Cleaning participated in the proposal process for the new contract, and never protested the termination of its 2010 agreement or the proposal process. Plaintiff Carolina Cleaning finished in 10th place out of 16 proposals.

B. Beaufort County's Contract with DSN

Plaintiffs' claims that Defendants acted in bad faith in the proposal process for contracts after 2010 are also without any merit. All of the RFPs expressly stated that Beaufort County was not obligated to actually contract for janitorial services through the RFP process:

This solicitation does not commit Beaufort County to award a contract, to pay any costs incurred in the preparation of a proposal, or to procure or contract for the articles of goods or services. The County reserves the right to accept or reject any or all proposals received as a result of this request, to negotiate with all qualified offerors, or to cancel in part or in its entirety this proposal, if it is in the best interests of the County to do so.

(See e.g., Thomas Aff. Exs. D, N and Q). Carolina Cleaning did not have any right to obtain contracts for janitorial services, and there is nothing illegal about the County electing to fulfill its janitorial needs outside of the RFP process. The County decided, in its discretion, to have janitorial work performed by DSN consumers rather than by a private contractor. This is entirely consistent with the terms of the RFPs, and Plaintiffs have not cited to any law prohibiting Beaufort County from doing this.

Plaintiffs suggest that the Count dishonestly created some sort of "company" to funnel funds for work. This is patently untrue. The challenged contracts (see Exhibits A and B hereto) are between the County and Beaufort County Disabilities & Special Needs Board, which is a creature of state statute and county ordinance and thus part of the County government. See S.C. Code §§ 44-20-30(4) & 44-20-375; Beaufort County Code of Ordinances §§ 46-91, *et seq.* While Plaintiff has disputed whether the consumers are "employees" of the County, documents that Plaintiffs recently submitted confirm that the DSN consumers are hired by the County and are not employees of a separate business or company: "The individuals we serve are not DSN or County employees. We contract with each individual separately and they are contract employees. We do cover workman's comp costs." (See "Employing Individuals with Developmental Disabilities" (attached hereto as Exhibit C)).

In a March 26, 2018 correspondence with the Court, Plaintiffs' counsel suggests the creation of a separate legal entity based on a misreading of minutes of the June 19, 2012 meeting of the DSN Board (see Exhibit D hereto). It is clear, however, that that discussion concerned DSN consumers' work at a greenhouse and pottery business, and had nothing whatsoever to do with janitorial work:

Ms. Wagner said she spoke with Knuckles Consulting Firm regarding the process of letting our consumers keep the profits from the greenhouse and pottery sales. She said because it is a cottage type industry they advised us to establish two separate businesses, that are consumer owned with a board, and they would decide how the profits will used. She said we set up two separate bank accounts, one is Old Shell Pottery and the other is Old Shell Plants. They have a board that meets periodically and the consumers can take what profits are there and divide it among themselves. She said it is a good learning experience because they interact and become involved with community people. She said the county wanted it to become a cost center in the budget, close out the bank accounts and Jet the treasurer handle the money. Ms. Wagner spoke with the consulting firm who advised her not to let the county become involved. Ms. Wagner said her plans are to recommend to the county not to do it based on the consultant's recommendation.

Plaintiffs have also cited to parts of meeting minutes taken out of context to argue that the County was hiring DSN consumers for janitorial work in order to profit from Medicaid reimbursement (at a 4:1 ratio). Once again, the evidence Plaintiffs cite has nothing to do with janitorial service. Bill Love, the Director of the Beaufort County DSN, explained: "Beaufort County does not receive any reimbursements from the state or federal government through Medicaid for the employment of DSN consumers to perform janitorial work." (*See Love Aff.* ¶ 40). Indeed, the meeting minutes that Plaintiffs reference involve federal money used to provide services to DSN consumers. (*See Love Aff. Ex. D*). Also, the Court can take judicial notice that Medicaid provides health coverage for eligible people, including people with disabilities; it has nothing to do with janitorial services.

C. Plaintiff's Tort Claims Are Time-Barred

At the March 23 hearing, Defendants argued that Plaintiffs' tort claims are barred by the statute of limitations. Plaintiffs responded, with regard to the County's decision to contract with the DSN rather than with Carolina Cleaning, that they did not know that they had a potential claim until they received documents pursuant to the FOIA sometime in 2015. This is patently incorrect. Plaintiffs knew, by June 30, 2014, that Carolina Cleaning had lost the entirety of its cleaning contract and was no longer performing any janitorial work for the County. The statute of limitations begins to run, not when a prospective plaintiff has sufficient evidence to prove its case, but when he is reasonably on notice that he has been injured and thus might have a claim:

"In other words, whether the particular plaintiff actually knew he had a claim is not the test. Rather, courts must decide whether the circumstances of the case would put a person of common knowledge and experience on notice that some right of his has been invaded, or that some claim against another party might exist." *Young v. South Carolina Dep't of Corrections*, 333 S.C. 714, 719, 511 S.E.2d 413, 416 (Ct. App. 1999).

On September 30, 1999, the Hackworths either knew or should have known they lost their ownership interest in the \$152,016 when Edman signed the consent to forfeiture. If the Hackworths thought their property was improperly seized and retained, they should have initiated an action before September 30, 2001.

See Hackworth v. Greenville Cty., 371 S.C. 99, 103, 637 S.E.2d 320, 322 (Ct. App. 2006). Plaintiffs plainly knew or should have known by June of 2014, at the very latest, that Carolina Cleaning contract had been terminated and that it was not awarded the new contract. "[T]he fact that the injured party does not comprehend the full extent of his injuries is immaterial." *Knox v. Greenville Hosp. Sys.*, 362 S.C. 566, 570-71, 608 S.E.2d 459, 462 (Ct. App. 2005) (citing *Dean v. Ruscon Corp.*, 321 S.C. 360, 364, 468 S.E.2d 645, 647 (1996)). In fact, the attached minutes from the May 27, 2014 Council meeting reflect that the contract was publicly awarded to A&B Cleaning Services, Inc. of Greenville, not to Carolina Cleaning. (*See Ex. E hereto*).

Plaintiffs have cited no evidence that would grant them relief from the statute of limitations in this case.

The Honorable Marvin H. Dukes, III
April 11, 2018
Page 5

D. Conclusion

Plaintiffs' proposed Verified Amended Complaint does not cure any of the deficiencies of their claims. We respectfully ask Your Honor to consider Defendants' motion for summary judgment as if it is addressed to this new Complaint.

Sincerely,



M. Dawes Cooke, Jr.
John W. Fletcher

MDCjr/JWF/jgc
Enclosures

cc: **VIA EMAIL AND U.S. MAIL**
Lauren L. Martel, Esquire
martellaw@hargray.com

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF BEAUFORT	)	14 TH JUDICIAL COURT
	)	CASE NO: 2016-CP-0701825
Steven Craig Molloy, individually and on behalf)		
of the Beaufort County Taxpayers and)		
Island Group, Inc. dba)		
Carolina Cleaning,)		
	)	
Plaintiffs,)		
	)	
vs.)		MOTION TO RECUSE AND
	)	CHANGE VENUE
	)	
Beaufort County Government)		
Gary Kubic,)		
Individually, and as Beaufort County)		
Administrator;)		
Josh Gruber,)		
Individually and as former Beaufort)		
County In-House Attorney;)		
Bryan Hill,)		
Individually and as former Beaufort)		
County Deputy Administrator; AND)		
Shannon Loper,)		
Individually, and)		
as employee of the Beaufort County)		
Parks and Leisure;)		
Stu Rodman, as Finance Chair of)		
Beaufort County Council;)		
Dave Thomas,)		
Procurement Director Beaufort)		
County, SC.)		
Disabilities and Special Needs (NON-PROFIT))		
Beaufort County DSN Board)		
<u>Defendants.</u>)		

**TO: THE ABOVE-NAMED DEFENDANTS BY AND THROUGH THEIR
ATTORNEYS, DAWES COOKE AND JOHN FLETCHER, REPRESENTING EACH
DEFENDANT:**

NOW COME THE PLAINTIFFS, by and through their attorney Lauren Martel, file the Motion to Recuse based on newly found evidence. Familial ties to Weston Newton, who signed the Beaufort County Ordinance in 2011 allowing the Beaufort County Council to institute an ordinance change regarding the appointment of DSN Board members, giving Beaufort County Council appointment authority, usurping the Governor of South Carolina. (SEE ATTACHED Letter from Governor office on boards and commissions) A Key change in the ordinance that impacted the Plaintiffs in this case. A change further authorized by the defendants , which basically rendered the BCDSN board out of compliance with state law from 2011 –present during which time the Defendants engaged in the activity that has been alleged in the Amended Complaint. Additionally, Beaufort County Attorney, Josh Gruber who failed in his duties to council or advise the Beaufort County Council on this change in ordinance, giving DSN Board appointments to the Beaufort County Council, in violation of State Law. (SEE LETTER FROM TOMMY WINDSOR) These revelations severely impact the Plaintiffs with a potential for bias and prejudice. During this entire time the Governor did not appoint the boards as the law requires and millions of dollars each year were allocated , received and spent and committed by these non-compliant boards. The intimate relationship between Beaufort County councilman Weston Newton in 2011 and now state legislator Weston Newton presently in the SC Statehouse is an apparent conflict of interests. In fact, Weston Newton's mother and Judge Dukes mother are sisters and they are first cousins. Although Weston Newton is not a party Defendant to this specific case, he is intimately involved with the set up of the non-profit entity BCDSN board through a changed Ordinance that failed to preserve the state law in the ordinance.

Canon 3 Rules of Professional Conduct for Judges in South Carolina, A Judge shall perform the duties of Judicial Office impartially and diligently. Judge Dukes has family connections to Weston Newton who allowed the Beaufort County Council to change BC ordinance, 46-91;

46-92 in 2011, signed the change as Chairman of the Beaufort County Council. Recent documents also signed by Weston Newton showing Mr. Newton taking a different approach with his signature, that the BC DSN Board is appointed by the Governor of South Carolina. A complete contradiction and a violation of the rule of law governing the State of South Carolina. This clear conflict of positions creates a genuine issue of material fact. The Plaintiffs are concerned that the Court wants to fast track this case to Summary Judgment without any Discovery. This may be one reason the court would fast track a case that has merit and try to side-step any Depositions or discovery.

A. Judicial Duties in General. *(2) A judge shall be faithful to the law* and maintain professional competence in it. A judge shall not be swayed by partisan interests, public clamor or fear of criticism.*

(5) A judge shall perform judicial duties without bias or prejudice. A judge shall not, in the performance of judicial duties, by words or conduct manifest bias or prejudice, including but not limited to bias or prejudice based upon race, sex, religion, national origin, disability or age, and shall not permit staff, court officials and others subject to the judge's direction and control to do so.

(7) A judge shall accord to every person who has a legal interest in a proceeding, or that person's lawyer, the right to be heard according to law. A judge shall not initiate, permit, or consider ex parte communications, or consider other communications made to the judge outside the presence of the parties concerning a pending or impending proceeding except that: (a) Where circumstances require, ex parte communications for scheduling, administrative purposes or emergencies that do not deal with substantive matters or issues on the merits are authorized; provided:*

(i) the judge reasonably believes that no party will gain a procedural or tactical advantage as a result of the ex parte communication, and

(ii) the judge makes provision promptly to notify all other parties of the substance of the ex parte communication and allows an opportunity to respond.

*(7) A judge shall accord to every person who has a legal interest in a proceeding, or that person's lawyer, the right to be heard according to law. * A judge shall not initiate, permit, or consider ex parte communications, or consider other communications made to the judge outside the presence of the parties concerning a pending or impending proceeding except that:*

(a) Where circumstances require, ex parte communications for scheduling, administrative purposes or emergencies that do not deal with substantive matters or issues on the merits are authorized; provided:

(i) the judge reasonably believes that no party will gain a procedural or tactical advantage as a result of the ex parte communication, and

(ii) the judge makes provision promptly to notify all other parties of the substance of the ex parte communication and allows an opportunity to respond. Certain ex parte communication is approved by Section 3B(7) to facilitate scheduling and other

D. Disqualification.

(1) A judge shall disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned, including but not limited to instances where:

Commentary:

Under this rule, a judge is disqualified whenever the judge's impartiality might reasonably be questioned, regardless whether any of the specific rules in Section 3E(1) apply. For example, if a judge were in the process of negotiating for employment with a law firm, the judge would be disqualified from any matters in which that law firm appeared, unless the disqualification was waived by the parties after disclosure by the judge.

A judge should disclose on the record information that the judge believes the parties or their lawyers might consider relevant to the question of disqualification, even if the judge believes there is no real basis for disqualification. (a) the judge has a personal bias or prejudice concerning a party or a party's

lawyer, or personal knowledge of disputed evidentiary facts concerning the proceeding; Commentary:*

A lawyer in a government agency does not ordinarily have an association with other lawyers employed by that agency within the meaning of Section 3E(1)(b); a judge formerly employed by a government agency, however, should disqualify himself or herself in a proceeding if the judge's impartiality might reasonably be questioned because of such association.

(c) the judge knows that he or she, individually or as a fiduciary, or the judge's spouse, parent or child wherever residing, or any other member of the judge's family residing in the judge's household,* has an economic interest* in the subject matter in controversy or in a party to the proceeding or has any other more than de minimis* interest that could be substantially affected by the proceeding;*

(d) the judge or the judge's spouse, or a person within the third degree of relationship* to either of them, or the spouse of such a person:

(i) is a party to the proceeding, or an officer, director or trustee of a party;

(iii) is known by the judge to have a more than de minimis* interest that could be substantially affected by the proceeding;*

(iii) is to the judge's knowledge likely to be a material witness in the proceeding.*

Plaintiffs are informed and believes that the potential for bias and prejudice does exist and may have already prejudiced the Plaintiffs.

Plaintiffs are informed and believes that Weston Newton is a blood relative of Judge Dukes, related as first cousins.

Plaintiffs are informed and believes that the familial connection violates or appears to violate the Canon Rule 3 of Professional Conduct for Judges, now that we have evidence that Weston Newton was intimately involved in setting up the BCDSN board.

Plaintiffs are informed and believes that Weston Newton has the potential to be a material witness in this case.

WHEREFORE, the Plaintiffs request , with due respect and with humility, only seeking this relief where it is of such concern that the Plaintiffs believe they will be or have been prejudiced, that Judge Dukes recuse himself from this case and it be transferred to a Judge with no intimate relationship with Mr. Weston Newton and that venue be changed to somewhere other than Beaufort County (where clerk of court is married to the Facilities Coordinator for Beaufort County who was Plaintiffs supervisor for 18 years) and for the other reasons set forth in the Affidavit of Craig Molloy and the letter of the Governor to the Beaufort County Attorney dated May 29, 2108 and attached documents.

June 19th 2018

Lauren L. Martel
2 Corpus Christi Place , Suite 200
The Professional Building
Hilton Head Is, SC 29928
(843) 298-3831

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF BEAUFORT

14th JUDICIAL COURT

CIVIL CASE NO.: 2016-CP-07-01825

Steven Craig Molloy and)
Island Group, Inc. dba)
Carolina Cleaning,)
)
Plaintiffs,)

vs.)

Beaufort County;)
Gary Kubic,)
Individually, and as Beaufort County)
Administrator;)
Josh Gruber,)
Individually and as former Beaufort)
County In-House Attorney;)
Bryan Hill,)
Individually and as former Beaufort)
County Deputy Administrator; AND)
Shannon Loper,)
Individually, and)
as employee of the Beaufort County)
Parks and Leisure;)
Stu Rodman, as finance Chair of)
Beaufort County Council;)
Dave Thomas,)
Procurement Director Beaufort)
County, SC.)

Defendants.)

**AMENDED
VERIFIED COMPLAINT
(Jury Trial Demanded)
TRO AND OTHER RELIEF**

THE ABOVE-NAMED DEFENDANTS:

The Plaintiffs complaining of the above-named Defendant(s) respectfully allege as follows:

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PARTIES AND JURISDICTION

1. The Island Group, Inc. is a corporation organized and operating under the laws of the State of South Carolina. Further, it has been conducting business in the commercial cleaning and janitorial business, under the name of Carolina Cleaning, in and for Beaufort County customers, including, but not limited to, local governments such as Beaufort County and other municipalities. A Copy of the Contract is attached hereto and incorporated herein.
2. The Plaintiff, Steven Craig Molloy, is a resident and citizen of Beaufort County, South Carolina, residing in Hilton Head Island, South Carolina. Plaintiff, Steven Craig Molloy, is the owner of the Island Group, Inc., d/b/a Carolina Cleaning.
3. Plaintiff "Steven Craig Molloy" has owned and operated a Janitorial Cleaning company in Beaufort County since 1994. Plaintiff Molloy is a taxpayer in Beaufort County South Carolina and has taxpayer standing in this case as well as being individually specifically harmed and injured by the Defendants.
4. The Defendant, **Beaufort County**, is a governmental subdivision of the State of South Carolina, with its principal offices located in Beaufort County, South Carolina. The Plaintiff reserves the right to add additional parties to this litigation.
5. The **Defendant, Gary Kubic**, is, and was at all times relevant to this action as the County Administrator for Beaufort County. He is named in this lawsuit both in his capacity as the Beaufort County Administrator and individually under the South Carolina Tort Act. Upon information and belief, Defendant Kubic resides in Beaufort County, South Carolina. All Causes of Action, but not limited to those set out in this Amended Complaint, are pled against Defendant Kubic more specifically set out below.

6. The **Defendant, Joshua Gruber**, though presently serving as Beaufort County Deputy Administrator was at all times relevant to this action as the Attorney for Beaufort County. Defendant Gruber is named in this lawsuit in his capacity as the County Attorney and individually under the South Carolina Tort Claim Act pled in this Amended Complaint. Upon information and belief, Defendant Gruber resides in Beaufort County, South Carolina. All Causes of Action, but not limited to those set out in this Amended Complaint, are pled against Defendant Gruber.

7. The **Defendant, Bryan Hill**, was at all times relevant to this action as the (then) Beaufort County Deputy Administrator. Byran Hill is being named in his capacity as the Deputy administrator of the Beaufort County during the time the damage was caused to the Plaintiffs and he is being named individually as well under the South Carolina Tort Claims act pled herein. Upon information and belief, Defendant Bryan Hill resided in Beaufort during the time the injury to Plaintiff took place. He lives out of state presently, upon information and belief. All Causes of Action, but not limited to those set out in this Amended Complaint, are pled against Defendant Hill.

8. The **Defendant, Shannon Loper**, was at all times relevant to this action as a PALS Fiscal Technical III employee, agent, and/or an otherwise individual employed by Defendant of Beaufort County. Defendant Loper is being named in her official capacity and individually under the South Carolina Tort Claim act pled herein. Upon information and belief, Defendant Loper, resides in Beaufort County, South Carolina. All Causes of Action, but not limited to those set out in this Amended Complaint, are pled against Defendant Loper.

9. The **Defendant, Stu Rodman**, is a member of Beaufort County Council, the entity that votes on and approves all the bids referenced herein and decisions relevant to BCDSN, who is

named herein as the (then) Chairman of the Beaufort County Finance Committee. The SC Tort Claim Act is applicable and each cause of Action set out herein in this Amended Complaint.

10. The **Defendant, Dave Thomas**, is the Procurement Director for Beaufort County and responsible for all procurement, contract and RFP requests and submissions. The Causes of Action set out herein apply to this Defendant in the Amended Complaint.

11. The other Beaufort County representatives referenced in this Complaint are named as operating in their capacity as elected, appointed officials or hired employees of Beaufort County. If in Discovery information reveals any other representatives named should fall under the South Carolina Tort Claims Act, the Plaintiffs reserve their right to amend the Complaint accordingly and will add these individuals.

The events giving rise to this action occurred in Beaufort County, South Carolina; that each Defendant and Carolina Cleaning had substantial connections to Beaufort County; and that subject matter and personal jurisdiction is proper.

INTRODUCTION

12. Paragraphs 1-11 are hereby incorporated as if specifically restated herein.

13. Carolina Cleaning has been doing business in Beaufort County since 1993. Their business successfully employed over 100 people at its height, due to their reputation for providing well-priced, competitive, and reliable services in a competent and timely manner.

14. The Plaintiff had a long-standing relationship with Beaufort County for over 17 years. In 1998 he bid on and was awarded a Contract with Beaufort County for the "South of the Broad Facilities". Plaintiff successfully performed on this contract and later placed bids during an open market RFP, wherein he was additionally awarded the "North of the Broad" contract. The term for these contracts were five years, with one year renewals. During their succinct terms and

additionally, awarded contracts by Beaufort County to the Plaintiff, over a fifteen-year period, there were no breaches of contract or issue wherein Plaintiff's company was not in good standing, nor were reasons brought forth to remove his company from performing on this or any succinct contracts. Further, there were never occasions to interrupt, stop or cancel these contracts mid-term within the five year terms. It was due to the size and complex nature of these contracts that pricing for supplies, materials and employee scheduling was based on five year increments to provide best pricing for the customer. This was affirmed and recognized by Procurement Director Dave Thomas in email statements.

Thomas also recognizes wrong doing on behalf of Beaufort County with regards to Plaintiff's Contract, stating (his contract has already been cut by 10 %, and if further deductions occur he may protest and request additional monies).

The Plaintiff employed up to 35 local Beaufort County residents to work on this contract at any given time. The service requirements for this contract were stringent and covered the extensive geography throughout areas of Beaufort County. The Plaintiff's company serviced many other State, Federal, and Private contracts as well.

15. When problems began occurring, the Plaintiff repeatedly requested meetings with Dave Thomas to resolve the issues. Plaintiff attempted, through numerous requests via telephone and in writing, administrative correction and still the issues went unresolved by Thomas. In particular, the Plaintiff relayed his concerns about DSN/PALS and the unjustified, unwarranted interference in his contract to Mr. Thomas. The Plaintiff is informed and believes the retaliation against him and his company occurred shortly after he refused to participate in a program designed by Beaufort County DSN / Pals departments requiring him to place and employ disabled persons in his company to clean facilities. The DSN/Pals program was

explained to Plaintiff as a work program to assist in the development of the disabled persons.

16. The DSN/Pals employment program was “excitedly” explained to the Plaintiff by Bill Love, BCDSN Assistant Director, in a manner designed to encourage the Plaintiff’s participation. In particular, as explained to Plaintiff by Love on several occasions, if Plaintiff hired the disabled (Plaintiff) “would not even have to pay minimum wage”. The Plaintiff became suspicious as to the intentions of BCDSN/Pals employees and program operators; this program appeared to him to be “illegal and wrong” and he thus declined participation. Plaintiff believed, as further evidence showed, the ill intent of this program as one that financially exploited the disabled and special needs people in the care of Beaufort County. Further Plaintiff believed the DSN/Pals employees responsible for the creation and implementation of this program lacked the requisite training and knowledge for proper operation and oversight, to include an appropriate understanding of the rigorous level of Federal paperwork required.

17. Plaintiff states that the Defendant described the DSN/Pals program as “a way Beaufort County would make money” off the disabled adults in the County programs. As explained to the Plaintiff these disabled adults would be paid sub-minimum wage, at times only \$1.00 -\$3.00 hourly. The County facilities (**Previously closed: Coosaw Center, Broomfield Center, Scott Center, Sea side Center, Green Street Gym, Port Royal, Lind Brown Centers, St. Helena Gym**) (previously awarded under Plaintiff’s 2010 contract: **Dale Center, Burton Wells Gym & Senior, Booker T Center, Green’s Shell Park and others**) several involved in this proposed enterprise had been previously closed, others removed upon DSN/Pals formation and the development of this scheme. Additional facilities randomly removed from Plaintiff’s (**Burton Wells Gym, Burton Wells Senior, Bluffton Center, Bluffton Gym, Buckwalter Gym and others**) without considerations or opportunity to provide alternative pricing. The

County employees (Mr. Gary Kubic, Ms. Alicia Holland, Ms. Mitzy Wagner and Mr. Bill Love) represented to Plaintiff at separate times they would make three dollars to every one dollar spent in reimbursements from Federal Medicaid and State funds. See Exhibit Sheet attached hereto and incorporated herein. Also see exhibit (meeting minutes from BC council meeting where Mr. Bill Love reports and speech to Beaufort County Council states “we have found a way to make money” and “we can get reimbursed 3 or 4 to 1” for this and “it’s like winning the lottery” as evidence of the true intention of the DSN/Pals program and its collaborators. The focus of the Federal programs and the guidelines for these programs are not intended for a creation of a “for profit” enterprise. Once Plaintiff received FOIA and put these statements together with others and actions only then was the Plaintiff sure of the illegal intent of the program.

Prior to the facts stated in this complaint, Carolina Cleaning’s success led to a series of contracts between Plaintiffs and Beaufort County over an eighteen (18) year period. In fact, in 2011, based on the past success the company and a new signed 2010 contract and the confidence of a 5 year term the Plaintiff began to receive offers to purchase of \$ 900,000.

The business is no longer operational as a result of the Defendants actions claimed here.

18. The manner in which the contracts were renewed and entered into spanned almost two decades (four complete 5 year terms all renewed yearly without issues and was based on a reliance and pattern of pricing and renewal that was most beneficial to both parties)

This pattern of one year renewals with successful five-year required RFP submissions was a benefit for both the Plaintiff and the Defendants to have transparency in negotiation and service in good faith, including best pricing practices and employment stability for this large and cumbersome type contract to service. The Plaintiff had the right to rely on this pattern of contracts and the contract that is at issue of this lawsuit. Plaintiff knew this business and

operation so well that his pricing submitted in the latest 2010 RFP accounted for a savings to Beaufort County and the Taxpayers more than \$200,000.00 per year (or a total of \$1,000,000.00 over the expected new 5-year term).

19. The Contract(s) with Beaufort County through the years were entered in good faith, and fair dealings with the expectation they would be honored and Island Group paid in a timely manner for services rendered. The County continued to add buildings, tasks and contracted work for Island Group / Carolina Cleaning and expressed extreme satisfaction with the contracted performance by the Plaintiff. The renewal and expansion of these contracts became a regular pattern, the renewals included five-year long periods for anticipated pricing expectations and familiarity for employees tasks and the required services which is common in the industry and best for both parties. The Plaintiffs and their employees relied on these contracts and the income stream negotiated by and between the parties to take care of its daily business.

20. The Island Group was considered so trustworthy and competent Beaufort County further awarded them contracts to clean sensitive county facilities, including the Sheriffs DNA Lab, the SWAT Team enclave, County treasurer's office, the Airports (which additionally required rigorous security checks by Homeland Security / FBI background checks and fingerprinting for all employees and owners) the Tax offices, SCDSS State and County Drug offices are some of the high level, restricted facilities.

21. In question is the 2010 contract executed October 25, 2010, as the Defendants breached, methodically and arbitrarily dismantled over time, and which gave rise to the causes of action in this Complaint. The actions and omissions of the Defendants caused actual, collateral and future damage to the Plaintiff and interfered with all of the Plaintiff's contracts because of the need for cross employment with their other contracts and their ability to fulfill those contracts.

These causes of action apply individually to the Defendants named as well as to the County Governmental entity.

FIRST CAUSE OF ACTION: VIOLATION OF PROCUREMENT

22. Paragraphs 1-22 are hereby incorporated as if specifically restated herein.

23. Plaintiffs are informed and believe that employees of Beaufort County, to include the Director and Assistant Director of the Department of Special Needs, the Director and employees of Procurement, the Director of Facilities Management, employees of the Parks and Leisure Department, the Administrator and Assistant County Administrators, CFO's past and current, and the County Attorney participated in a conspiracy to defraud the procurement process, exploit Vulnerable Adults, and abuse Medicaid monies, at the same time breaching the contract with the Plaintiffs, which they placed proper parties on notice at the time they found out about the violations. (Exhibit - Attorney General Letter)

24. In 2010, with the award of a Janitorial Services Contract. Beaufort County employees extorted the awarded contractor during their initial contract year of 2010, in an effort to reduce the contracted price. In 2011, the Director and Executive Director of DSN began pressuring the contractor to hire the disabled in their program and pay sub-minimum wage. Failing that, DSN tried to sub-contract the disabled to this contractor.

25. The Plaintiff refused to hire DSN "consumers" (as they are called) for ten buildings that had been previously closed or rarely used by the county but became part of a 2012 RFP. Three professional contractors submitted bids; the RFP closed on March 22, 2012. It was learned months later that a formal announcement was made only at the County's August 2012 finance meeting and the county's in-house DSN/Pals was awarded the contract, (Exhibit letter from DSN

Director Mitzy Wagner stating they quickly set up to submit their bid) in spite of their lack of business licensing, their acknowledged inability to meet the criteria of the bid, the fraudulent nature of their submitted bids and their several submissions after the RFP close date, and that DSN and their partner, Parks and Leisure Services (PALS) participated in prior in interviews with other bidders where they also had access to the bidders confidential information and bids and after this recommend to the selection committee to award to DSN/Pals. (to view the other bids and vote to award DSN/PALS on line):

http://beaufort.granicus.com/ViewPublisher.php?view_id=2

26. Plaintiff began asking questions, particularly in regard to the Medicaid monies being paid to execute these contracts and the higher costs of labor and transportation that would be required for an untrained workforce and supplies and equipment needed to service the amount of commercial buildings across a large geography. Plaintiff was informed by senior administration officials that *Beaufort County bills the State three times the cost of the invoices so it's a good deal for the County. And because it involved the disabled no one would challenge it.*

27. Defendants created fraudulent bids by using Plaintiff's and others confidential information gained through their official positions. The Defendants "rigged" bids beginning 2012 and 2013. Defendant used an in-house department as a "business entity", made a labor force of unwitting and underpaid disabled people and intentionally misused Medicaid monies to fund and profit from this illicit venture. As the BC executives stated they not just funded but also "handsomely profited" from the State and Federal Governments, which is not aligned with the intention of the disabled work programs. Defendant also avoided compliance with Federal Minimum wage standards, which incurred shortages in appropriate taxes to the State and the IRS. In actuality, the role of DSN Boards and their contractor is to provide "Supported

Employment” (description attached). They are not to be the EMPLOYER or COMPANY. The documentation corroborates corruption, collusion and lack of compliance with the stated objectives of the DSN program and, abuse of Medicaid monies which by law are to be used to fund legitimate programs and salaries.

28. The Plaintiffs stress the importance to comprehend how Beaufort County’s Department of Special Needs (BCDSN) and Beaufort County Parks and Leisure Services (PALS) “gamed” the contract system for this enterprise.

29. Plaintiff is informed and believes that when questions continued to be asked, county employees used intimidation and then retaliation in order to silence the detractors.

30. **September 2010:** Many companies bid on Beaufort County Janitorial Services RFP #3910/100566. It was awarded to the Plaintiff’s company, Island Group Inc. (dba Carolina Cleaning HHI SC.)

31. **August 2011:** Richard Hinline Jr., Beaufort County Contract Specialist, informed Carolina Cleaning they needed to “reduce their existing contract by 10% or the County would not pay their current invoices, the contract would be bid again, and Carolina Cleaning would then possibly lose the contract”. Carolina Cleaning contacted Mark Roseneau, Director Facilities Management, to meet/report county employees were extorting the company. After not being paid and without resolution of the complaint, Carolina Cleaning was forced to agree to the reduction.

32. **Fall 2011 - Spring 2012:** Mitzi Wagner and Bill Love, Director /Assistant Director respectively of BCDSN asked Carolina Cleaning to enter into an arrangement to subcontract their disabled “consumers” as part of Carolina Cleaning’s work crews.

Love initially asked Carolina Cleaning to hire their DSN “folks” and said “they would not even have to be paid minimum wage”. Carolina Cleaning replied they would not pay less than legal, minimum wage. Love responded “DSN does not have the money”. Later Mitzi Wagner inquired of Carolina Cleaning regarding *subcontracting these disabled “consumers”*. Carolina Cleaning questioned the program as explained to him of such a subcontracting arrangement and suggested DSN other options.

33. **February 2012:** While DSN was communicating with Carolina Cleaning, RFP 3910/120221 came up for bid, with a submission/close date of **March 22, 2012**. *Note: according to the county records some of the buildings contained in this bid were either closed or rarely used. Three local companies submitted bids.

34. **June 27, 2012:** An email was sent from M. Wagner to D. Thomas, Joe Penale (PALS Interim Director), Loper, Hill, Morris Campbell (Community Services Director), Roseneau, and cc'd to Love and a “Beth Cody”, re RFP39010/120221 (**over three months after the RFP bid close date**) referencing a discussion they'd had about BCDSN's inability to perform some of the requirements listed in the RFP (When one compares the requirements of the RFP v. this e-mail from Wagner, in addition to the obvious contract violations, BCDSN confirms they were not equipped to handle the bid specifications.) See email from M Wagner to D Thomas including RFP pages containing “OMIT” and “REMOVE” indicating changes be made for items DSN/Pals could not perform.

35. **August 2012:** At the August 20, 2012 Beaufort County Finance meeting, the assembled were formally notified, in person, by Elizabeth Wooten (Senior Buyer – Purchasing), that DSN/Pals was selected, and a memorandum was distributed at this committee meeting, dated August 13, 2012 (video available on BC website). It was signed off on by senior administrative

personnel, in spite of the fact that (among other things) BCDSN's bid(s) were submitted months after the RFP's official close date of 3/22/12, BCDSN's bid(s) were unsigned, *and both the head of DSN, Mitzi Wagner, and PALS Fiscal Technician, Shannon Loper (whose department's buildings became part of the bid after being summarily removed from Carolina Cleaning's contract), were part of the selection committee.* *Note: one of the first buildings removed arbitrarily from Carolina Cleaning's contract was the Senior Center, where Loper worked. Also noteworthy is the dollar amount difference between the June and July BCDSN proposals – \$43,125 - this was achieved by taking buildings away from the existing Carolina Cleaning contract.*

36. In addition to the obvious violations of county and state procurement rules, Beaufort County employees committed (ex.) the following violations of the code (in total at least 20 violations of county/state procurement regulations):

- a) Beaufort County allowed DSN/PALS to use confidential, proprietary information to assemble their bid (see example attached – from the August 8, 2012 DSN Proposal Cost Details – note at bottom of page “**Little Flowers Cleaning Services**”, a commercial cleaning company based in Ridgeland SC (see “**Little Flowers**” **letterhead, bottom of page**))
- b) Proprietary bid/pricing information from the three actual bidders was also used by DSN/PALS in their bid. Plaintiff asked and received FOIA from BC that included several pages from Plaintiff's original bid and proprietary documents regarding pricing returned which was returned to him as part of DSN/Pals proposal.
- c) Beaufort County employees allowed DSN and PALS staff to sit in on bid meetings that discussed the pricing and strategy for this 2012 bid, knowing Wagner, Love and Loper were setting up a competitive, internal cleaning business and Loper worked at one of the buildings that was under contract to Carolina Cleaning.
- d) Beaufort County Purchasing Director and others allowed DSN/PALS to change the dictates of the RFP to better accommodate their requirements. These changes were not consistent with the specifications, both financially and otherwise, from the legitimate bidders. The DSN bid specifications were different (cleaning requirements/times/schedule etc. which directly effects pricing). And, as the Department of Labor will note, **every** DSN proposal had a “line item mark-up”, of 15%- for supplies, travel, and supervision, which is impossible, given a disabled,

untrained workforce would need substantive on-site training and supervision, translating to significant additional overhead and costs.

- e) Beaufort County removed buildings from Carolina Cleaning's existing contract to benefit DSN/PALS (DSN proposals dated 6/18/12 and 7/25/12)
- f) The rigorous paperwork and processes required establishing this "workforce" under the Department of Labor Wage and Hour division section "Special Employment" were either disregarded or not submitted pursuant to the regulations. Documents appear to show fraudulent paperwork filled out by DSN/Pals employees of participation by local companies who have claimed they did not. (see signed affidavits)
- g) Paying "consumers" under the minimum wage, while using Federal Medicaid monies to pay for their supervisors, who were paid well above the minimum wage
- h) According to the Plaintiff and BC records, BCDSN put at least 50 "consumers" into this "employment program" (more heads = more reimbursements). This did not include support staff and additional costs associated with this program.
- i.) Note the difference in the specs required in the 2012 BC RFP and the differences in the specs submitted by DSN and others. Other bidders cooperated with the RFP specs while DSN/Pals did not. Emails copies from M Wagner to D. Thomas show Wagner request (dictate) to change the specs. to benefit DSN/Pals.

37. Further, as related by Plaintiff, in two separate meetings in 2012, after DSN/Pals was awarded this RFP, senior administrators were questioned about the legitimacy of the DSN/Pals contract. Alicia Holland, CFO and Gary Kubic, County Administrator, (with Mark Roseneau, Director Facility Management present at both) stated "***this is a good deal for Beaufort County – they "bill" or "receive back" three times from the State of South Carolina what they spend on these programs***".

38. The Director of Procurement, Dave Thomas, was questioned about these procurement violations and BCDSN taking over existing contracted work, he replied: "***there was nothing that could be done, as the county was going to give the work to the BCDSN program***" and "***no one would challenge it as had to do with helping the disabled.***"

39. South Carolina Code § 43-35-10. Definitions.

- (1) "Abuse" means physical abuse or psychological abuse.
- (2) "Caregiver" means a person who provides care to a vulnerable adult, with or without

compensation, on a temporary or permanent or full or part-time basis and includes, but is not limited to, a relative, household member, day care personnel, adult foster home sponsor, and personnel of a public or private institution or facility.

(3) "Exploitation" means:

- (a) Causing or requiring a vulnerable adult to engage in activity or labor which is improper, unlawful, or against the reasonable and rational wishes of the vulnerable adult. Exploitation does not include requiring a vulnerable adult to participate in an activity or labor which is a part of a written plan of care or which is prescribed or authorized by a licensed physician attending the patient;
- (b) an improper, unlawful, or unauthorized use of the funds, assets, property, power of attorney, guardianship, or conservatorship of a vulnerable adult by a person for the profit or advantage of that person or another person; or
- (c) causing a vulnerable adult to purchase goods or services for the profit or advantage of the seller or another person through: (i) undue influence, (ii) harassment, (iii) duress, (iv) force, (v) coercion, or (vi) swindling by overreaching, cheating, or defrauding the vulnerable adult through cunning arts or devices that delude the vulnerable adult and cause him to lose money or other property.

(4) "Facility" means a nursing care facility, community residential care facility, a psychiatric hospital, or any residential program operated or contracted for operation by the Department of Mental Health or the Department of Disabilities and Special Need

40. By way of identification of the named Defendants /or below referenced "County Representatives" that made representations or took action on behalf of Beaufort County or acted

outside their office to the Plaintiffs and /or operating on behalf of "Beaufort County" and the
taxpaying constituents are the following named representatives:

SECOND CAUSE OF ACTION: BID-RIGGING/ COLLUSION/INTERFERENCE

41. Paragraphs 1-41 are hereby incorporated as if specifically restated herein.

42. Under Freedom of Information Act Plaintiff requested documents regarding Beaufort
County programs relative to:

a.) DSN/Pals program and bids submitted by DS/Pals and other bidders. Upon receipt
Plaintiff learned his own proprietary, confidential information was contained within the
DSN/Pals proposals.

This information had been discussed by Plaintiff in meetings with D. Thomas,
M. Roseneau, (and emailed to B. Hill) as the Plaintiff was suggested options and adjustments
to his remaining contracted work, once DSN/Pals awarded parts of his contracted
work. (Exhibit)

Upon closed inspection of the documents Plaintiff noted the proposal submission dates
date for DSN/Pals was different from the requirement for the other bidders, including the
Plaintiff. Plaintiff made additional FOIA requests for internal emails and communications and
related documents, which were instrumental in exposing the bid rigging, alleged collusion,
and interferences with his contract.

Upon further research and inspection and FOIA Plaintiff noticed discrepancies with Defendants
set up, organization and operations relating to the DSN work programs Defendants were
operating as required by the Federal and State Governments.

b.) These proprietary documents were used by Plaintiff in previous meetings with D.

Thomas and M. Roseneau in discussions to adjust his original contract after BC decided to extort 10 % from his original contract and remove at random increments buildings and give to the new DSN/Pals program with no opportunity to match or considerations. (Exhibit email to B. Hill, M. Roseneau) to present options and adjustments his remaining contracted work after being removed from his contract and given to the DSN/Pals program.
(Exhibit).

c.) Upon closer look he noticed the varying dates that the DSN/Pals proposal was submitted which were different from the date required for submissions.

d.) Plaintiff began reviewing all items received from the FOIA and asked for additional and found many questionable actions by BC.

e.) Thomas received requests from DSN director dictating items to be removed from their copy of the RFP for North of the Broad that they were not able to perform. Thomas granted these changes with no copies or similar sent to other bidders.

(Exhibit)

43. The practices listed above are in direct violation of *South Carolina Code § 2-532. - Reporting of anticompetitive practices.*

“When for any reason collusion or other anticompetitive practices are suspected among any bidders or offerors under this division, a notice of the relevant facts shall be transmitted to the state attorney general and the county attorney” Also these acts and omissions are in direct violation of the language contained in the Contract between Plaintiff and Defendant (s).

44. The Plaintiffs placed the South Carolina Attorney General on written notice and preserved his causes of action. It is the actual violation of procurement that gives rise to all the other underlying causes of action set out below:

THIRD CAUSE OF ACTION BREACH

45. Paragraphs 1- 45 are hereby incorporated as if specifically restated herein.

46. The South Carolina Tort Claims Act provides that the State of South Carolina, an agency, a political subdivision, and a governmental entity are liable for their torts in the same manner and to the same extent as a private individual under like circumstances, subject to the limitations upon liability and damages, and exemptions from liability and damages contained therein. S.C. Code Ann. § 15-78-40 (2005). The provision containing the exceptions to the waiver of immunity provides that a governmental entity is not liable for a loss resulting from employee conduct outside the scope of his official duties or which constitutes actual fraud, actual malice, intent to harm, or a crime involving moral turpitude. S.C. Code Ann. § 15-78-60(17).

47. **SECTION 15-78-70.** Liability for act of government employee; requirement that agency or political subdivision be named party defendant; effect of judgment or settlement.

(a) This chapter constitutes the exclusive remedy for any tort committed by an employee of a governmental entity.

(b) Nothing in this chapter may be construed to give an employee of governmental entity immunity from suit and liability if it is proved that the employee's conduct was not within the scope of his official duties or that it constituted actual fraud, actual malice, intent to harm, or a crime involving moral turpitude.

48. The Plaintiff is informed and believes that the Defendants at least negligently and he is informed willfully and intentionally and with malice Breached the Contract and continued to breach the contract and used confidential information and colluded and conspired to use his confidential information and cause harm and damage the Plaintiff. There was a Contract, the Plaintiff had the right to rely on the Contract, it was dismantled, behind closed doors, under

multiple acts of collusion by the Defendants, or persons named below in the Complaint without any consideration or due process or transparency to the Plaintiff.

49. The Plaintiff is informed and believes a Fraud and Misrepresentation occurred by the acts and omissions of the Defendants and named county representatives herein.

FOURTH CAUSE OF ACTION: FRAUD

50. Paragraphs 1- 50 are hereby incorporated as if specifically restated herein. This cause of action is directed to each Defendant;

51. Fraud/Misrepresentation

- (a) A representation(s) was/were made;
- (b) It was false
- (c) It was material
- (d) Defendants' knew of falsity
- (e) Defendants' intended that representation be acted on;
- (f) Plaintiffs 'were ignorant of falsity
- (g) Plaintiffs' reliance
- (h) Plaintiffs' right to rely thereon;
- (i) Plaintiffs' consequent and proximate injury;

FIFTH CAUSE OF ACTION: TORTIOUS INTERFERENCE WITH CONTRACTUAL RELATION

52. Paragraphs 1- 52 are incorporated as if restated herein.

53. The Plaintiff is informed and believes that a Tortious Interference with Contract Rights occurred. He requests to recover all damages for intentional interference with prospective contractual relations and actual contractual relations. The plaintiff is informed and believes that: (1) the defendant(s) intentionally interfered with the plaintiff's potential and actual contractual relations; (2) for an improper purpose or by improper methods; and (3) which causes injury to the plaintiff. The Plaintiff is informed and believes that elements of recoverable damages include the pecuniary loss of the benefits of the contract or prospective contract, consequential

losses for which the interference is the legal cause, lost profits, and loss of business good will. South Carolina is among the majority of jurisdictions that have recognized tort liability for intentional interference with a person's economic relationship with a third party. Tort liability is imposed for intentional interference with the performance of an existing contract or the formation of a prospective one.

54. An essential element to the cause of action for tortious interference with contractual relations requires the intentional procurement of the contract's breach. Where there is no breach of the contract, there can be no recovery. The clear use of the Defendants Private and Confidential bidding information is a prima facie breach of Contract, among the other breaches. The Plaintiff is informed and believes that he underlying Breach of Contract was created and the element wherein it was later discovered the intentional interference with his contractual agreement with the county for the commercial cleaning contract.

55. The Plaintiff is informed and believes that interference with contractual relations was intentional, willful, and premeditated and that interference to be actionable. A claim of intentional interference with contract can be based on interference with a contract terminable at will. The elements necessary to establish the tort of intentional interference with an existing contract are: (1) a contract; (2) the defendant's knowledge thereof; (3) the defendant's intentional procurement of its breach; (4) the absence of justification; and (5) damages resulting therefrom.

56. The Plaintiff is informed and believes the Defendants acted in RETALIATION to him. He refused to break the law and refused to participate in the Beaufort County's questionable unlawful acts. Because he refused they intentionally set out to breach the contract with Plaintiffs causing significant damage to the Plaintiffs. In addition to damaging the Plaintiffs it caused him to go out of business and more than 50 local people lost their jobs as a result of Beaufort

County's acts. Beaufort County's acts caused significant additional taxpayer monies while breaching a contract with Plaintiffs.

SIXTH CAUSE OF ACTION: UNJUST ENRICHMENT and BREACH of SOUTH CAROLINA CODE § 2-532 Reporting Anti-Competitive Practices"

57. Paragraphs 1- 57 are incorporated as if restated herein.

58. The Plaintiff is informed and believes that the Defendants were unjustly enrichment by their willful breach, misrepresentation, manipulation of bids, and other fraudulent acts and omissions and that they gained unfairly from the manner in which they breached the contract and treated the Plaintiff. In general, a court will consider the following questions when proving unjust enrichment:

- (a) The Plaintiff is informed the defendant enriched by the activity of the plaintiff;
- (b) The enrichment occurs at the expense of the plaintiff;
- (c) The enrichment unfair or unjust;
- (d) There are no defenses available to the defendant;

59. The Plaintiff seeks full damages, to include actual collateral and future damages from Defendants.

SEVENTH CAUSE OF ACTION: UNFAIR TRADE PRACTICES as to Individuals named as Defendants in this action.

60. Paragraphs 1- 60 are incorporated as if restated herein.

61. Plaintiff is informed and believes that the individual named Defendants are in violation of the *South Carolina Unfair Trade Practices Act, SC. Code 39-5-10 and 39-5-140*. Plaintiffs are informed they have suffered actual damages in an amount of no less than set out below in the damages portion of this Complaint. Plaintiffs are informed and believe they are due treble damages, interest and attorney fees as a result of the unfair and deceptive acts of the Plaintiffs. Plaintiffs are informed and believe these unfair acts affect the public. Therefore, the people of

the state of South Carolina rather than just Plaintiffs may be at risk for unfair increases in tax money being used in a manner that is not in accordance with the duty of office. Evidence of these acts and omissions are set out as partial exhibits incorporated herein and the below paragraphs as background of the chain of events or representations made.

62. The Defendants were both "Vendor and Customer" and contracting in house for these services. This had no transparency and is a violation of SCDDSN employment services standards found in the SCDDSN rules and regulations.

64. Plaintiff is informed and believes the Defendants participated in the following exploitation of Special needs and disable people including making it mandatory for some of the special needs people participate in "cleaning enclaves" and making it mandatory regardless of their skill set or preference in vocation.

EIGHTH CAUSE OF ACTION: CONSPIRACY INDIVIDUAL DEFENDANTS

Paragraphs 1-64 are hereby incorporated as if specifically restated herein.

Plaintiff is informed and believes:

65. Stuart Rodman – Beaufort County Councilman

Rodman has been the County Councilman, for District 11 and is presently in his third term of office. He was the Chairman of the Finance Committee during the period the Plaintiff's contract was being breached, subverted and interfered with to the detriment of the Plaintiff without meaningful consideration or disclosure. As Chairman, and upon review of the August 13, 2012 memorandum, Rodman should have called an immediate halt to the meeting and requested County Council meet to deal with their emergent employee problem, that being Gary Kubic, along with Kubic's employees, who were apparently manipulating the procurement system.

Rodman had a fiduciary responsibility pursuant to the County Procurement Ordinance to report this suspected wrongdoing to the Attorney General; further, given the indication of Exploitation of Vulnerable Adults, Rodman had a further duty pursuant to State Law, which mandates reporting of the suspected exploitation to SLED, as well as the Attorney General's office for suspected Medicaid Fraud.

66. Gary Kubic – County Administrator

Kubic had a duty to know of BCDSN/PALS apparent contract rigging scheme, beginning with the coercion by employees of the County Purchasing Department of the Plaintiff's 2010 contract. They unilaterally reduced said contract by 10% and withheld pay until Plaintiff signed a letter prepared by Beaufort County, this unilateral breach allowed for no new consideration. This withholding of all payments from the initial breach of the contract forced the Plaintiff to contact senior county administration both before and after August 12, 2013 for assistance in (initially) dealing with Richard Hine (County Contract Specialist/Purchasing). According to meetings between the Plaintiff, Kubic, Dave Thomas, Alicia Holland and others, Kubic extolled the virtue of the "*profits*" made by billing the State DDSN for three (3) times the amount of their invoices. Further and by Kubic's initials on the August 13, 2012 document he demonstrated an obvious preference toward BCDSN/PALS being awarded these illegal contracts. However, as the County Administrator Kubic was responsible for the conduct of the employees who served under him; further, he knew or should have known and had a duty to know the laws under which the County must conduct its procurement processes. In addition, Kubic was instrumental, along with Joshua Gruber, Bryan Hill and others, in the intimidation and retaliation against the Plaintiff, to include the cover up of an alleged assault by Hill and the release of the Plaintiff's confidential information to third parties. Including information with State agencies. Also, by causing this

damage to the Plaintiff the taxpayers now bear the additional costs, based on the series of unfortunate acts that occurred thereafter and appear to be continuing to occur with BCDSN. He acted outside the scope of his office and did so grossly, recklessly and intentionally with retaliation to cause damage. Which is why he is being sued individually. Honoring the original contract would have saved Beaufort County money and would have provided the services necessary for commercial cleaning.

67. Joshua Gruber was the Beaufort County Attorney at time of Plaintiff's 2010 –five-year renewal contract.

Plaintiff is informed and believes Gruber shared in the responsibility for the breach of contract, fraud, intimidation, retaliation and other causes of action set out herein both as a County representative and individually. Gruber failed the County repeatedly, and the taxpayers and the Plaintiff. He acted outside the scope of his office and did so grossly, recklessly and intentionally with retaliation to cause damage. Which is why he is being sued individually, to include the unfair trade practices. First, when accusations of coercion were raised by the Plaintiff to Gruber; then at the August 20, 2012 Finance Committee meeting, with document package containing the August 13, 2012 memorandum, presented to the committee, and finally, when county employees, to include Gruber, directed and participated in the intimidation and retaliation against the Plaintiff, to include Gruber's role in covering up the alleged assault by Hill and sharing confidential information about the Plaintiff with third parties. Gruber was the County attorney at that time and still is employed with Beaufort County. It is the purview of the county attorney(s) to review contracts and agreements to assess if there is anything untoward that may put the County in an unfavorable and/or untenable legal position that may violate State and/or Federal laws. Given Gruber's position and having full and complete access to the August

20, 2012 document package and August 13, 2012 memorandum, Gruber should have immediately interceded pursuant to County ordinance "*Section 2-532 Reporting of Anti-Competitive Practices*" and called for an emergency session of County Council to inform them of this illegal bid rigging scheme, and reported the employees responsible, to include county officials Kubic and Hill, to the appropriate authorities. Instead, Gruber apparently approved the scheme and then participated in the harassment, retaliation and cover up of an assault involving Hill and a member of the Plaintiff's family. Gruber also blocked the Plaintiff's access to FOIA documents and made a conscious decision to communicate to Beaufort County employees via their personal email addresses to circumvent future inquiries. Further Gruber and others shared confidential information about the Plaintiff with unauthorized third parties and state agencies. Also, by causing this damage to the Plaintiff the taxpayers must bear the additional costs, based on the series of unfortunate acts that occurred thereafter with BCDSN. Honoring the original contract would have saved Beaufort County money and would have provided the services necessary for commercial cleaning. The provider agency is precluded from being the "seller" and the Purchaser". They could not contract with another department.

68. Mizi Wagner was the DSN Executive Director

At the time the Plaintiffs contract was being interfered and breached in a tortious interference with contractual relations and other named causes of action. Wagner was responsible for directing the DSN mission, pursuant to state and federal rules and regulations. As the Executive Director, she was considered the expert on all programs within the local DSN purview, to include the rules and regulations for supported employment, to include compliance with all State and Federal laws, to include 14C certificate holders may not continue to employ any person at

sub minimum wage unless the person has received career counseling; access to the VR agency; and information about self-advocacy, self-determination and peer mentoring opportunities from an entity without a financial interest in the person's employment.

<https://www.dol.gov/odep/pdf/ChapterTwo14cProgram.pdf> compliance for disabled consumers.

Plaintiff is informed it was Wagner's responsibility to lead the department in all matters pertaining to fiscal policies, including but not limited to, knowledge of the County's procurement process. Causing the Plaintiff damage, it has costs more tax money to the taxpayers based on the series of unfortunate acts that occurred thereafter with DSN. Honoring the original Contract would have saved Beaufort County money and would have provided the services needed for commercial cleaning.

69. Bill Love – (Former) DSN Assistant Executive Director, (now Current Executive Director)

Love was responsible for compliance with all policies and procedures related to the DSN programs and, according to the provisions of the position, take a leadership role in the fiscal management of agency revenue and expenses providing the Executive Director updates and shared decision making on fiscal issues. Further, be conversant in all state and federal rules and regulations regarding County procurement ordinances and State and Federal requirements for Supported Employment and the submission of documentation of the same to the Department of Labor's Compliance Division for 14C worker programs. Causing the Plaintiff damage, it has costs more tax money to the taxpayers based on the series of unfortunate acts that occurred thereafter with DSN. Honoring the original Contract would have saved Beaufort County money and would have provided the services needed for commercial cleaning.

70. Shannon Loper – PALS Fiscal Technical III Loper's position in PALS precluded any role in DSN's supported employment program.

Loper used confidential bidding information to subvert his contract and used personal relationships and personal emails to interfere with his contract and cause him damage and harm to the Plaintiff. She also interfered with third parties (witnesses) and an investigation. He is informed she operated outside her official capacity to interfere and "instruct" BC employees to dismantle Plaintiff's contract causing damage and harm to Plaintiff directly and businesses.

Causing the Plaintiff damage, it has costs more tax money to the taxpayers based on the series of unfortunate acts that occurred thereafter with DSN. Honoring the original Contract would have saved Beaufort County money and would have provided the services needed for commercial cleaning.

71. Mark Roseneau – As Director, Facility Management.

Roseneau was directly involved in almost every salient conversation; meetings and/or email referencing the alleged rigged bids, as well as the coercion of Plaintiff of Island Group's 2010 contract. He was the Contract overseer and as such he made certain representation to the Plaintiff he had the right to rely upon and he did so to his detriment. The Plaintiff is informed this Defendant knew the representations he made were not true but continued to make these representations anyway. As early as August 2011 Roseneau was implored by the (then) contracted vendor, Carolina Cleaning, to intercede when they alleged their company was being coerced by county employees and later, when Roseneau received information county employees from other departments were rigging bid(s). Roseneau had a fiduciary responsibility to report this collusion, as well as the alleged criminal misconduct, to the authorities. Among other

representations, interference and use of information he directly caused the Plaintiffs damage. Also, by causing the Plaintiff damage it has costs more tax money paid by the taxpayers based on the series of unfortunate acts that occurred thereafter with DSN/Pals. Honoring the original Contract would have saved Beaufort County money would have been transparent and would have provided the services needed for commercial cleaning in a competent legal manner for the community.

72. Elizabeth Wooten – As Procurement Officer and Senior Buyer,

Part of her obligation is to be well versed in the appropriate and legal process of county and state procurement regulations. Wooten was copied on almost all of the relevant documentation to the contracting scheme. Further, Wooten was the County employee who presented the BCDSN (video on BC website) proposal on behalf of the purchasing department at the August 20, 2012 County Finance Committee meeting, and extolled the virtues of Beaufort County awarding itself its own contract, which was clearly in violation of the South Carolina Department of Disabilities and Special Needs published “Employment Services Standards” and further exploited the disabled under the DSN/Pals SCHEME. Also, by causing the Plaintiff damage it has cost more tax money paid by the taxpayers based on the series of unfortunate acts that occurred thereafter with DSN/Pals. Honoring the original Contract would have saved Beaufort County money would have been transparent and would have provided the services needed for commercial cleaning in a competent legal manner for the community.

73. David Thomas – As Director of Purchasing and the head of Beaufort County Procurement

Mr. Thomas is one of the most culpable in this apparent rigging of commercial cleaning contracts, as his position required allegiance to both the County’s published “Code of Ethics” for

Purchasing as well as State and Federal regulations governing it. Based upon information including voluminous email communication Dave Thomas knew or should have known of the egregious violations being committed by he and his direct employees, and others. In addition, Thomas was included on almost all of the collusive documents and emails and personally signed off on the August 13, 2012 Finance Committee Memorandum. Thomas also colluded with M. Wagner/ S. Loper and agreed to changes to the RFP 2012 dictated to him by Wagner to accommodate / favor the DSN/Pals program, purposefully keeping these changes from other bidders. By causing the Plaintiff damage it has cost more tax money paid by the taxpayers based on the series of unfortunate acts that occurred thereafter with DSN. Honoring the original Contract would have saved Beaufort County money would have been transparent and would have provided the services needed for commercial cleaning in a competent legal manner for the community.

74. Richard Hinline Jr. – County, Contract Specialist

Mr. Hinline Jr. has an obligation and duty to be versed in the subject of contracts. He knew or should have known coercing the Plaintiff to re-negotiate terms before the contract was up for renewal was a blatant violation of County and State regulations. Hinline should also have known that withholding payment from a vendor by force and threatening to cancel the contract unless Plaintiff agreed to the County's reduction revisions was illegal. Hinline had a fiduciary obligation pursuant to the County's purchasing ordinance to report illegal and/or criminal conduct directly to the State Attorney General and the County Attorney. Causing the Plaintiff damage, it has cost more tax money paid by the taxpayers based on the series of unfortunate acts that occurred thereafter with DSN/Pals. Honoring the original Contract would have saved

Beaufort County money, would have been transparent and would have provided the services needed for commercial cleaning in a competent legal manner for the community.

75. Alicia Holland – As Chief Financial Officer

Has a fiduciary duty in her position and therefore recognized via the plethora of documentation, emails and particularly the memorandum of August 13, 2012 the South Carolina Code violations and fraudulent practices being committed by BCSN/Pals County purchasing employees, and others. Further, as CFO Holland had a duty to be been mindful of basic procurement and contractual procedures, and interceded when she initially became aware a county vendor's payments were being withheld and coerced. Further and pursuant to reported conversations between Holland, Beaufort County Administrator Kubic and others, she's alleged to have seen BCDSN as a "profit center" and a way to exploit (Federal Medicaid) monies the county was receiving from the State DDSN. Causing the Plaintiff damage it has costs more tax money paid by the taxpayers based on the series of unfortunate acts that occurred thereafter with DSN / Pals. Honoring the original Contract would have saved Beaufort County money would have been transparent and would have provided the services needed for commercial cleaning in a competent legal manner for the community.

76. J. Bryan Hill, (former) Deputy County Administrator

In his role thereof and upon review of the August 13, 2012 memorandum to the Finance Committee, should have immediately recognized the illegal acts and fraudulent practices contained therein. Hill had a fiduciary responsibility to report these alleged illegal contracts and that the employees under him were acting well outside the scope of their positions. Further, Hill should have reported the transgressions to the State Attorney General, pursuant to county procurement rules and regulations, and taken additional steps as the Deputy Administrator to

rectify the illegalities committed against the Plaintiff and other legitimate bidders. Hill played a roll in this contracting scheme and specifically included S. Loper.

It was through Loper, and Hill's personal emails at times from County attorney Joshua Gruber, to discuss retaliation against the Plaintiff. These relationships in particular that contributed to the contracting scheme, the retaliation against the Plaintiffs and the alleged assault that was reported to others. Said retaliation and alleged assault reported by the Plaintiff to County Administrator Gary Kubic and others.

77. Brian Baird, BCSO Detective –

In his role as Investigator for the Beaufort County Sherriff's office received report and evidence including witness names and statements and details regarding an assault on Plaintiff's minor child in one of the Beaufort County facilities by a County Executive. Detective Baird did not Investigate or look into this report as required by law. (Exhibit)

78. These actions violated the South Carolina Tort Claim Act. The causes of action and the elements for breach of contract, unfair trade practices, tortious interference with contractual and potential contractual relations, fraud, and other causes of actions pled are claimed against the Defendants. Causing the Plaintiff damage, it has cost more tax money paid by the taxpayers based on the series of unfortunate acts that occurred thereafter with DSN. Honoring the original Contract would have saved Beaufort County money would have been transparent and would have provided the services needed for commercial cleaning in a competent legal manner for the community.

79. The Plaintiff is informed and believes the Defendant engaged in collusion, fraud, and breach of contract, misrepresentation, Tortious Interference with contractual and potential contractual relations, Unjust enrichment and retaliation, manipulation of bidding, (more than 20

Beaufort County / State Procurement Codes violated) in regard to actions by Beaufort County employees (Exhibit - Division 4 Procurement) :

80. **September 2010:** Several companies bid on County Janitorial Services RFP #3910/100566. It was awarded to Island Group Inc. (dba Carolina Cleaning HHI SC).

81. **August 2011:** Richard Hinline Jr., BC Contract Specialist, informed Carolina Cleaning they needed to “reduce their existing contract by 10% or the County would not pay their current invoices, the contract would be bid again, and Carolina Cleaning would then possibly lose the contract”. Carolina Cleaning contacted Mark Roseneau, Director Facilities Management; to meet/report county employees were coercing the company. After two months of payments withheld by the County and without resolution of the complaint, Carolina Cleaning was forced to agree to the reduction.

82. **Fall 2011 - Spring 2012:** Mitzi Wagner and Bill Love, Director /Assistant Director respectively of BCDSN asked Carolina Cleaning Services to enter into an arrangement to subcontract their disabled “consumers” as part of Carolina Cleaning’s work crews.

83. Love initially asked Carolina Cleaning to hire their DSN “folks” and said “they would not even have to be paid minimum wage”. Plaintiff refused and indicated they would not pay less than legal, minimum wage to anyone. Shortly thereafter Mitzi Wagner inquired of Carolina Cleaning regarding “subcontracting these disabled “consumers”. Plaintiffs questioned the such an unusual subcontracting arrangement and after researching related programs offered DSN some ideas on how to proceed forward within and in addition to the contract that already was awarded.

84. **February 2012:** While DSN was communicating with Plaintiffs, RFP 3910/120221 came up for bid with a submission/close date of **March 22, 2012**. Three local companies submitted bids.

85. **June 19, 2012:** Wagner's presentation to the DSN Board, memorialized in published minutes on June 19, 2012, speaks for itself in reference to DSN and Commercial Cleaning contracts.

86. **June 27, 2012:** An email was sent from Wagner to Thomas, Joe Penale (PALS Interim Director), Loper, Hill, Morris Campbell (Community Services Director), Roseneau, and cc'd to Love and a "Beth Cody", re RFP39010/120221 (**over three months after the RFP bid close date**) referencing a discussion they'd had about BCDSN's inability to perform some of the requirements listed in the RFP.

87. **August 2012:** At the August 20, 2012 Beaufort County Finance meeting, the assembled were formally notified by Elizabeth Wooten (Senior Buyer – Purchasing) BCDSN was selected, and a memorandum dated August 13, 2012 distributed. It was signed off on by senior administrative personnel, in spite of the fact that BCDSN's bid(s) were submitted months after the RFP's official close date of 3/22/12, BCDSN's bid(s) were unsigned,

they were not a vendor, and state regulations forbid their actions in regard to employment of disabled persons. Both the head of DSN, Mitzi Wagner, and PALS Fiscal Technician, Shannon Loper (whose department's buildings became part of the bid after being summarily removed from Carolina Cleaning's contract), were part of the selection committee.

One of the first buildings removed arbitrarily from Carolina Cleaning's contract was the Bluffton Senior Center, where Loper worked.

88. In addition to the clear and convincing violations of county and state procurement rules, Beaufort County employees committed the following violations of their procurement code (including but not limited to those set out below as examples of county/state procurement regulations set out below)

- a) Beaufort County allowed DSN/Pals to use confidential, proprietary information to assemble their bids, notably documentation submitted by Carolina Cleaning. Proprietary pricing information from (other legitimate) bidders was also used by DSN/Pals in their bid(s).
- b) Beaufort County employees allowed DSN and PALS staff to sit in on bid meetings that discussed the pricing and strategy and proprietary documents for this 2012 bid, knowing Wagner, Love and Loper were setting up an illegal, in-house internal cleaning "business / operation" with intentions to compete.
- c) Beaufort County allowed DSN/Pals to change the dictates of the RFP to better accommodate their "limited" abilities to perform. These changes were not consistent with the specifications, both financially and otherwise, from the legitimate bidders. The DSN/PALS bid specifications were different (cleaning requirements/times/schedules, etc.). And every DSN/Pals proposal had a "line item mark-up" of 15%- for supplies, travel, and supervision, which is impossible, given that a disabled, untrained workforce would need substantive on-site training and supervision, transportation translating to significant additional overhead and costs. Volumes emails exist to show this collusion.

- d) Beaufort County removed buildings at random from Carolina Cleaning's existing 2010 contract to benefit DSN/Pals and added the previously awarded facilities to (DSN/Pals "contract" proposals dated 6/18/12 and 7/25/12). This created additional "billings and expenses" for DSN/Pals thus increasing the reimbursements to Beaufort County from State and Federal monies.
- e) Paying "*consumers*" under the minimum wage, while using Federal Medicaid monies to pay their supervisors, who were paid well above the minimum wage
- f) DSN/Pals put at least 50 "consumers" into this "employment program" (more heads = more reimbursements). This did not include support staff and additional costs associated with this program. The State requirements do not permit such an enterprise.

88. The Plaintiff is informed and believes that they are owed money back from the Defendants in actual and treble damages, consequential damages and future and attorney fees and costs to be determined:

89. The Plaintiff is informed and believes that the Defendants knowingly and intentionally took advantage of him, flagrantly lied and intentionally worked against him. They abused their office, acted outside the scope of authority and participated in personal Retaliation.

90. Plaintiffs requests further that they request the right to Amend the Pleadings upon the Discovery of all lease information and property management documentation by the Plaintiff in course of formal discovery once this case is filed in Circuit Court.

91. The Plaintiff is informed and believes that the Plaintiffs has incurred treble damages and attorney fees and that Defendants should be responsible for any further fees that are incurred in this litigation.

NINTH CAUSE OF ACTION: ASSUALT OF MINOR

92. Paragraphs 1- 92 are hereby incorporated as if specifically restated herein.

93. The Plaintiff is informed and believes that Defendant Bryan Hill acted outside his position and engaged in an alleged Assault; Battery; and Retaliation directly on Plaintiff's minor son in a gym in Bluffton. The Plaintiff is informed and believes that the Court should grant any other relief that it deems just and proper as to this cause of action.

- a) Plaintiff learned of an assault on his minor child and discussed with witnesses known to have been present. After confirmation of the incident by discussing with witnesses present at the time of incident Plaintiff was advised to report what happened.
- b) Plaintiff reported the alleged assault directly to Brian Baird of the BCSO, Baird suggested he inform Kubic as well (playing an audio for both) Plaintiff reported many details learned of the incident and detailed items including phone calls made to witness and courthouse mutual friends of both Hill and witness.
- c) Plaintiff reported such details as Hill asking where witness place of business was located and reported different phones used by Hill to make calls.
- d) Plaintiff played an "audio tape" of the minor's description of the alleged assault. Kubic mentioned he would perform a third party investigation and "a firm" would be brought in to investigate. Kubic promised to communicate findings to Plaintiff, and to keep the communications on this between Plaintiff, Baird, himself and any third party investigator. Plaintiff never heard from Kubic or Baird or any third party investigator about this incident again.
- e) FOIA information shows Loper (who should have never known or ever been involved with this report) visited the witness place of business 3 days after the

report, asking questions of the witness about the incident. The witness discussed with Plaintiff in person and over phone calls he had received from Hill during this time discussing the incident and re-counting other calls to Hill from a "person" at the courthouse that the two mutually knew asking questions of Hill about the incident, Hill making statements to the "person" at the courthouse recounting "something happening" and mentioned the Plaintiff's son's name. In the days following the report Hill also called the witness and asked the location of his place of business. FOIA shows Loper mentions Hill was in the gym the night of the incident, as well as showing up at the witness's place of business just days after the report.

- f) FOIA shows Gruber used personal emails to communicate to Hill and Loper to question and discuss and receive statements about the incident. This would only occur if the intent was to intentionally circumvent further inquiries. FOIA shows no involvement of others to investigate this incident. Personal emails should not have been used and it appears there was a "conspiracy" to interfere with the investigation and the Plaintiff's contract.

94. That while the Plaintiff is informed and believes that the underlying Complaint in this matter ultimately he will be entitled to statutory and or common law relief and all other remedies and relief available to him, he seeks interim / *Temporary relief and Injunction from the Court under S.C.R.C.P 65 ad 66.*

95. The Plaintiff is entitled to seek a TRO without Notice to Defendants pursuant to Rule 65, as he is suffering extensive irreparable injury including but not limited to consequences and damages before notice can be served and a hearing take place. This must stop immediately.

96. Due to the clear out of control nature of the violation of procurement and use of confidential bid information;

97. That due to the imminent burden to the County of continual fraud as seen by the over-extended funds this is an overwhelming irreparable injury to the Plaintiff. Therefore, he is informed that pursuant to *Rule 66 of the SCRPC* that a receiver be appointed by this Court together with all further equitable relief as this Court may award. The Receiver should assume all administration of overseeing a full accounting of this Program and coordinate with State Auditors of these programs.

TEMPORARY RELIEF ORDER / TAXPAYER STANDING TO SUE

In numerous recent cases, this Court has found that Standing is not inflexible and standing may be conferred upon a party when an issue is of such public importance as to require its resolution for future guidance. *Sloan v. Dep't of Transportation*, 365 S.C. 299, 618 S.E.2d 876_ (2005) (finding Sloan had [642 S.E.2d 742] standing to bring actions for alleged violation of statutory bidding violations by the DOT); *Sloan v. Filkins*, 362 S.C. 430, 60 S.E. 2d 579 (2005) (holding Sloan had standing to challenge legislative enactment). Additionally, both this Court and the Court of Appeals have found standing in other cases of important public interest without requiring the plaintiff to show he has an interest greater than other potential plaintiffs. *See id*; *Sloan v. Sanford*, 357 S.C. 431_, 593 S.E.2d 470_ (2004) (holding standing to challenge governor's commission as officer in Air Force reserve); *Sloan v. Greenville Cty.*, 36 S. 548, 590 S.E.2d 338, 347 (Ct.App.2003) (holding plaintiff had standing to bring declaratory judgment action alleging county failed to comply with ordinances governing procurement). Furthermore, under the public importance exception, may be conferred upon a party "when an issue is of such public importance as to require its resolution for future guidance." *Baird v. Charleston Cty.*, 333 S.C. 519, 531, 511 S.E.2d 69, 75 (1999). SPAPW v. SC Dept. of Natural Resources, 345

S.C. 594, 550 S.E.2d 287 (S.C., 2001) To have standing, one must have a personal stake in the subject matter of the lawsuit.

98. The Sworn testimony indicates that in these programs implementations were based on DSN Labor Program participants as test participants. They have NEVER participated in the Program. See the Affidavits provided herein. The Plaintiff has no confidence that this state agency can adequately oversee or regulate this program.

WHEREFORE, Plaintiff prays:

1. Initially inquire into issues presented by the Plaintiffs in addition to the interim relief issue any Ex Parte relief as may be just and proper;
2. Appoint a RECIEVER OR ORDER A FORENSIC ACCOUNTING of all money used for Beaufort County commercial cleaning and any nexus to DSN;
3. Set a hearing as soon as possible, for the TRO / Temporary Injunction and Appointment of a Receiver, after Notice to the Defendants, for a minimum of 3 hours to hear any further argument or review any further supporting documentation.
4. Maintain Jurisdiction over all parties and subject matter at hand;
5. Allow the Plaintiff after further proceedings and efforts and discovery to revise and/or amend the pleadings so as to provide a full and final disposition of any and all claimed remedies that might be sought;
6. Without limit, allow the Plaintiff any and all further remedies and/or relief to which he and his family might be entitled, and
7. Grant and allow any and all such yet to be determined rights and remedies that the Court might deem just and proper.

8. Grant monetary damages as permitted by Law and actual, consequential and punitive damages;
9. Grant Attorney Fees and Costs involved in the litigation of this matter;
10. For such Further relief as may be just and proper.

65125

s/ Lauren Martel

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CASE NUMBER # 2016-CP-07-01825

The Budget and Control Board Procurement Regulations

Amend Chapter 19 of the Rules and Regulations of the 1976 South Carolina Code of Laws, as amended, by adding the following State Procurement Regulations in Article 4.

ARTICLE 4

Consolidated Procurement Code

19-445.2000. State Procurement Regulations

A. Application

B. Organizational Authority

19-445.2005. Approval of Internal Procurement Procedures Manual

19-445.2015. Ratification

A. Unauthorized Procurements

19-445.2020. Certification

A. Review Procedures

B. Limitations

19-445.2025. Authority to Contract for Certain Professional Services

A. Consultant Services

B. Employee Services

C. Employment Services

D. Legal Services

E. Auditing Services

19-445.2030. Competitive Sealed Bidding-The Invitation for Bids

19-445.2035. Bidders' List

A. Application

B. Bidders' List for Construction

19-445.2040 The Official State Government Publication

A. Specifications of Publication

B. Availability in Public Libraries

19-445.2045. Receipt and Safeguarding of Bids

A. Procedures Prior to Bid Opening

B. Unidentified Bids

19-445.2050. Bid Opening

A. Procedures

B. Postponement of Bid Opening

C. Disclosure of Bid Information

19-445.2055. Bid Acceptance and Bid Evaluation

19-445.2060. Telegraphic Bids

19-445.2065. Rejection of Bids

A. Application

B. Cancellation of Bids Prior to Award

C. Extension of Bid Acceptance Period

19-445.2070. Rejection of Individual Bids

A. General Application

B. Alternate Bids

C. Nonresponsive Bids

D. Modification of Requirements by Bidder

E. Price Unreasonableness

F. Bid Guarantee Requirement

G. Unsigned Bids

H. Exceptions to Rejection Procedures

19-445.2075. All or None Qualifications

19-445.2085. Correction or Withdrawal of Bids; Cancellation of Awards

A. General Procedures

B. Correction Creates Low Bid

C. Notice of Award

19-445.2090. Award

A. Application

B. Time of Award

C. Notice of Award

19-445.2095. Competitive Sealed Proposals

A. Request for Proposals

B. Receipt and Safeguarding of Proposals

C. Receipt of Proposals

D. Evaluation of Proposals

E. Minor Informalities and Irregularities in Proposals

F. Specified Type of Supplies, Services or Construction

G. Other Applicable Provisions

19-445.2100. Small Purchases and Other Simplified Purchasing Procedures.

A. Authority

Competition and Price Reasonableness

B. Establishment of Blanket Purchase Agreements

C. Calls Against Blanket Purchase Agreement

D. Receipt and Acceptance of Supplies and Services

E. Review Procedures

19-445.2105. Sole Source Procurements

A. Application

B. Exceptions

19-445.2110. Emergency Procurements.

A. Application

B. Definition

C. Limitations

D. Conditions

E. Selection of Method of Procurement

F. General Procedures

G. Written Determination

19-445.2115. Information Technology Procurements

A. Authority and Purpose

B. Organization

19-445.2120. Lease and/or Rental of Office Space and Other Real Property

A. Lease of Non-State-Owned Real Property

B. Lease of State-Owned Real Property

C. Exemptions

19-445.2121. Leasing of Real Property

A. General Regulations

B. Types of Lease Transactions

C. Exempt Leases

D. Standard Leases

E. Major Leases

F. Leases/Purchases

G. Other Leases

H. Standard Lease Documents

19-445.2125. Responsibility of Bidders and Offerors

A. State Standards of Responsibility

B. Duty of Contractor to Supply Information

C. Demonstration of Responsibility

D. Justification for Contract Award

E. Written Determination of Nonresponsibility

19-445.2130. Prequalification of Supplies and Suppliers

A. Qualified Products Lists

B. Prequalification

19-445.2135. Conditions for Use of Multi-Term Contracts

A. General

B. Objective

C. Rule Inapplicable

D. Conditions for Use

E. Solicitation

F. Award

G. Food Service Contracts

19-445.2140. Specifications

A. Definitions

B. Issuance of Specifications

C. Use of Functional or Performance Descriptions

D. Preference for Commercially Available Products

E. Specifications for Construction

19-445.2145. Construction, Architect-Engineer, Construction Management, and Land Surveying Services

A. Method of Construction Contract Administration

B. Construction Procurement - The Invitation for Bids

C. Bonds and Security

D. Architect-Engineer, Construction Management and Land Surveyin Services Procurement

E. Contract Forms

F. Manual for Planning and Execution of State Permanent Improvement Projects

G. Prequalifying Construction Bidding

H. Reference Section 11-35-3310

19-445.2150. Surplus Property Management .

A. Definition, Authority and Mission

B. Reporting and Relocation of Surplus Property

C. Transfer of Surplus Property to Governmental Bodies, Political Subdivisions, & Eligible Nonprofit Health or Education Institutions

D. Public Sale of Surplus Property

E. Fee Schedule

F. Inventory and Accounting Systems

G. Trade-In Sales

H. Definition and Sale of Junk

I. Unauthorized Disposal

J. Authority to Debar or Suspend19-445.2152 Leases, Lease/Payment, Installment Purchase, and Rental of Personal Property19-445.2155. Intergovernmental Relations**A. Selective Mandatory Opting**19-445.2160. Assistance to Minority Businesses**A. Definitions****B. Certification as a Minority Firm****C. Income Tax Credit****D. Negotiation with Certified South Carolina Based Firms****E. Minority Business Enterprise (MBE) Utilization Plan****F. Progress Payments****G. Reporting Requirements****H. Letter of Credit/Letter of Contract Award**

Amend Chapter 19 of the Rules and Regulations of the 1976 South Carolina Code of Laws, as amended, by adding the following State Procurement Regulations in Article 4.

ARTICLE 4**Consolidated Procurement Code****19-445.2000. State Procurement Regulations.**

Promulgated under statutory authority of Chapter 35 of Title 11 of the 1976 Code.

A. Application.

These Regulations issued by the South Carolina Budget and Control Board, hereafter referred to as the Board, establish policies, procedures, and guidelines relating to the procurement, management, control, and disposal of supplies, services, information technology, and construction, as applicable, under the authority of the South Carolina Consolidated Procurement Code, as amended. These Regulations are designed to achieve maximum practicable uniformity in purchasing throughout state government. Hence, implementation of the Procurement Code by and within governmental bodies, as defined in Section 11-35-310(18) of the Procurement Code, shall be consistent with these Regulations. Nothing contained in these Rules and Regulations shall be construed to waive any rights, remedies or defenses the State might have under any laws of the State of South Carolina. References to the Office of General Services throughout these Regulations apply equally to its successor, the Office of General Services of the Division of Operations of the Budget and Control Board.

B. Organizational Authority.

(1) Division of General Services: The Director of the Division of General Services acting on behalf of the Board shall have the responsibility to audit and monitor the implementation of these Regulations and requirements of the South Carolina Consolidated Procurement Code. In accordance with Section 11-

35-510 of the Code, all rights, powers, duties and authority relating to the procurement of supplies, services, and information technology and to the management, control, warehousing, sale and disposal of supplies, construction, information technology, and services now vested in or exercised by any governmental body under the provisions of law relating thereto, and regardless of source funding, are hereby vested in the Division of General Services through the auspices of the Office of the Director of the Division of General Services.

The Director of the Division of General Services shall be responsible for developing such organizational structure as necessary to implement the provisions of the Procurement Code and these Regulations.

(2) **Materials Management Office:** The Director of the Division of General Services hereby delegates the following responsibilities to the Materials Management Officer in accordance with Section 11-35-3810 of the Procurement Code. The Materials Management Officer therefore is specifically responsible for:

(a) developing a system of training and certification for procurement officers of governmental bodies in accordance with Section 11-35-1030;

(b) The Materials Management Officer is authorized to recommend differential dollar limits for direct procurements on the basis of but not limited to the following:

(1) procurement expertise,

(2) commodity,

(3) service,

(4) dollar;

(c) performing procurement audits of governmental bodies in accordance with Sections 11-35-70 and 11-35-1230 of the Procurement Code.

(d) overseeing the acquisition of goods and services for the State by the State Procurement Office.

(e) overseeing the acquisition of procurements by the Information Technology Management Office in accordance with Section 11-35-820;

(f) overseeing the acquisition of procurements by the State Engineer in accordance with Section 11-35-830; and

(g) overseeing the implementation and activities of a State Warehousing and Disposal Program in accordance with Section 11-35-3610 of the Procurement Code.

(3) **Office of Information Technology Management:** The Office of Information Technology Management under the direction and oversight of the Materials Management Officer shall be responsible for all procurements involving information technology pursuant to Section 11-35-820 of the Procurement Code.

(4) **Office of the State Engineer:** The Office of the State Engineer under the direction and oversight of the Materials Management Officer shall be responsible for all procurements involving construction, architectural and engineering, construction management, and land surveying services pursuant to Section 11-35-830 of the Procurement code.

(5) **Head of Governmental Body:** The head of a governmental body shall be that individual charged with responsibility for the administration, operations and procurement activities of that governmental body.

(6) **Procuring Agency:** The agency issuing the solicitation involved.

19-445.2045. Receipt and Safeguarding of Bids.**A. Procedures Prior to Bid Opening.**

All bids (including modifications) received prior to the time of opening shall be kept secure and, except as provided in Subsection B below, unopened in a locked bid box or safe. If an invitation for bids is cancelled, bids shall be returned to the bidders. Necessary precautions shall be taken to insure the security of the bid box or safe. Prior to bid opening, information concerning the identity and number of bids received shall be made available only to the state employees, and then only on a "need to know" basis. When bid samples are submitted, they shall be handled with sufficient care to prevent disclosure of characteristics before bid opening.

B. Unidentified Bids.

Unidentified bids may be opened solely for the purpose of identification, and then only by an official specifically designated for this purpose by the Chief Procurement Officer, the procurement officer of the governmental body, or a designee of either officer. If a sealed bid is opened by mistake, the person who opens the bid will immediately write his signature and position on the envelope and deliver it to the aforesaid official. This official shall immediately write on the envelope an explanation of the opening, the date and time opened, the invitation for bids' number and his signature, and then shall immediately reseal the envelope.

19-445.2050. Bid Opening.**A. Procedures.**

The procurement officer of the governmental body or his designee shall decide when the time set for bid opening has arrived, and shall so declare to those present. He shall then personally and publicly open all bids received prior to that time, and read aloud so much thereof as is practicable, including prices, to those persons present and have the bids recorded. The amount of each bid and such other relevant information, together with the name of each bidder, shall be tabulated. The tabulation shall be open to public inspection.

B. Postponement of Bid Opening

If it becomes necessary to postpone a bid opening, the procurement officer shall issue the appropriate amendments to the solicitation postponing or rescheduling the bid opening.

C. Disclosure of Bid Information. Only the information disclosed by the procurement officer of the governmental body or his designee at bid opening is considered to be public information under the Freedom of Information Act, Chapter 4 of Title 30, until the notice of intent to award is issued.

19-445.2055. Bid Acceptance and Bid Evaluation.

When necessary for the best interest of the State, bid criteria to determine acceptability may include inspection, testing, quality, workmanship, delivery and suitability for a particular purpose. Those criteria that will affect the bid price and be considered in evaluation for award shall be measurable costs to include, but not be limited to, discounts, transportation costs, total or life cycle costs.

19-445.2085. Correction or Withdrawal of Bids; Cancellation of Awards.**A. General Procedure.**

A bidder or offeror must submit in writing a request to either correct or withdraw a bid to either the Chief Procurement Officer or the procurement officer of the governmental body. Each written request must document the fact that the bidder's or offeror's mistake is clearly an error that will cause him substantial loss.

B. 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 errors in addition.

C. Notice of Award.

Cancellation of award prior to performance. When it is determined after an award has been issued but before performance has begun that the State's requirements for the goods or services have changed or have not been met, the award or contract may be canceled and either reawarded or a new solicitation issued, if the Chief Procurement Officer determines in writing that:

- (1) Inadequate or ambiguous specifications were cited in the invitation;
- (2) Specifications have been revised;
- (3) The supplies or services being procured are no longer required;
- (4) The invitation did not provide for consideration of all factors of cost to the State, such as cost of transporting state furnished property to bidders' plants;
- (5) Bids received indicate that the needs of the State can be satisfied by a less expensive article differing from that on which the bids were invited;
- (6) The bids were not independently arrived at in open competition, were collusive, or were submitted in bad faith;
- (7) Administrative error of the procuring agency discovered prior to performance, or
- (8) For other reasons, cancellation is clearly in the best interest of the State.

19-445.2095. Competitive Sealed Proposals.**A. Request for Proposals.**

The provisions of Regulation 1919-445.2035 and Regulations 1919-445.2040 shall apply to implement the requirements of Section 11-35-1530 (2), Request for Proposals, and Section 11-35-1530 (3), Public Notice.

B. Receipt and Safeguarding of Proposals.

The provisions of Regulation 1919-445.2045 shall apply for the receipt and safeguarding of proposals.

C. Receipt of Proposals.

For the purposes of implementing Section 11-35-1530 (4), Receipt of Proposals, the following requirements shall be followed.

- (1) Proposals shall be opened publicly by the procurement officer of the governmental body or his

designee in the presence of one or more witnesses at the time and place designated in the request for proposals. A tabulation of those offering a proposal shall be made public record. Contents of competing offers shall not be disclosed during the process of negotiation. All offerors must visibly mark as "confidential" each part of their proposal which they consider to be proprietary information.

D. Evaluation of Proposals.

Evaluation of Proposals. The provisions of Regulation 1919-445.2055 shall apply to implement the requirements of Section 11-35-1530(7), Evaluation Factors.

E. Minor Informalities and Irregularities in Proposals.

The provisions of Section 11-35-1520(13) shall apply to competitive sealed proposals.

F. Specified Types of Supplies, Services or Construction.

Pursuant to Section 11-35-3020(1), and the approval requirements of Section 11-35-3010, the following types of supplies, services, or construction may be procured by competitive sealed proposals:

- (1) Architect-Engineer services and construction services to be awarded in the same contract for an indefinite delivery of a specialized service (e.g. Hazard waste remedial action).
- (2) Design-Build or Lease-Purchase contracts where there must be selection criteria in addition to price.
- (3) Energy conservation or other projects to be financed by vendors who will be paid from the State's savings.
- (4) Supplies, services, or construction, where consideration of alternative methods or systems would be advantageous to the State.

G. Other Applicable Provisions. The provisions of the following Regulations shall apply to competitive sealed proposals:

- (1) Regulation 1919-445.2060, Telegraphic Bids,
- (2) Regulation 1919-445.2065, Rejection of Bids,
- (3) Regulation 1919-445.2070, Rejection of Individual Bids,
- (4) Regulation 1919-445.2075, All or None Qualifications,
- (5) Regulation 1919-445.2085. Correction or Withdrawal of Bids; Cancellation of Awards, and Cancellation of Awards Prior to Performance.
- (6) Regulation 1919-445.2135, Food Service Contracts.

19-445.2030. Competitive Sealed Bidding The Invitation for Bids.

The invitation for bids shall be used to initiate a competitive sealed bid procurement and shall include the following, as applicable:

- (1) instructions and information to bidders concerning the bid submission requirements, including the time and date set for receipt of bids, the individual to whom the bid is to be submitted, the address of the office to which bids are to be delivered, the maximum time for bid acceptance by the State, and any other special information;
- (2) the purchase description, evaluation factors, delivery or performance schedule, and such inspection and acceptance requirements as are not included in the purchase description;
- (3) the contract terms and conditions, including warranty and bonding or other security requirements,

as applicable; and

(4) instructions to bidders to visibly mark as "confidential" each part of their bid which they consider to be proprietary information. Bidding time will be set to provide bidders a reasonable time to prepare their bids. A minimum of seven (7) days shall be provided unless a shorter time is deemed necessary for a particular procurement as determined in writing by the Chief Procurement Officer or the head of the governmental body or his designee.

19-445.2125. Responsibility of Bidders and Offerors.

A. State Standards of Responsibility.

Factors to be considered in determining whether the state standards of responsibility have been met include whether a prospective contractor has:

- (1) available the appropriate financial, material, equipment, facility, and personnel resources and expertise, or the ability to obtain them, necessary to indicate its capability to meet all contractual requirements;
- (2) a satisfactory record of performance;
- (3) a satisfactory record of integrity;
- (4) qualified legally to contract with the State; and
- (5) supplied all necessary information in connection with the inquiry concerning responsibility.

B. Duty of Contractor to Supply Information.

The prospective contractor shall supply information requested by the procurement officer concerning the responsibility of such contractor. If such contractor fails to supply the requested information, the procurement officer shall base the determination of responsibility upon any available information or may find the prospective contractor non-responsible if such failure is unreasonable.

C. Demonstration of Responsibility.

The prospective contractor may demonstrate the availability of necessary financing, equipment, facilities, expertise, and personnel by submitting upon request:

- (1) evidence that such contractor possesses such necessary items;
- (2) acceptable plans to subcontract for such necessary items; or
- (3) a documented commitment from, or explicit arrangement with, a satisfactory source to provide the necessary items.

D. Justification for Contract Award.

Before awarding a contract, the procurement officer must be satisfied that the prospective contractor is responsible.

E. Written Determination of Nonresponsibility.

If a bidder or offeror who otherwise would have been awarded a contract is found nonresponsible, a written determination of nonresponsibility setting forth the basis of the findings shall be prepared by the Chief Procurement Officer or the procurement officer of the governmental body. A copy of the determination shall be sent promptly to the nonresponsible bidder or offeror. The final determination shall be made part of the procurement file.

19-445.2135. Conditions for Use of Multi Term Contracts.**A. General.**

A multi-term contract is appropriate when it is in the best interest of the State to obtain uninterrupted services extending over one fiscal period, where the performance of such services involves high start-up costs, or when a changeover of service contracts involves high phase-in/phase-out costs during a transition period. The multi-term method of contracting is also appropriate when special production of definite quantities of supplies for more than one fiscal period is necessary to best meet state needs but funds are available only for the initial fiscal period. Special production refers to production for contract performance when it requires alteration in the contractor's facilities or operations involving high start-up costs. The contractual obligation of both parties in each fiscal period succeeding the first is subject to the appropriation and availability of funds thereof. The contract shall provide that, in the event that funds are not available for any succeeding fiscal period, the remainder of such contract shall be cancelled.

B. Objective.

The objective of the multi-term contract is to promote economy and efficiency in procurement by obtaining the benefits of sustained volume production and consequent low prices, and by increasing competitive participation in procurements which involve special production with consequent high start-up costs and in the procurement of services which involve high start-up costs or high phase-in/phase-out costs during changeover of service contracts.

C. Rule Inapplicable.

This Regulation 1919-445.2135 applies only to contracts for supplies or services described in Subsection A of this Regulation and does not apply to any other contract including, but not limited to, contracts for construction and leases of real property.

D. Conditions for Use.

The maximum time for any multi-term contract is five (5) years unless otherwise approved by the Board. A multi-term contract may be used when it is determined in writing by the Procurement Officer of the governmental body that:

- (1) special production of definite quantities or the furnishing of long-term services are required to meet state needs; or
- (2) a multi-term contract will serve the best interests of the state by encouraging effective competition or otherwise promoting economies in state procurement.

The following factors are among those relevant to such a determination:

- (1) firms which are not willing or able to compete because of high start-up costs or capital investment in facility expansion will be encouraged to participate in the competition when they are assured of recouping such costs during the period of contract performance;
- (2) lower production cost because of larger quantity or service requirements, and substantial continuity of production or performance over a longer period of time, can be expected to result in lower unit prices;
- (3) stabilization of the contractor's work force over a longer period of time may promote economy and consistent quality;

(4) the cost and burden of contract solicitation, award, and administration of the procurement may be reduced.

E. Solicitation.

The solicitation shall state:

- (1) the estimated amount of supplies or services required for the proposed contract period;
- (2) that a unit price shall be given for each supply or service, and that such unit prices shall be the same throughout the contract (except to the extent price adjustments may be provided in the solicitation and resulting contract);
- (3) that the multi-term contract will be cancelled only if funds are not appropriated or otherwise made available to support continuation of performance in any fiscal period succeeding the first; however, this does not affect either the state's rights or the contractor's rights under any termination clause in the contract;
- (4) that the procurement officer of the governmental body must notify the contractor on a timely basis that the funds are, or are not, available for the continuation of the contract for each succeeding fiscal period;
- (5) whether bidders or offerors may submit prices for: (a) the first fiscal period only; (b) the entire time of performance only; or (c) both the first fiscal period and the entire time of performance;
- (6) that a multi-term contract may be awarded and how award will be determined including, if prices for the first fiscal period and entire time of performance are submitted, how such prices will be compared; and
- (7) that, in the event of cancellation as provided in (5) (c) of this Subsection, the contractor will be reimbursed the unamortized, reasonably incurred, nonrecurring costs.

F. Award.

Award shall be made as stated in the solicitation and permitted under the source selection method utilized. Care should be taken when evaluating multi-term prices against prices for the first fiscal period that award on the basis of prices for the first period does not permit the successful bidder or offeror to "buy in", that is give such bidder or offeror an undue competitive advantage in subsequent procurements.

G. Food Service Contracts.

Any food service contracts entered into by any governmental body shall be solicited under Code Section 11-35-1530, Competitive Sealed Proposals, and Regulation 1919-445.2095. A review panel composed of one representative each from the governmental body, the Materials Management Office, and the Commission on Higher Education shall review such proposals and approve it prior to contract award.

ARTICLE 4

Consolidated Procurement Code

19-445.2000. State Procurement Regulations.

Promulgated under statutory authority of Chapter 35 of Title 11 of the 1976 Code.

A. Application.

These Regulations issued by the South Carolina Budget and Control Board, hereafter referred to as the Board, establish policies, procedures, and guidelines relating to the procurement, management, control, and disposal of supplies, services, information technology, and construction, as applicable, under the authority of the South Carolina Consolidated Procurement Code, as amended. These Regulations are designed to achieve maximum practicable uniformity in purchasing throughout state government. Hence, implementation of the Procurement Code by and within governmental bodies, as defined in Section 11-35-310(18) of the Procurement Code, shall be consistent with these Regulations. Nothing contained in these Rules and Regulations shall be construed to waive any rights, remedies or defenses the State might have under any laws of the State of South Carolina. References to the Office of General Services throughout these Regulations apply equally to its successor, the Office of General Services of the Division of Operations of the Budget and Control Board.

B. Organizational Authority.

(1) Division of General Services: The Director of the Division of General Services acting on behalf of the Board shall have the responsibility to audit and monitor the implementation of these Regulations and requirements of the South Carolina Consolidated Procurement Code. In accordance with Section 11-35-510 of the Code, all rights, powers, duties and authority relating to the procurement of supplies, services, and information technology and to the management, control, warehousing, sale and disposal of supplies, construction, information technology, and services now vested in or exercised by any governmental body under the provisions of law relating thereto, and regardless of source funding, are hereby vested in the Division of General Services through the auspices of the Office of the Director of the Division of General Services.

The Director of the Division of General Services shall be responsible for developing such organizational structure as necessary to implement the provisions of the Procurement Code and these Regulations.

(2) Materials Management Office: The Director of the Division of General Services hereby delegates the following responsibilities to the Materials Management Officer in accordance with Section 11-35-3810 of the Procurement Code. The Materials Management Officer therefore is specifically responsible for:

(a) developing a system of training and certification for procurement officers of governmental bodies in accordance with Section 11-35-1030;

(b) The Materials Management Officer is authorized to recommend differential dollar limits for direct procurements on the basis of but not limited to the following:

(1) procurement expertise,

(2) commodity,

(3) service,

(4) dollar;

(c) performing procurement audits of governmental bodies in accordance with Sections 11-35-70 and 11-35-1230 of the Procurement Code.

(d) overseeing the acquisition of goods and services for the State by the State Procurement Office.

(e) overseeing the acquisition of procurements by the Information Technology Management Office in accordance with Section 11-35-820;

(f) overseeing the acquisition of procurements by the State Engineer in accordance with Section 11-35-830; and

(g) overseeing the implementation and activities of a State Warehousing and Disposal Program in

accordance with Section 11-35-3610 of the Procurement Code.

(3) Office of Information Technology Management: The Office of Information Technology Management under the direction and oversight of the Materials Management Officer shall be responsible for all procurements involving information technology pursuant to Section 11-35-820 of the Procurement Code.

(4) Office of the State Engineer: The Office of the State Engineer under the direction and oversight of the Materials Management Officer shall be responsible for all procurements involving construction, architectural and engineering, construction management, and land surveying services pursuant to Section 11-35-830 of the Procurement code.

(5) Head of Governmental Body: The head of a governmental body shall be that individual charged with responsibility for the administration, operations and procurement activities of that governmental body.

(6) Procuring Agency: The agency issuing the solicitation involved.

19-445.2005. Approval of Internal Procurement Procedures Manual.

All governmental bodies shall develop an internal procurement procedures manual and forward a copy of such to the Materials Management Officer. Upon receipt of the respective governmental body's internal procurement procedures manual, the Materials Management Office shall be responsible for the following review:

(1) Determine that written internal operations procedures as submitted are consistent with the South Carolina Consolidated Procurement Code and Regulations.

(2) Notify the governmental body of its findings in writing.

19-445.2015. Ratification

A. Unauthorized Procurements.

The ratification of an act obligating the State in a contract by any person without the requisite authority to do so by an appointment or delegation under the procurement Code rests with the Office of General Services. It is prohibited for a procurement officer to ratify such acts.

(1) Ratification by a Governmental Body. The Office of General Services hereby delegates authority to ratify such acts to the head of the governmental body responsible for the person committing the act when the value of the contract is within the dollar limits designated by the Budget and Control Board for that governmental body.

(2) Ratification by the Materials Management Officer. The Director of the Office of General Services may delegate authority to ratify such acts other than those specified in Item 1 above.

(3) Corrective Action and Liability. In either case referred to in Items 1 and 2 above, the head of the governmental body shall prepare a written determination as to the facts and circumstances surrounding the act, what corrective action is being taken to prevent reoccurrence, action taken against the individual committing the act, and documentation that the price paid is fair and reasonable.

RECEIVED

OCT 19 2010

CONTRACT FOR JANITORIAL SERVICES
COUNTY OF BEAUFORT, SC

PURCHASING DEPT.

THIS AGREEMENT (the "Agreement") is made this 25th day of OCTOBER, 2010, by and between Beaufort County, a political subdivision of the State of South Carolina (hereinafter referred to as "County") and Island Group, Inc. dba Carolina Cleaning (hereinafter referred to as "Contractor"). This Agreement shall consist of all the terms, conditions, scope of work, specifications and provisions which are hereby incorporated and made part of this Contract Agreement, by reference, and contained in RFP # 3910/100566 dated May 27, 2010, Addendum # 1 dated May 18, 2010 and the Contractor's Proposal dated May 27, 2010.

WITNESSETH:

WHEREAS, the Contractor and the County desire to enter into an agreement relating to Janitorial Services, subject to the terms, specifications, conditions, scope of work, specifications and provisions by reference of the Request for Proposal as heretofore mentioned.

NOW, THEREFORE, the Contractor and the County agree to all of these terms, conditions, specifications, provisions and the special provisions as listed below:

- A. This Agreement is deemed to be under and shall be governed by and construed according to the laws of the State of South Carolina.
- B. Any litigation arising out of this Agreement shall be held only in a circuit court of Beaufort County, Beaufort, South Carolina in the Fourteenth Judicial Circuit.
- C. The Contractor shall not sublet, assign, nor by means of a stock transfer sale of its business, assign or transfer this Agreement without the written consent of the County.
- ✓ D. This Agreement, including the terms, conditions, specifications and provisions listed herein makes up the entire agreement between the Contractor and County. No other Agreement, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or bind either party hereto.
- E. It is understood that this Agreement shall be considered exclusive between the parties.
- F. Any provisions of this Agreement found to be prohibited by law shall be ineffective, to the extent of such prohibition, without invalidating the remainder of this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the parties agree as follows:

**ARTICLE 1
DESCRIPTION**

The Contractor does hereby offer to the County services for the purpose of providing Janitorial Services as contained and fully described in RFP # 3910/100566 (Janitorial Services for Beaufort County Facilities) and including Addendum 1.

**ARTICLE 2
LIABILITY**

The County and Contractor shall not be responsible to each other for any incidental, indirect or consequential damages incurred by either Contractor or County or for which either party may be liable to any third party which damages have been or are occasioned by services performed or reports prepared or other work performed hereunder.

**ARTICLE 3
INDEMNIFICATION AND HOLD HARMLESS**

The Contractor does hereby agree to indemnify and save harmless the County, its officers, agents and employees from and against any and all liability, claims, demands, damages, fines, fees, expenses, penalties, suits, proceedings, actions and cost of actions, including attorney's fees for trial and on appeal of any kind and nature to the extent arising or growing out of or in any way connected with the negligent performance of the Agreement, by Contractor, its agents, servants or employees.

**ARTICLE 4
ASSIGNMENT**

Contractor shall not assign any rights or duties of the professional services agreement without the expressed written consent of the County. Any assignment or subletting without the written consent of County shall be void and this Agreement shall terminate at the option of the County.

**ARTICLE 5
TERM**

The term of this Agreement shall be for a period of one (1) year starting on November 1, 2010 and ending on October 31, 2011. There are four (4) one (1) year renewals available on this Contract all at the approval of Beaufort County. The Contract shall not exceed five (5) years.

ARTICLE 6 COMPENSATION

Compensation shall be in accordance with Contractor's Proposal dated May 27, 2010 and not to exceed Six Hundred Twenty Two Thousand, Three Hundred Twenty Dollars (\$622,320.00) per year.

ARTICLE 7 INSURANCE

Contractor does hereby covenant, agree and hereby represent to the County that it has obtained workmen's compensation insurance, general liability and automobile liability insurance, as well as providing coverage against potential liability arising from and in any manner relating to the Contractor's use or occupation of the premises during the course of performing the contracted services, all in accordance with and as fully described in the County's RFP # 3910/100566 including Addendum # 1.

ARTICLE 8 DEFAULT

In the event of default or breach of any condition of this Agreement resulting in litigation, the prevailing party would be entitled to reasonable attorneys' fees fixed by the Court. The remedies herein given to County shall be cumulative, and the exercise of any one remedy by the County shall not be to the exclusion of any other remedy.

ARTICLE 9 TERMINATION

Either party may terminate this Agreement upon sixty (60) days' written notice to the other party. Upon such termination, the County shall pay the Contractor for all services performed hereunder up through the date of such termination.

ARTICLE 10 RESPONSIBILITY

The County will be responsible to provide the Contractor reasonable access to County locations when necessary, ensure cooperation of County employees in activities reasonable and appropriate under the project, and obtain authorization for access to third party sites, if required.

ARTICLE 11 FORCE MAJEURE

Should performance of Contractor services be materially affected by causes beyond its reasonable control, a Force Majeure results. Force Majeure includes, but is not restricted to, acts of God, acts of a legislative, administrative or judicial entity, acts of contractors other than subcontractors of Contractor, fires, floods, labor disturbances, and unusually severe weather.

Contractor will be granted a time extension and the parties will negotiate an adjustment to the fee, where appropriate, based upon the effect of the Force Majeure upon Contractor's performance.

ARTICLE 12 SEVERABILITY

Every term or provision of this Agreement is severable from others. Notwithstanding any possible future finding by a duly constituted authority that a particular term or provision is invalid, void, or unenforceable, this Agreement has been made with the clear intention that the validity and enforceability of the remaining parts, terms and provisions shall not be affected thereby.

ARTICLE 13 INDEPENDENT CONTRACTOR

The Contractor shall be fully independent in performing the services and shall not act as an agent or employee of the County. As such, the Contractor shall be solely responsible for its employees, subcontractors, and agents and for their compensation, benefits, contributions and taxes, if any.

ARTICLE 14 NOTICE

The Contractor and the County shall notify each other of service of any notice of violation of any law, regulation, permit or license relating to the services; initiation of any proceedings to revoke any permits or licenses which relate to such services; revocation of any permits, licenses or other governmental authorizations relating to such services; or commencement of any litigation that could affect such services. Such notice shall be delivered by U.S. mail with proper postage affixed thereto and addressed as follows:

County:	Beaufort County Administrator P. O. Drawer 1228 Beaufort, SC 29901-1228
	Beaufort County Attn: Beaufort County Purchasing Director P. O. Drawer 1228 Beaufort, SC 29901-1228
Contractor:	Island Group, Inc. dba Carolina Cleaning Attn: Mr. S. Craig Molloy, President PO Box 22326 Hilton Head Island, SC 29925

**ARTICLE 15
TOTAL AGREEMENT**

This Agreement constitutes the entire agreement between the parties hereto. No representations, warranties or promises pertaining to this Agreement have been made or shall be binding upon any of the parties, except as expressly stated herein.

This Agreement shall be construed in accordance and governed by the laws of the State of South Carolina.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year first above written.

WITNESSES:

Cheryl Harris
Janey Hare

BEAUFORT COUNTY, a political
subdivision of the State of South Carolina

By: Gary Kubic
Name: Gary Kubic
Title: County Administrator
Address: P.O. Drawer 1228
Beaufort, SC 29901-1228
Phone: (843) 255-2026
Fax: (843) 255-9403
Date: Oct. 25, 2010

WITNESSES:

Walter Carey
Jack W. Molloy

ISLAND GROUP, INC.
dba **CAROLINA CLEANING**

By: S. Craig Molloy
Name: S. Craig Molloy
Title: President
Address: PO Box 22326
Hilton Head Island, SC 29925
Phone: 843-681-8461
Fax: 843-681-5849
Tax ID Number: 57-1503755
Date: 10.19.10

5

**CERTIFICATE AUTHORIZING SPECIAL MINIMUM WAGE RATES
UNDER SECTION 14(c) OF THE FAIR LABOR STANDARDS ACT**

Certificate Number: **04-04314-S-028**

For Branch Location:

**BEAUFORT COUNTY DISABILITIES AND SPECIAL NEEDS
100 CLEAR WATER WAY
BEAUFORT, SC 29906**

**BEAUFORT COUNTY DEPT OF DISABILITIES
100 CLEAR WATER WAY
Beaufort, SC 29906**

Type of Certificate:

**Community Rehabilitation Program
(Work Center)**

This special certificate authorizes the employment of workers with disabilities in accordance with the requirements of 29 CFR Part 525, effective 02/01/2014.

This certificate will remain in effect until 01/31/2016 provided that all applicable provisions of the Fair Labor Standards Act, the Walsh-Healey Public Contracts Act, the McNamara-O'Hara Service Contract Act, and the Contract Work Hours and Safety Standards Act and the regulations issued pursuant thereto are fully complied with. If an application for renewal has been properly and timely filed with the Wage and Hour Division prior to 01/31/2016, this special minimum wage certificate will remain in effect until the application for renewal has been granted or denied.

The enclosed certificate does not constitute a statement of compliance by the Department of Labor nor does it convey a good faith defense to the employer should violations of the Fair Labor Standards Act, the Walsh-Healey Public Contracts Act, the McNamara-O'Hara Service Contract Act, or the Contract Work Hours and Safety Standards Act occur.

Please contact the following Wage Specialist should you have any questions regarding the issuance of this certificate:

Name of wage specialist: (b) (7)

Phone: (b) (7)

See the reverse of this certificate and the applicable regulations for further information.

NOTICE TO WORKERS WITH DISABILITIES PAID AT SPECIAL MINIMUM WAGES

The Fair Labor Standards Act (FLSA) provides that workers with disabilities whose disabilities impair their ability to perform the type of work being done in the establishment may be employed at wage rates below the minimum otherwise required by the FLSA. Such employment is permitted only under certificates issued by the Department of Labor and must reflect the productivity of the individual worker as related to the productivity of a worker who does not have disabilities for the work being performed, and the wages being paid to experienced workers performing the same or similar work in the vicinity. Such wages are referred to as "commensurate wage rates." This establishment has a certificate authorizing the payment of commensurate wages to workers with disabilities. Workers who do not have disabilities for the work being performed, including workers who may otherwise have disabilities, must receive at least the statutory minimum wage.

For purposes of payment of commensurate wages under a certificate, a worker with a disability is defined as an individual whose earning or productive capacity is impaired by a physical or mental disability, including those relating to age or injury, for the work to be performed. Disabilities which may, but will not necessarily, affect productive capacity include blindness, mental illness, mental retardation, cerebral palsy, alcoholism, and drug addiction. The following, taken by themselves, do not constitute disabilities for purposes of paying commensurate wages: educational disabilities, chronic unemployment, receipt of welfare benefits, nonattendance at school, juvenile delinquency, and correctional parole or probation.

Each worker with a disability, and where appropriate, the parent or guardian of such worker, shall be informed orally and in writing by the employer of the terms of the certificate under which such worker is employed.

Complaints or questions regarding the terms and conditions of employment under a certificate may be directed to the Wage and Hour Division, U.S. Department of Labor. Action will be taken to address an individual's concerns, including where appropriate, a formal investigation of the employer. Workers with disabilities paid at special minimum wages may also petition the Administrator of the Wage and Hour Division of the U.S. Department of Labor for a review of their wage rates by an Administrative Law Judge. No particular form of petition is required, except that it must be signed by the worker with a disability or his or her parent or guardian and should contain the name and address of the employer. Petitions should be mailed to: Administrator, Wage and Hour Division, U.S. Department of Labor, Room S-3502, 200 Constitution Avenue, N.W., Washington, D.C., 20210.

Wage and Hour Representative:

Nicole Howard

Title:

Certification Program Manager

Date Certificate Printed

12/29/2014

Cert. ID: 180180

Form WH-228

Rev. January 2002

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)
IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT
CASE NO.: 2016-CP-07-01825

STEPHEN CRAIG MOLLOY and ISLAND)
GROUP INC., d/b/a CAROLINA)
CLEANING;)

Plaintiffs,)

vs.)

BEAUFORT COUNTY; GARY KUBIC,)
Individually and as Beaufort County)
Administrator; JOSH GRUBER, Individually)
and as former Beaufort County In-House)
Attorney; BRYAN HILL, Individually and)
as former Beaufort County Deputy)
Administrator; SHANNON LOPER,)
Individually and as Employee of the)
Beaufort County Parks and Leisure; STU)
RODMAN, as Finance Chair of the Beaufort)
County Council; and DAVE THOMAS,)
Procurement Director for Beaufort County,)
South Carolina,)

Defendants.)

**AFFIDAVIT OF DAVE THOMAS IN
OPPOSITION TO PLAINTIFFS'
MOTION FOR TEMPORARY
INJUNCTION AND TEMPORARY
RESTRAINING ORDER**

1. I am an adult individual and resident of Beaufort County, South Carolina.
2. I have personal knowledge of the facts set forth herein.
3. I am presently the Purchasing Director for Beaufort County, South Carolina.
4. I have served in that capacity for Beaufort County since December, 2007.
5. I have more than twenty (20) years' experience as a Procurement Manager/Director.
6. I have reviewed the Affidavit of Craig Molloy dated February 21, 2017 and Plaintiffs' Motion for Temporary Injunction and Temporary Restraining Order filed on March 15, 2017.

A. **The 2010 Contract (RFP # 3910/100566)**

7. On October 25, 2010, Beaufort County entered a Contract for Janitorial Services ("2010 Contract") with Island Group Inc., d/b/a Carolina Cleaning. A true and correct copy of this 2010 Contract is attached hereto as Ex. A. This 2010 Contract referenced Request for Proposal ("RFP") # 3910/100566.

8. Island Group Inc., d/b/a Carolina Cleaning submitted bid information with regard to its effort to obtain the contract for RFP # 3910/100566.

9. At no time did Island Group Inc., d/b/a Carolina Cleaning indicate that any of the information it submitted in connection with its bid for RFP # 3910/100566 was confidential, proprietary or trade secret.

10. To the contrary, the information that Island Group Inc., d/b/a Carolina Cleaning (and all bidders) submitted in connection with its bid for RFP # 3910/100566 was publicly available information that could be obtained via a request under the South Carolina Freedom of Information Act.

11. The bidding process for RFP # 3910/100566 was in compliance with the South Carolina Consolidated Procurement Code, the Beaufort County Procurement Code and other governing laws.

12. The description of the work to be done by Island Group Inc., d/b/a Carolina Cleaning under the 2010 Contract was as follows: "The Contractor does hereby offer to the County services for the purpose of providing Janitorial Services as contained and fully described in RFP # 3910/100566 (Janitorial Services for Beaufort County Facilities) and including Addendum 1." (*See id.* ¶ 1).

13. The term of the 2010 Contract was as follows: "The term of this Agreement shall be for a period of one (1) year starting on November 1, 2010 and ending on October 31, 2011. There are four (4) one (1) year renewals available on this Contract all at the approval of Beaufort County. The Contract shall not exceed five (5) years." (*See id.* ¶ 5).

14. In 2010, Beaufort County began an effort to reduce all contracts by 10% to help alleviate its budget deficit. At that time, the County was even discussing furloughs for employees and seeking ways to save money on contracts.

15. Beaufort County sent letters to all contractors requesting a 10% reduction in the contract amount, including Island Group Inc., d/b/a Carolina Cleaning under the 2010 Contract.

16. Specifically, attached hereto as Ex. B is a true and correct copy of a September 8, 2011 letter from Richard H. Hineline, Jr. (Contract Specialist) to Craig Molloy of Island Group Inc., d/b/a Carolina Cleaning. Mr. Molloy countersigned that letter, binding Island Group Inc., d/b/a Carolina Cleaning, on October 30, 2011.

17. That letter provided, in relevant part: "It is with great pleasure that Beaufort County desires to renew the Contract for the Janitorial Services, per our option as specified in Contract #3910/100566, with a 10% cost reduction to Beaufort County. Please sign below and return to our Office as soon as possible. The Renewal Contract dates will be for one (1) year commencing on November 1, 2011 thru October 31, 2012. There are now three (3) one (1) year Contract Renewals remaining on the Contract."

18. On July 5, 2012, I wrote a letter to Craig Molloy of Island Group Inc., d/b/a Carolina Cleaning, a true and correct copy of which is attached hereto as Ex. C. That letter stated in relevant part:

It is a great pleasure to inform you that Beaufort County has renewed the above mentioned contract [Contract Number 3910/100566] we have with you in accordance with the original contract and solicitation (Invitation for Bid (IFB)/Request for Proposal (RFP)). The original contract was executed on November 1, 2010 and thus the contract renewal period will commence on October 31, 2012 and extend through November 1, 2013.

B. Beaufort County DSN

19. In 2012 and 2013, in an effort to further reduce costs, Beaufort County began considering using its in-house Disabilities and Special Needs ("DSN") Department to provide the service.

20. Under that approach, "consumers" of DSN services, *i.e.*, individuals with disabilities and special needs, would perform janitorial work for Beaufort County as employees of the County.

21. This would provide benefits both to those consumers and to the taxpayers of Beaufort County.

22. Because any "contract" for the use of DSN was essentially a use of "in-house" employees, it was not technically required to be bid out under the South Carolina Consolidated Procurement Code or the Beaufort County Procurement Code.

23. Nonetheless, in an effort to safeguard the taxpayers of Beaufort County, the County permitted the submission of competing proposals against DSN.

24. Every RFP in which DSN submitted a proposal was in full compliance with all governing procurement procedures.

25. DSN was never given any advantage with regard to bidding or contracting.

26. Beaufort County began rebidding for janitorial services for certain locations in order to save money and provide better service, which resulted in the change orders and contract terminations discussed herein.

C. RFP # 3910/120221 (Locations North of the Broad and the DNA Laboratory)

27. Attached hereto as Ex. D is a true and correct copy of RFP # 3910/120221, entitled "Request for Proposals to Provide Janitorial Services, North of the Broad River, Eight Locations for Beaufort County South Carolina."

28. Specifically, RFP # 3910/120221 sought proposals for the cleaning of the following locations:

- Coosaw Center
- Broomfield Recreation Center
- Green Street Gym
- Scott Community Center
- Seaside Center

- St. Helena Gymnasium
- Port Royal Community Center
- DSN

29. Attached hereto as Ex. E is a true and correct copy of Addendum #1 to RFP # 3910/120221.

30. Attached hereto as Ex. F is a true and correct copy of Addendum #2 to RFP # 3910/120221.

31. Addenda ## 1 and 2 to RFP # 3910/120221, increased the total number of locations for that RFP to ten (10) by adding Booker T Washington and the Sheriff's Office DNA lab.

32. Attached hereto as Ex. G is a true and correct copy of Addendum #3 to RFP # 3910/120221, dated July 30, 2012. This Addendum indicated that the only remaining location up for bid was the Sheriff's Office DNA lab and requested pricing on that one location by August 9, 2012.

33. Island Group Inc., d/b/a Carolina Cleaning did not file a protest to complain about Addendum #3 to RFP # 3910/120221.

34. Island Group Inc., d/b/a Carolina Cleaning submitted bid information with regard to its effort to obtain the contract for RFP # 3910/120221.

35. On August 6, 2012, in accordance with Addendum # 3 to RFP # 3910/120221, Island Group Inc., d/b/a Carolina Cleaning submitted a revised bid for only the Sheriff's DNA lab. A true and correct copy of this bid is attached hereto as Exhibit S.

36. At no time did Island Group Inc., d/b/a Carolina Cleaning indicate that any of the information it submitted in connection with its bid for RFP # 3910/120221 was confidential, proprietary or trade secret.

37. To the contrary, the information that Island Group Inc., d/b/a Carolina Cleaning (and all bidders) submitted in connection with its bid for RFP # 3910/120221 was publicly

available information that could be obtained via a request under the South Carolina Freedom of Information Act.

38. The bidding process for RFP # 3910/120221 was in compliance with the South Carolina Consolidated Procurement Code, the Beaufort County Procurement Code and other governing laws.

39. In August of 2012, Beaufort County awarded a new contract to DSN from responses to RFP # 3910/120221 for all of the locations in that RFP *except for* the DNA lab. Attached hereto as Ex. H is a true and correct copy of my Contract Award Recommendation for that RFP. DSN's proposal for all locations except for the DNA laboratory was \$52,026. The price proposed by Island Group Inc., d/b/a Carolina Cleaning for the same work was \$88,680, making it the *third-place* finisher for the bidders for those nine buildings North of the Broad River.

40. As mentioned below, Island Group Inc., d/b/a Carolina Cleaning was awarded the contract on part of RFP # 3910/120221 for the DNA Lab that DSN did not bid on.

41. On September 4, 2012, I wrote a letter to Craig Molloy of Island Group Inc., d/b/a Carolina Cleaning, a true and correct copy of which is attached hereto as Ex. I. That letter stated in relevant part that Beaufort County was ending Island Group Inc., d/b/a Carolina Cleaning's contract for certain locations, but adding other locations:

We wish to inform you that Beaufort County has selected our in-house DSN for the contract award. Thus, your cleaning services for the Dale Center, the Bluffton Center, Burtons Wells concession and press box, and the Burton Wells Senior Center will end August 31, 2012.

However, we also wish to congratulate you that you are the winning bidder for both our DNA lab and the new Sheriff's Office on Hilton Head Island. The term on this particular service is September 1, 2012 to June 30, 2013.

42. On December 12, 2012, I wrote a letter to Craig Molloy of Island Group Inc., d/b/a Carolina Cleaning, a true and correct copy of which is attached hereto as Ex. J. That letter stated in relevant part that Beaufort County was providing notice of the termination of Contract

3910/100566 with regard to the Bluffton Gym stating, *inter alia*: "This is absolutely no reflection on your work; however as a cost-cutting measure, we have decided to take care of this facility in-house. All other terms, condition, amendments, and prices remain in effect."

43. On May 30, 2013, Richard Dimont, Contract Specialist wrote a letter to Craig Molloy of Island Group Inc., d/b/a Carolina Cleaning, a true and correct copy of which is attached hereto as Ex. K. I was copied on that letter. That letter stated in relevant part that Beaufort County was providing 60-day notice of the cancellation of Contract Number: 3910/100566 with regard to two locations: the Buckwalter Recreation Center and the Burton Wells Recreation Center.

44. On or about June 11, 2013, I received a memorandum from Gary Kubic, Beaufort County Administrator, a true and correct copy of which is attached hereto as Ex. L. That Memorandum adjusted the amount to be paid to Island Group Inc., d/b/a Carolina Cleaning on Contract No. 3901/120221 by the Consumer Price Index of 2.4%.

D. RFP # 133020130215 (New St. Helena Library)

45. On October 16, 2012, I wrote a letter to Craig Molloy of Island Group Inc., d/b/a Carolina Cleaning, a true and correct copy of which is attached hereto as Ex. M. That letter stated in relevant part that Beaufort County was extending to Island Group Inc., d/b/a Carolina Cleaning a month-to-month contract for the cleaning of the new St. Helena Library.

46. Attached hereto as Ex. N is a true and correct copy of RFP # 133020130215, entitled "Request for Proposals to Provide Janitorial Services for Beaufort County's St. Helena Library."

47. Island Group Inc., d/b/a Carolina Cleaning submitted bid information with regard to its effort to obtain the contract for RFP # 133020130215.

48. At no time did Island Group Inc., d/b/a Carolina Cleaning indicate that any of the information it submitted in connection with its bid for RFP # 133020130215 was confidential, proprietary or trade secret.

49. To the contrary, the information that Island Group Inc., d/b/a Carolina Cleaning (and all bidders) submitted in connection with its bid for RFP # 133020130215 was publicly available information that could be obtained via a request under the South Carolina Freedom of Information Act.

50. The bidding process for RFP # 133020130215 was in compliance with the South Carolina Consolidated Procurement Code, the Beaufort County Procurement Code and other governing laws.

51. Attached hereto as Ex. O is a true and correct copy of my memorandum containing my recommendations for the award of the contract for RFP # 133020130215.

52. DSN's proposed pricing for RFP # 133020130215 was \$22,511.25, compared to \$31,800 bid by Island Group Inc., d/b/a Carolina Cleaning.

53. In accordance with my recommendation, Beaufort County awarded the contract for RFP # 133020130215 for St. Helena Library to DSN.

54. On June 27, 2013, Richard Dimont, Contract Specialist wrote a letter to Craig Molloy of Island Group Inc., d/b/a Carolina Cleaning, a true and correct copy of which is attached hereto as Ex. P. I was copied on that letter. That letter stated in relevant part that Beaufort County was cancelling its month-to-month agreement with Island Group Inc., d/b/a Carolina Cleaning for the St. Helena Library, because it had "decided to go with Disabilities and Special Needs for the long term" under RFP # 133020130215.

E. RFP # 14305

55. Island Group Inc., d/b/a Carolina Cleaning's 2010 Contract term had been extended from November 1, 2012 to October 31, 2013 for \$566,521.

56. After that date, the 2010 Contract was extended on a month-to-month basis and was scheduled to end on June 30, 2014.

57. Attached hereto as Ex. Q is a true and correct copy of RFP # 14305, entitled "Request for Proposals to Provide Janitorial Services for Beaufort County, South Carolina."

58. Beaufort County submitted RFP # 14305 to vendors capable of providing janitorial services for Beaufort County facilities located both North and South of the Broad River (27 facilities in the North, including additional services needed at the 14 buildings currently being serviced by DSN, and 9 facilities in the South).

59. Island Group Inc., d/b/a Carolina Cleaning submitted bid information with regard to its effort to obtain the contract for RFP # 140305.

60. At no time did Island Group Inc., d/b/a Carolina Cleaning indicate that any of the information it submitted in connection with its bid for RFP # 140305 was confidential, proprietary or trade secret.

61. To the contrary, the information that Island Group Inc., d/b/a Carolina Cleaning (and all bidders) submitted in connection with its bid for RFP # 140305 was publicly available information that could be obtained via a request under the South Carolina Freedom of Information Act.

62. The bidding process for RFP # 140305 was in compliance with the South Carolina Consolidated Procurement Code, the Beaufort County Procurement Code and other governing laws.

63. Attached hereto as Ex. R is true and correct copy of a May 19, 2014 Memorandum I prepared under the subject "RFP # 140305 Award Recommendation for Janitorial Services for Beaufort County."

64. As reflected in that Memorandum, the recommended vendor for RFP # 140305 was A&B Cleaning Service Inc. of Greenville, North Carolina.

65. On the final scoresheet for the bidders for RFP # 140305, A&B had the highest score with 503 points and a cost of \$585,828.

66. On the other hand, Island Group Inc., d/b/a Carolina Cleaning, the incumbent on that contract, had a score of 333 points and a cost of \$833,628. Carolina Cleaning finished in 10th place out of 16 potential vendors.

67. In selecting A&B Cleaning Service Inc., rather than Island Group Inc., d/b/a Carolina Cleaning, Beaufort County did not use any confidential information of Island Group Inc., d/b/a Carolina Cleaning.

68. The bidding process for RFP # 14305 was in full compliance with the law, and Island Group Inc., d/b/a Carolina Cleaning submitted a proposal.

69. Island Group Inc., d/b/a Carolina Cleaning has done no work for Beaufort County since June 30, 2014.

F. Defendants Have Acted Properly in Dealing With Plaintiffs and in the Procurement Process

70. At all times, Beaufort County has fully complied with the terms of its agreements with Island Group Inc., d/b/a Carolina Cleaning, including the 2010 Contract.

71. Under the South Carolina Consolidated Procurement Code and the Beaufort County Procurement Code, bids and proposals submitted by bidders are generally not confidential or privileged.

72. Under the South Carolina Consolidated Procurement Code and the Beaufort County Procurement Code, bids and proposals submitted by bidders are generally publicly available information that could be obtained via a request under the South Carolina Freedom of Information Act.

73. Beaufort County retains ownership of all bids and RFP responses.

74. Beaufort County never misused any confidential information of Island Group Inc., d/b/a Carolina Cleaning in the procurement process.

75. Beaufort County never disclosed any confidential information of Island Group Inc., d/b/a Carolina Cleaning to any other person or entity in the procurement process.

76. Beaufort County never provided any confidential information of Island Group Inc., d/b/a Carolina Cleaning to DSN in the procurement process.

77. At all times and for all RFP's, all bids remained sealed until the time for opening. No information contained in any sealed bid of Island Group Inc., d/b/a Carolina Cleaning was ever provided to DSN or any other bidder.

78. At all times and for all RFP's, Island Group Inc., d/b/a Carolina Cleaning was provided the same information as all other bidders, including DSN.

79. At all times and for all RFP's, Island Group Inc., d/b/a Carolina Cleaning was reviewed under the same standards as all other bidders, including DSN.

80. The scope of work for all Beaufort County RFP's is set by the relevant Departments and the Facilities Director, and is reviewed by the Purchasing Director.

81. The minimum scope of services is included in every RFP and provided to all vendors who respond.

82. With regard to all of the RFP's referenced in this Affidavit, Island Group Inc., d/b/a Carolina Cleaning received the same scope of work as any other bidder (including DSN) and had the opportunity to provide lower pricing, although selection is not just based on price but on other objective criteria.

83. DSN had no advantage over Island Group Inc., d/b/a Carolina Cleaning in the RFP process.

84. No bidder had any advantage over Island Group Inc., d/b/a Carolina Cleaning in the RFP process.

85. At all relevant times, if it believed that the bidding or RFP process was unfair, Island Group Inc., d/b/a Carolina Cleaning had the opportunity to file a formal protest in writing to Beaufort County.

86. Those protest procedures are included in the South Carolina Consolidated Procurement Code, the Beaufort County Procurement code and all of Beaufort County's RFPs for vendors to follow if they have a reason or desire to protest an award.

87. The protest process is the exclusive remedy for a person aggrieved in the procurement or contracting process.

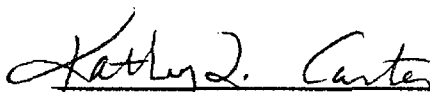
88. Island Group Inc., d/b/a Carolina Cleaning never filed a protest under governing law with regard to the bidding, procurement or contracting for janitorial services in Beaufort County, South Carolina.

FURTHER THE AFFIANT SAYETH NOT!



Dave Thomas

Sworn to and Subscribed to before
me this 6th day of April, 2017.



Notary Public for South Carolina
My Commission Expires:

My Commission expires
July 20th, 2017

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

STEPHEN CRAIG MOLLOY and ISLAND
GROUP INC., d/b/a CAROLINA
CLEANING;

Plaintiffs,

vs.

BEAUFORT COUNTY; GARY KUBIC,
Individually and as Beaufort County
Administrator; JOSH GRUBER, Individually
and as former Beaufort County In-House
Attorney; BRYAN HILL, Individually and
as former Beaufort County Deputy
Administrator; SHANNON LOPER,
Individually and as Employee of the
Beaufort County Parks and Leisure; STU
RODMAN, as Finance Chair of the Beaufort
County Council; and DAVE THOMAS,
Procurement Director for Beaufort County,
South Carolina,

Defendants.

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT
CASE NO.: 2016-CP-07-01825

**AFFIDAVIT OF WILLIAM LOVE IN
OPPOSITION TO PLAINTIFFS'
MOTION FOR TEMPORARY
INJUNCTION AND TEMPORARY
RESTRAINING ORDER**

1. I am an adult individual and resident of Beaufort County, South Carolina.

2. I have personal knowledge of the facts set forth herein.

A. General

3. I am presently the Director of the Disabilities & Special Needs
Department of Beaufort County, South Carolina ("DSN").

4. I have held that position with Beaufort County since August of 2015.

5. Prior to holding this position, I served as Deputy Director and as Director
of the Adult Day Program. I began working with DSN in August 2008.

6. The Mission Statement of the Beaufort County DSN is: "To provide quality services and support to our consumers and to facilitate opportunities for them to live productively and inclusively in the community."

7. Among the services DSN provides to individuals with disabilities or special needs ("consumers") are residential services, day program services, waiver services, respite services, job coach services, early intervention services, family support services and Camp Treasure Chest and after school programs, among others.

8. DSN also provides people with disabilities, including intellectual disabilities, mental health, and traumatic brain injury, among others, assistance with obtaining and maintaining employment through various approaches.

9. The focus of the DSN employment program is:

- The creation of jobs for people with disabilities
- Job selection and placement that focuses on the individual's abilities and desires
- Training to assist in the job field selected and in the specific job for which an individual is hired
- Stabilization when the job is obtained including all aspects of the job
- Proactive follow along to ensure that the individual meets the employer needs and the job is a good fit for the individual
- Transitional services to assist individuals in being introduced or adjusting to DSN services that are available

10. DSN actually employs 26 consumers who work on janitorial crews which provide services to Beaufort County as part of its employment program.

11. Because of some disability limitations of some individuals, federal law permits them to be paid amounts less than the prevailing minimum wage, to facilitate their employment opportunities.

12. In this respect, some DSN consumers have provided janitorial services for Beaufort County, as part of the job training and employment program.

13. The DSN consumers who performed janitorial work for Beaufort County were paid by county funds.

14. Beaufort County was and is not compensated by the federal government for wages paid to DSN consumers who performed janitorial work for the County.

15. Beaufort County and DSN comply with all state and federal laws in connection with the employment of DSN consumers.

16. The employment of DSN consumers to perform janitorial work serves the public interest in several ways. First, it permits individuals with special needs to obtain employment in a safe, supervised environment, and to eventually become tax paying citizens. These individuals receive pay for their work in accordance with the law and also benefit from having a sense of purpose. Additionally, this program benefits the taxpayers of Beaufort County by providing cost savings.

17. Contrary to Plaintiffs' allegations in this lawsuit, DSN consumers involved in the provision of janitorial services are not "exploited."

18. Attached hereto as collective Ex. A are true and correct copies of U.S. Department of Labor, Wage and Hour Division Certificates Authorizing Special Minimum Wage Rates Under Section 14(c) of the Fair Labor Standards Act for, *inter alia*, DSN consumers working for Beaufort County. These certificates include DSN consumers in providing janitorial services to Beaufort County.

19. In completing this form, DSN obtained information regarding prevailing wages for similar work in the area from several private companies.

20. Beaufort County and DSN have complied with federal law in connection with the wages paid to DSN consumers for janitorial work.

21. The federal government's only involvement with the payment of DSN consumers providing janitorial work to Beaufort County is approving the payment of wages below the prevailing minimum wage.

22. At no time did DSN or Beaufort County instruct or direct Island Group Inc., d/b/a Carolina Cleaning to hire special needs individuals or DSN consumers, although it may have encouraged Carolina Cleaning to voluntarily provide opportunities for DSN consumers.

23. The DSN's program of employing consumers for janitorial work has been the subject of extensive auditing by the South Carolina Department of Disabilities and Special Needs. Attached hereto as Ex. B is a true and correct copy of a May 23, 2016 Special Request Audit of the program for the employment of DSN consumers.

24. Although this state audit noted a previously unknown deficiency in that DSN mistakenly had not paid wages for travel time, it also noted that the rates of pay for DSN's consumers was compliant with the law, if not in excess of what the law required (emphasis added):

BCDSNB obtained commensurate wages from at least three different companies and used the HIGH wage rate even though they could legally average the three wage rates. *This benefited all consumers.* As an example, the commensurate wage rate for janitorial tasks used by the Provider is 20% higher than if BCDSNB used an average wage rate.

25. All audits of the DSN programs at issue in this lawsuit have disclosed that Beaufort County and DSN complied with all governing laws and that the consumers involved were well cared for and were not exploited.

26. Attached hereto as Exhibit C is a true and correct copy of a March 30, 2017 audit of DSN by the United States Department of Labor, Wage & Hour Division. This audit did note some issues (including the issue relating to travel time wages identified in the state audit):

1. The firm failed to obtain accurate prevailing wage rate information for some of the jobs being performed by the consumers in some instances due to the fact the firm used rates of pay for inexperienced workers to compute the prevailing wage rates rather than using rates of pay for experienced workers.

2. The firm failed to record and pay for all hours worked when compensable travel time between establishments was not considered hours worked by the firm.

3. The failure to properly compensate employees for travel time between establishments during the course of the work day led to underpayment of 38 workers, and resulted in FLSA section 14(c) subminimum wage and recordkeeping violations.

The report noted that DSN was working to correct deficiencies, including paying back wages.

27. At various times, Island Group Inc., d/b/a Carolina Cleaning was responsible for cleaning DSN facilities in Beaufort County.

28. Plaintiff Island Group Inc., d/b/a Carolina Cleaning did not provide satisfactory services in the cleaning of DSN's facilities.

29. On numerous occasions, DSN had various difficulties with Plaintiff Island Group Inc., d/b/a Carolina Cleaning not fulfilling its cleaning obligations.

30. DSN encountered numerous occasions when Plaintiff Island Group Inc., d/b/a Carolina Cleaning failed to provide proper cleaning of its facilities.

31. Overall, Plaintiff Island Group Inc., d/b/a Carolina Cleaning's performance of cleaning duties at DSN facilities was deficient and was detrimental to Beaufort County taxpayers.

32. I have reviewed the Affidavit Statement by Edward Wilmerding of Merry Maids that Plaintiffs have filed in this lawsuit.

33. I do not know Mr. Wilmerding. To my knowledge, DSN was not involved with Merry Maids.

B. Factual Inaccuracies in Plaintiff Molloy's Affidavit

34. I have reviewed the Affidavit of Craig Molloy submitted in this matter.

35. In his Affidavit, Mr. Molloy states: "Evidence shows BC's intentions were not for the development of skills for the people, rather to make money and they used confidential bidding and other information including forcing the special needs

participants into the 'cleaning enclave' which equaled more monies as the costs increased to operate the program which in-turn led to BC's profit."

36. This is not true. DSN never used confidential information in the bidding process. It has never forced special needs individuals into this employment program. Finally, while the employment of DSN consumers has served the dual purposes of benefitting those consumers and providing savings to Beaufort County taxpayers, this has not been the result of any improper conduct by DSN.

37. DSN has never obtained or improperly used any confidential information of Mr. Molloy or his company, Island Group Inc., d/b/a Carolina Cleaning.

38. DSN has never engaged in any collusive conduct or "bid rigging."

39. Mr. Molloy also states in his Affidavit that: "This placed BC in a position to receive (3 and 4 to 1) reimbursements from the State and Federal Government under Medicaid, based on the costs to operate this program."

40. This is also untrue. Beaufort County does not receive any reimbursements from the state or federal government through Medicaid for the employment of DSN consumers to perform janitorial work.

41. Mr. Molloy further claims in his Affidavit that: "The program operators, in this case BC - DSN /Pals are required to follow stringent Federal requirements, which did not happen." However, DSN has fully complied with all federal requirements.

42. In his Affidavit, Mr. Molloy also says that: "Public Beaufort County meeting minutes show the Director of DSN stating 'we have found a great way to make money' and 'its (sic) like winning the lottery' and refers to the significant financial gain as 'the big apple'." Plaintiff also attaches a single page from the minutes for the February 16, 2016 meeting of the Beaufort County Disabilities and Special Needs Advisory Board.

43. This is inaccurate for several reasons. First, the quoted language was not spoken by me. Rather, these words were spoken by Erin Womack, who was at the meeting to answer some questions by Board members.

44. Second, none of the language cited by Mr. Molloy had any reference to the employment of DSN consumers to perform janitorial work. Instead, Ms. Womack was speaking about certain waivers that permitted additional federal money to be paid to the families of severely disabled individuals for their care. Again, the "lottery" and "big apple" statements had **nothing** to do with either the employment of DSN individuals or the payment of federal money to Beaufort County.

45. Attached hereto as Ex. D is a true and correct copy of the entire minutes for the February 16, 2016 meeting of the Beaufort County Disabilities and Special Needs Advisory Board.

FURTHER THE AFFIANT SAYETH NOT!

Bill Love

Bill Love

Sworn to and Subscribed to before
me this 6th day of April, 2017.

Danise N. Beach

Notary Public for South Carolina

My Commission Expires: 5/29/2025



COUNTY COUNCIL OF BEAUFORT COUNTY
PURCHASING DEPARTMENT
POST OFFICE DRAWER 1228 ♦ BEAUFORT, SOUTH CAROLINA 29901-1228
TELEPHONE: (843) 255-2350 FAX: (843) 255-9437

PROPOSAL NOTICE 3910/120221

Page 1 of 56

CLOSING DATE AND TIME: March 22, 2012 3:00 P.M

PROPOSAL TITLE: Janitorial Services for Beaufort County – North of the Broad River – Eight (8) Locations.

You are invited to submit proposals in accordance with the requirements of this solicitation which are contained herein.

A pre-proposal conference will be held at 2:00 pm in the BIV # 3 Conference Room, 102 Industrial Village Road, Building # 3, Beaufort, SC 29906-4291, on February 29, 2012. All offerors are strongly encouraged to attend.

In order for your proposal to be considered, it must be submitted to the Purchasing Department no later than the date and time as listed above, at which time respondents to this request will be recorded in the presence of one or more witnesses. Proposals received by the Purchasing Department after the time specified will be returned to the offeror unopened. Due to the possibility of negotiation with all offerors, the identity of any offeror or the contents of any proposal shall not be public information until after the contract award is made; therefore, the public is not invited to the proposal closing.

The proposals must be signed by an official authorized to bind the Offeror, and it shall contain a statement to the effect that the proposal is firm for a period of at least 90 days from the closing date for submission of proposals. **Proposals must be submitted in a sealed opaque envelope/container showing the above proposal number, closing date, and title.**

All submittals (see Part XI, Submission Requirements) received in response to this Request for Proposals will be rated by a County Selection Committee, based upon the Evaluation Criteria as listed in Part VII and VIII. If the best offeror is clearly identified from the point summary, there will not be a need for oral presentations. If not, then an oral presentation from a minimum of the top two rated firms shall be required.

This solicitation does not commit Beaufort County to award a contract, to pay any costs incurred in the preparation of a proposal, or to procure or contract for the articles of goods or services. The County reserves the right to accept or reject any or all proposals received as a result of this request, to negotiate with all qualified offerors, or to cancel in part or in its entirety this proposal, if it is in the best interests of the County to do so.

BEAUFORT COUNTY

David L. Thomas, CPPO
Purchasing Director
(843) 255-2353

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**COUNTY COUNCIL OF BEAUFORT COUNTY
PURCHASING DEPARTMENT**

Building 2, 102 Industrial Village Road
Post Office Drawer 1228, Beaufort, SC 29901-1228
Phone: (843) 255-2353 Fax: (843) 255-9437

TO: Councilman Stewart H. Rodman, Chairman, Finance Committee

VIA: Cary Kubie, County Administrator *CK*
Bryan Hill, Deputy Administrator *BH*
David Starkey, Chief Financial Officer *DS*
Morris Campbell, Community Services Director *MC*
Mark Roseneau, Facilities Management Director *MR*
Mitzi Wagner, DSN Director *MW*
Joe Penale, PALS Director *JP*

FROM: Dave Thomas, Purchasing Director *DT*

SUBJ: Contract Award Recommendation for Janitorial Services North of the Broad River

DATE: August 13, 2012

BACKGROUND: Beaufort County issued a Request for Proposals (RFP) from qualified vendors to provide janitorial services for ten locations north of the Broad River (see attachment 1). Proposals were received from three vendors and subsequently evaluated by a selection committee. The Beaufort County Department of Special Needs (DSN) provided a proposal as well. The selection committee consisted of the following: Mark Roseneau, Facilities Management Director, Mitzi Wagner, Department of Special Needs Director, John Donahue, DNA Technical Leader, Beaufort County Sheriff's Office, Shannon Loper, Fiscal Technician III, Parks and Leisure Department. Oversight of the process was provided by the Purchasing Director. The evaluation committee reviewed all proposals, interviewed each vendor, and selected DSN's proposal as the number 1 ranked vendor. DSN will provide the janitorial services for the recreation centers listed in attachment 1 with the exception of the DNA Lab. Carolina Cleaning was selected to provide the services for the DNA Lab. The contract term for both vendors will begin September 1, 2012 and expire on June 30, 2013, with four more one year annual renewals subject to County Council approval.

VENDOR INFORMATION

Annual Pricing

Annual Pricing for DNA Lab

Beaufort County Department of Special Needs	\$52,026*	NA
Heavy D's, Beaufort, SC	\$84,924	Did not bid
Carolina Cleaning, Hilton Head Island, SC	\$88,680	\$4,320
Green Solutions Group, Sandy Springs, SC	\$142,362	\$7,911

*Does not include the DNA Lab.

FUNDING: PALS Locations: Accounts 63316-51210 PALS Athletic Centers and 63317-51210 Recreation Cleaning Services, DNA Lab: Account 33020-51210 Facilities Cleaning Services.

RECOMMENDATION: The Finance Committee approve and recommend to County Council the contract awards for Janitorial Services to DSN and Carolina Cleaning for the PALS centers and the DNA Lab in the respective annual contract amounts of \$52,026 and \$4,320.

cc: Elizabeth Wooten, Richard Dimont
At: RFP Original Pricing Form, Best and Final Pricing Information, DSN Pricing

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Original A.P.C. 01/1/12



Project Name:	Junkyard Clearing North of the Ground
Project Number:	RFP# 3010/120221
Project Budget:	
RFP Closing:	22-Mar-12
Time:	3:00 p.m.
Location:	BIV #3 Conference Room, 102 Industrial Village Road, Beaufort, SC 29908
RFP Administrator:	Dave Thomas, CPPO
RFP Recorder:	Elizabeth Woolen, CPPB

Locations	Light Cleaning			Heavy Duty			Green Solutions Green		
	Monthly Cost	Annual Cost	Frequency	Monthly Cost	Annual Cost	Frequency	Monthly Cost	Annual Cost	Frequency
1. Coosaw Center	\$125 per spec	NA	As needed	\$ 45.00		As needed	\$ 85.00		As needed
2. Booker T Center	\$125 per spec	NA	As needed	\$ 45.00		As needed	\$ 90.00		As needed
3. Broomfield Center	\$ 150.00	\$ 1,800.00	2x/month	\$ 45.00		As needed		\$ 3,269.03	2x/month
4. Lind Brown Gym	\$ 1,570.00	\$ 18,840.00	4x/wk/6x/ball	\$ 1,800.00	\$ 21,600.00	4x/wk		\$ 24,474.25	4x/wk/6x/ball
5. Scott Center	\$ 315.00	\$ 3,780.00	3x/wk	\$ 480.00	\$ 5,760.00	3x/wk		\$ 6,445.71	3x/wk
6. Seaside Center	\$ 200.00	\$ 2,400.00	1x/wk	\$ 160.00	\$ 1,920.00	1x/wk		\$ 4,135.35	1x/wk
						5x/wk/2 months/2 day/3 months			
7. St. Helena Gym	\$ 1,225.00	\$ 14,700.00	2x/wk/6x/ball	\$ 840.00	\$ 10,080.00			\$ 16,078.23	2x/wk/6x/ball
8. Port Royal Center	\$ 800.00	\$ 9,600.00	5x/wk	\$ 1,002.00	\$ 12,024.00	5x/wk		\$ 19,009.31	5x/wk
9. DSH Building	\$ 2,930.00	\$ 35,160.00	5x/wk	\$ 2,420.00	\$ 29,040.00	5x/wk		\$ 56,740.40	5x/wk
10. Sheriff's DNA Lab	\$ 200.00	\$ 2,400.00	3x/wk	\$ 325.00	\$ 3,900.00	3x/wk		\$ 12,210.24	3x/wk
Monthly Total:	\$ 7,390.00			\$ 7,162.00					

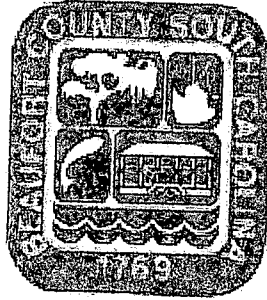
Bid Tab											
	Project Name:		Janitorial Cleaning North of the Broad								
	Project Number:		RFP# 3010/120221								
	Project Budget:										
	RFP Closing:		22-Mar-12								
	Time:		3:00 p.m.								
	Location:		DIV #3 Conference Room, 102 Industrial Village Park, Beaufort, SC 29900								
RFP Administrator:		Duane Thomas, CPPQ									
RFP Reporter:		Elizabeth Woodson, CPPB									

	Carolina Cleaning			Heavy Duty			Green Solutions Group			DSN	
Locations	Monthly Cost	Annual Cost	Frequency	Monthly Cost	Annual Cost	Frequency	Monthly Cost	Annual Cost	Frequency	Annual Cost	
1. Coosaw Center	\$125 per spec	NA	As needed	\$ 45.00		As needed	\$ 85.00		As needed	\$ 660.00	
2. Booker T Center	\$125 per spec	NA	As needed	\$ 45.00		As needed	\$ 90.00		As needed	\$ 660.00	
3. Broomfield Center	\$ 150.00	\$ 1,800.00	2x/month	\$ 45.00		As needed		\$ 3,269.03	2x/month	\$ 660.00	
4. Lynn Brown Gym	\$ 1,570.00	\$ 18,840.00	4x/wk/Exball	\$ 1,800.00	\$ 21,600.00	4x/wk		\$ 24,474.25	4x/wk/Exball	\$ 9,000.00	
5. Scott Center	\$ 315.00	\$ 3,780.00	3x/wk	\$ 480.00	\$ 5,760.00	3x/wk		\$ 6,445.71	3x/wk	\$ 4,800.00	
6. Seaside Center	\$ 200.00	\$ 2,400.00	1x/wk	\$ 160.00	\$ 1,920.00	1x/wk		\$ 4,135.35	1x/wk	\$ 660.00	
						6x/wk/2 months/2 day/3 months					
7. St. Helena Gym	\$ 1,225.00	\$ 14,700.00	2x/wk/Exball	\$ 840.00	\$ 10,080.00			\$ 16,078.23	2x/wk/Exball	NA	
8. Port Royal Center	\$ 800.00	\$ 9,600.00	5x/wk	\$ 1,002.00	\$ 12,024.00	5x/wk		\$ 19,009.31	5x/wk	\$ 9,000.00	
9. DSN Building	\$ 2,930.00	\$ 35,160.00	5x/wk	\$ 2,420.00	\$ 29,040.00	5x/wk		\$ 36,740.40	5x/wk	DSN	
10. Sheriff's DNA Lab	\$ 200.00	\$ 2,400.00	3x/wk	\$ 325.00	\$ 3,900.00	3x/wk		\$ 12,210.24	3x/wk	NA	
										Supplies:	
Monthly Total:	\$ 7,390.00			\$ 7,102.00						\$6,786.50	
Best and Final for the DNA Lab 08/09/12		\$4,320			Did not bid			\$7,911		NA	

Notes: St. Helena Gym was dropped from the scope of work as well as the Recreation Centers from the RFP. DSN offered to provide the service at a reasonable cost for all the Centers. The Dale Center, Bluffton Center, Burton Wells Senior Center, Burton Wells Concession Stand or Press Box was added to the DSN proposal.

Dale Center:	\$4,800
Bluffton Center:	\$10,200
Burton Wells Center:	\$4,800
DSN Grand Total:	\$ 32,026.50

A total of ten (10) PALS facilities will be serviced by DSN. Carolina Cleaning will service the DNA Lab. DSN will clean their own building.



Beaufort County Disabilities & Special Needs
100 Clear Water Way
Beaufort, SC 29906
843-255-6300
mwagner@bcgov.net

Janitorial Proposal to clean Parks & Leisure Services Buildings- Revised 6-18-12

Beaufort County Day Program staff and consumers have cleaned the old DSN Building in Port Royal which was about 8,000 sq ft for over 7 years. They also had a janitorial contract with Hargray for several years.

This proposal was developed quickly to allow DSN to have an affordable alternative by August 1, 2012, if our estimated costs are less than our revenue after 6 months we will renegotiate the contract to the correct amount.

The cleaning will be done by our Day Program consumers with a staff on site to provide supervision and to assure that the contract deliverables are completed. DSN has a certificate from the Department of Labor to allow us to pay consumers less than minimum wage based on a wage/hour study which pays each consumer based on their ability to perform the functions of the job. Wage/hour studies are conducted every 6 months and the amount paid is calculated based on the going rate for others without disabilities that perform the same function.

One of the main goals of DSN is to help consumers reach their full potential and this includes employment opportunities in our community. This contract will meet both consumer needs and Beaufort County Disabilities & Special Needs requirements.

Contact Person

Bill Love, DSN Deputy Director
100 Clear Water Way

Sites/Frequency/ Cost* NOT SAME SPECS. AS OTHER
bidders. *

SITE	FREQUENCY	MONTHLY COST	ANNUAL COST	
Broomfield	1 x per month	\$55	\$660	Additional as needed at \$55 each time
Coosaw	1 x per month	\$55	\$660	Additional as needed at \$55 each time
Booker T	1 x per month	\$55	\$660	Additional as needed at \$55 each time
Seaside	1 x per month	\$55	\$660	Additional as needed at \$55 each time
Scott Center	2X per week after 2:00PM	\$400	\$4,800	
Dale Center	2X per week after 2:00PM	\$400	\$4,800	
Lynn Brown	3 X per week	\$750	\$9,000	
Port Royal Center	3 X per week	\$750	\$9,000	
Bluffton Center	3xper week	\$850	\$10,200	
Burton Wells Concession Stand or/ press box	As needed	0	0	\$55 each time as needed
Burton Wells Senior Center	2 x per week	\$400	\$4,800	
TOTAL COST		\$3770.00	\$45,240.00	
Cost Supplies, Equipment, travel	15% of total contract	\$6,786	\$52,026	
Grand Total			\$52,026	

Total Agreement

This agreement constitutes the entire agreement between the parties hereto. No representations, warranties or promises pertaining to this agreement have been made or shall be binding upon any of the parties, except as expressly stated herein.

This agreement shall be construed in accordance and governed by the laws of South Carolina.

Beaufort, SC 29906

843-255-6285

wlove@bcgov.net

Mitzi H. Wagner, DSN Executive Director

100 Clear Water Way

Beaufort, SC 29906

843-255-6290

mwagner@bcgov.net

Contract Requirements

We will have the needed number of consumers at each site and there will always be a DSN Training Specialist with the consumers. We will provide transportation to and from the site. We will complete all duties including the following:

- **Empty all trash containers and replace liners**
- **Wash trash containers as needed**
- **Sweep, vacuum and/or wet mop all floors**
- **Sweep outside entrances including sidewalks, steps and ramps**
- **Pick-up and dispose of any loose trash around the exterior of buildings (including cigarette butts, other litter, etc.)**
- **Return chairs and tables to their regular locations as needed**
- **Replenish all bathroom supplies as needed (toilet paper, paper towels)**
- **Clean kitchens, water fountains and bathrooms with appropriate sanitizers and disinfectants**
- **If maintenance issues are noted, notice will be given to the appropriate customer contact person**
- **Other cleaning services as needed**

We will provide a monthly evaluation sheet attached to this proposal to let us know how we are doing to meet your needs. We request that you and/or your staff complete it monthly for each site. Also any problems or issues reported to the contact persons will be addressed within 24 hours.

FLSA NARRATIVE

Beaufort County Board of Disabilities and Special Needs
100 Clear Water Way
Beaufort, SC 29906
Tel (843) 255-6300
Contact Person: William Love, Exec. Dir
Terry Geitner, Day Program Coor
Vicki Prescott, Planning Specialist

EIN: 57-6000311

Certificate Number: 04-04314-S-028; 04-04314-S-044

Profile Section:

Beaufort County DSN Board, 100 Clear Water Way Beaufort, SC 29906, is a community rehabilitation program (CRP) (Work Center) that does business as Beaufort County Department of Disabilities (see Exhibit C-1.) Beaufort County DSN provides multiple services in the community, such as early intervention, case management, respite, day support, job coaching, residential and family support services. There are a few jobs performed by the consumers under the Day Services Program umbrella. The firm does hold a subminimum wage certificate, under which all consumers are paid hourly rates. The jobs performed are Hanging Textiles, Shredding, Light Janitorial, and Car Wash. The investigation was full investigation of the firms sub minimum wage programs. The firm employed approximately ^{Ex 4} workers with disabilities (see Exhibit C-6.) The CRP also consisted of approximately ^{Ex 4} non-disabled staff employees (see Exhibit C-1-c.) The subject firm is a 501(c)(3) governmental non-profit organization and began operation in 2002 (see Exhibit C-1a and C-2.) The Executive Director is William Love. Beaufort County DSN also operates under the direction of an ^{Ex 4} member appointed board. Nancy Pinkerton is currently the chairperson of the board.

COVERAGE

Reason for Investigation:

Ex 7(d)

History: This was the first full investigation conducted on Beaufort County BDSN . Therefore, no investigatory history exists.

MODO Information: The corporation has one location in Beaufort, SC. The Columbia District Office is the district office responsible for this geographic region.

Nature of Business: Beaufort County BDSN advocates for and provides assistance/services to individuals with disability and or special needs.

Section 3(d) employer:

William Love, Executive Director, meets the definition of an employer under 3(d) of the Fair Labor Standards Act. He is involved in the daily operations of the business, he has hired and fired employees, directed their work, and otherwise acted in the direct interest of the organization. Therefore, he is the Section 3(d) employer under the Act.

Enterprise Defined 3(r):

The firm currently employs Ex 4 staff employees.

Enterprise Coverage Section 3(s)(1)(C): This work center is operated by the Beaufort County local government . The board of directors is appointed by the Governor of the state of South Carolina. In addition, the center receives 98% of its funding from the State Department of Disabilities and Special Needs. Furthermore, all employees are paid under the state of South Carolina pay schedule and plan (see Exhibits C-2 through C-5.) As a result of this information, the Beaufort County DSN Board meets the definition of a 3(s)(1)(c) public agency. Therefore, all of Beaufort County DSN Board staff members are covered under 3(s)(1)(c) for the investigatory period.

Enterprise Coverage Section 3(s)(1)(A): *(For reporting purposes only)*

The funding for each of the years the firm has been operating is as follows:

2015

2014

Ex 4

The CRP was a 501(c)(3) non-profit organization; therefore the firm's ADV was not applicable. The firm did not have a retail concept which could be considered as a for-profit branch of the work center. (see Exhibits C-1 and C-4.)

Period of Investigation: June 6, 2014 through June 3, 2016.

Investigation Tool: This investigation is a full investigation consisting of payroll and time records check, establishment visits and employee interviews (see Ex. B-1 through B-6.)

EXEMPTIONS

13(a)(1)

The firm claimed Ten exemptions. Based on the size of the organization and a discussion with the employer the exemptions were not tested.

STATUS OF COMPLIANCE

Reason for Investigation:

Ex 7(d)

Pay Practice/Workforce: The workweek ran from Saturday through Friday for the CRP. All staff members were paid bi-weekly (see Exhibits C-1 and "B" Exhibits.) The consumers were paid monthly (see Exhibit C-1.) The hours worked by consumers were kept by the direct service staff (see Exhibit C-1 and "B" Exhibits.) The establishment's normal hours of operation were 8:00am to 2:30pm. for the consumers, and 8:00am to 5:00pm for the staff. There were approximately ^{Ex 4} staff employees and approximately ^{Ex 4} working consumers (see A-0 Exhibits. C-6.) All of the consumers were paid hourly rates. Transportation was provided for the consumers at no charge (see Exhibits A-0 and C-1.)

Section 206: Seven minimum wage violations were disclosed. Payroll records and initial conference information indicate consumers who worked on the Janitorial contracts were not paid for travel time to and from all job sites during the course of the work day. This WHI requested the employers provide a report indicating the distance and time from site to site that each work group traveled daily. The employer used MapQuest to generate the distance and time between each route. This WHI then asked for a list indicating the number of times each consumer travel to the various worksites during the period of investigation (see Exhibit D-3.) After all documentation was compiled the federal minimum wage was computed for the individuals who earned \$7.25 for the hours they worked. Formula Follows:
(see Exhibits A-1 through A-39.)

Method of Computation

Distance in minutes * number of trips = Total hourly travel time
Total hourly travel time* minimum wage=Backwages owed for travel time

Ex.

$$.50 * \$7.25 = \$3.63$$

Total backwages owed to five (5) employees \$891.75

Section 207: No overtime violations were disclosed. Payroll records and employee interviews indicate that all staff was paid at least the federal overtime wage for all hours worked. Furthermore, consumers did

not perform work for more than 40 hours a week (see Exhibits A-0 through A-0r & B-1 through B-6.)

Section 211: Recordkeeping violations were disclosed. The employer failed to pay for all travel time incurred by consumers and the employer also did not pay all wages when due, to some consumers. WHIs **Ex 7(c) & 6** found timesheets that were paid two months after the services were performed, instead of on a monthly basis. The employer indicated that it was because the staff submitted the time after payroll had been done.

Section 212: Interviews and visual observation during a tour of the establishment indicated there were no employees under the age of 18 (see "B" Exhibits and C-1.)

Section 14(c):

Certificate Status

-Certificate Number -04-04314-S-028

-Issue Date-12-29-2014

-Certificate Number -04-04314-S-044

-Issue Date-01-07-2016

Section 29 CFR 525.3-Disabled for the Work Performed: No violations found. Medical diagnosis records were reviewed at the establishment. The medical files reviewed and the tour of the establishment indicated that the workers were disabled for the work being performed (see Exhibit D-7.)

Section 525.10-Prevailing Wage: Calls were made to establishments that completed prevailing wage surveys for the CRP. All surveys were verified (see Exhibit D-8.) However, the employer did receive two survey in 2015 that included the minimum wage rate. One was for Retail/ Hanging Textiles and the other was for Car wash. This WHI asked the employer to redo the prevailing wage surveys to get the rate of the experienced worker. The employer had a fudge factor included and paid \$8.00 instead of the incorrect average of \$7.90 for the retail job and paid \$9.00 instead of the incorrect average of \$8.67. Therefore, no monetary violation was cited (see Exhibit D-8.)

Time Studies: No issues were disclosed with the time studies as the standard established was verified within an acceptable range (see CRP time study at Exhibit D-4.) WHI's tested the Car Wash Study and the Janitorial study. WHIs attempted to test the Goodwill Hanging Textile study however, there were not enough articles of clothing to complete the study. WHI ^{EX 7(6) KB} requested the employer conduct the time study and report findings to WHIs.

Section 29 CFR 525.12-Piece Rate: No violations found. The employer did not pay any consumers on a piece rate basis (see "A-0" exhibits.)

Section 29 CFR 525.12-Hourly Rate: 33 violations were found. Consumers who worked on the Janitorial contracts were not paid for the travel time they incurred between job sites. This WHI found that consumers who performed janitorial work at various locations were not compensated for travel that took place across the work day. Consumers would arrive at the CRP in the morning and travel to the first site of work. After they left the first site of work they did not receive compensation for the time it took for them to travel between job sites.

In addition, some work groups returned to the CRP for lunch and then went back out to a job site after lunch and were not compensated for that time. As a result this presented an hours worked issue. Per 29 CFR 785.38 travel time that takes place across a work day should be reimbursed. This WHI computed the average hourly earnings in the most recent quarter for the consumers who were paid sub-minimum wages. Then this WHI requested the employer compile the distance between jobsites and the number of trips each consumer made. The employer used MapQuest to generate the distance and time between each route. After all of the documentation was compiled the average hourly earnings was used to compute the travel time owed (see Exhibits A-1 through A-39.) Formula Follows:

Method of Computation

Distance in minutes * number of trips = Total hourly travel time
Total hourly travel time* minimum wage= Backwages owed for travel time

Ex.

3.75 hrs of travel *\$6.00 = \$22.50

Total backwages owed to thirty-three (33) employees \$16,087.07

FMLA: The CRP is covered under FMLA as a Public Agency. The policy review indicated the CRP used the city's FMLA policy. The policy did not have the Flight Attendant updated provisions included. WHI advised the employer that all updated provisions should be included in the policy (see Exhibit D-1.)

DISPOSITION

A final conference was held on February 14, 2017 with Ms. Vicki Prescott and Mr. Terri Geither. WHI  represented the division. An overview of the investigation process and a general discussion of the Fair Labor Standards Act were conducted that included the following topics: **section 14c**, coverage, **minimum wage**, overtime, **record keeping**, exemptions, and child labor. Items bolded were discussed in detail.

Section 525.10-Prevailing Wage: This WHI reminded the ER that the prevailing wage surveys must be done annually and that no minimum wages should ever be used in the surveys. Ms. Prescott stated that she understood and has been closely monitoring the surveys for the last year.

Section 206: 29 CFR 525.12-Hourly Rate: This WHI informed the employer that a violation had been disclosed as a result of the nonpayment of travel time. WHI explained to the employers that the 38 consumers who were part of the Janitorial contracts should have been paid for the travel that took place from site to site. Ms. Prescott stated that she understood, but asked if they had to be paid when they returned to the center for lunch. This WHI explained that if the center is their last stop for the day then the travel time to the center does not have to be compensated. However, if the consumers eat then return to work at a job site then they should be paid for the travel time from the center to the last job site. Mr. Geitner stated that he understood and that all consumers would be reimbursed for the travel time.

This WHI also reminded the employer to always round up when it came to establishing the commensurate rate. Mr. Geitner and Ms. Prescott stated they understood.

Section 211: This WHI informed the employers that a recordkeeping violation was disclosed as a result of the nonpayment of travel time to consumers and the delayed pay checks received to some consumers. The WHIs stated that since the CRP paid consumers monthly, all compensation should be paid timely for the month the work was performed. Mr. Geitner stated they would relay that to payroll.

Firm's approach for immediate and future compliance:

1. The employer agreed to pay backwages to consumers by March 28, 2017.
2. The employer agreed to keep accurate payroll records for 3 years and time records for 2 years.
3. The firm agreed to conduct accurate prevailing wage surveys.
4. The firm agreed to round accurately for hourly wages.

Section 16(e): WHIs stressed the importance of future compliance and advised firm representatives regarding the potential assessment of CMPs and possible certificate revocation for future violations.

Section 16(b): No 16(b) actions pending (see Exhibit C-1-e).

Recommendations: WHIs recommend the case be closed upon receipt of proof of payment with no CMPs assessed.

Publications Provided: HRG, FLSA, WH-1284, Regs. 516, 525, Fact Sheets 44, 28D, 39, 39A-F

Notification: Email will be sent to Beaufort Watchdog email address regarding case outcome

All correspondence to:

Mr. William Love
100 Clear Water Way
Beaufort, SC 29906

Wage Hour Investigator(s)

Ex 7(c) & 6
02/28/2017

BEAUFORT COUNTY BOARD OF DISABILITIES AND SPECIAL NEEDS

100 Clear Water Way

Beaufort, SC 29906

June 19, 2012

MEMBERS PRESENT: Gloria Bolino, Bobby Collar, Margaret Gatch, David Green, Helene Gruber, Nancy Pinkerton, Ann Wirz and Gardenia Simmons-White

MEMBERS ABSENT: Jonathan Brown, Grace Dennis, Algredda Ford, and Morris Campbell (Ex-Officio).

STAFF PRESENT: Mitzi Wagner and Joe Anne King

GUESTS PRESENT: None present

I. CALL TO ORDER – Nancy Pinkerton, Secretary

Ms. Gruber was running late. Ms. Pinkerton called the meeting to order at 4:05 p.m.

II. WELCOMING GUESTS

There were no guests present

III. MINUTES OF THE MAY 15, 2012 BOARD MEETING

MOTION WAS MADE BY DAVID GREEN AND SECONDED BY BOBBY COLLAR TO APPROVE THE MAY 15, 2012 BOARD MINUTES AS WRITTEN. PASSED UNANIMOUSLY.

IV. ADOPTION OF THE JUNE 19, 2012 AGENDA

Ms. Wagner stated she would like to add the Budget Update under the Executive Director's report.

MOTION WAS MADE BY ANN WIRZ AND SECONDED BY MARGARET ANN GATCH TO APPROVE THE JUNE 19, 2012 AGENDA AS AMENDED. PASSED UNANIMOUSLY.

V. CHAIRMAN'S REPORT, Helene Gruber, Chair

Ms. Gruber stated that Rev. Cushingberry, Chairman of the ABLE Foundation, presented her with the balance of the funds set aside for the ABLE Garden, in the amount of \$447.00 that can be used to help fund the painting of the donor tree or possibly replenish the annual plants in the garden. Ms. Gruber said she would provide an update each month on the remaining funds.

Ms. Gruber thanked all those who attended the dedication and to those who contributed to the refreshments and helped to get things organized. She said it was a nice fun event.

Ms. Gruber asked about taking the month of July off. It was mentioned that previously board members had voted to not meet during the month of August. Board members were asked if July could be considered and all agreed to skip the meeting in July.

MOTION WAS MADE BY NANCY PINKERTON AND SECONDED BY DAVID GREEN TO FORGO THE JULY MEETING AND MEET IN AUGUST. PASSED UNANIMOUSLY.

The next meeting will be held on August 21, 2012 at the DSN Facility beginning at 4:00 p.m.

VI. EXECUTIVE DIRECTOR'S REPORT – Mitzi Wagner

Ms. Wagner said the garden party was delightful and thanked all those who attended and helped to make it possible. She said it was really a neat event and with so much difficulty with the first one this one made up for it, and that's exactly the way it should be. She said she was very surprised and humbled by what staff did with the presentation of the plaque, picture and the gift card. She again thanked all those who made this possible.

Ms. Wagner passed out information on the Targeted Case Management. She said she did receive a little more information and wanted to keep board members up to date on what we can do and what we cannot do. She said this is our first month of looking at what our service coordinators are doing now, see how many units of billable time is spent in the month and have a target amount of 324 billable hours a month we will need to pay for the current budget for service coordination. She said we are still not aware of what will be approved as a billable unit and trying to interpret what the billable hours are. She said by October or November we should have a better picture of where we will be. She said Targeted Case Management will be starting in January of 2013. She also said that the payment premium can be readjusted up the five times per year and the billable time can be rounded up but she was not aware at what point that would be. We will have to become a Medicaid Provider in order to direct bill for services which will require a completed application and a fee to become a provider.

Ms. Wagner said we have been given the grant for the 2013 Breakers Program. We were also told that we would get the remaining funds of the 2012 grant that was not used, to continue on this year. She said we have now become the poster child of this program. She also mentioned that the program Ms. Holland spoke about at the last meeting that we have not had in seven years had a balance of \$25,000 and will be diverted to Camp Treasure Chest and Breakers will roll over into next year's budget.

Ms. Wagner said she spoke with Knuckles Consulting Firm regarding the process of letting our consumers keep the profits from the greenhouse and pottery sales. She said because it is a cottage type industry they advised us to establish two separate businesses, that are consumer owned with a board, and they would decide how the profits will be used. She said we set up two separate bank accounts, one is Old Shell Pottery and the other is Old Shell Plants. They have a board that meets periodically and the consumers can take what profits are there and divide it among themselves. She said it is a good learning experience because they interact and become involved with community people. She said the county wanted it to become a cost center in the budget, close out the bank accounts and let the treasurer handle the money. Ms. Wagner spoke with the consulting firm who advised her not to let the county become involved. Ms. Wagner said her plans are to recommend to the county not to do it based on the consultant's recommendation.

Ms. Wagner said we have not received our 2013 budget. County Council has approved the budget but in terms of knowing what of that total budget is ours and how much it is, she has not gotten it in writing. She said she has asked for some new positions in the budget and is assuming they are in the budget. She says she feels we will scrape by this year and not be in the "red". She said we have approval for nine new waiver individuals and three new "pay for services" individuals in the day program, therefore need the additional staff to meet the ratio staff to individuals.

Ms. Wagner said she is meeting with county in regards to the cleaning contract. She said we are not pleased with the cleaning crew we now have and are in hopes of having someone new next year. They were complaining about the smaller buildings in the county, mainly with PALS. She said our individuals could clean the smaller buildings. County liked the idea and we put together a proposal to do a lot of the community buildings, Green Street gym, Bluffton gym and Burton Wells Senior Citizens. Some will be monthly, some on an as needed basis. The contract would bring in \$45,000 to \$50,000 annually and would mean a lot of our individuals in day program would be employed.

Ms. Wagner said she received a petition from the individuals in day program stating they wanted a flag and a flagpole. She said they had been talking about Flag Day and the 4th of July and what the flag is. Ms. Wagner said we will have a flag here, one way or another.

VII. COMMITTEE REPORTS

- Hospitality Committee, Helene Gruber, Chair
Ms. Gruber said the Garden Party was a success and we may look forward to a fall or Holiday event
- Personnel Committee, Jonathan Brown, Chair
~Nothing to report
- Policy/Directives Committee, Grace Dennis, Chair
~Nothing to report
- Public Relations Committee, David Green, Chair
Mr. Green said we are waiting to get information updated on the county web page and asked if we had any further information. Ms. Wagner said there is some additional information on the web page with some errors. She suggested he get in contact with Bryan Hill.

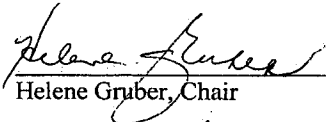
VIII. PUBLIC COMMENT

The next board meeting will be held on August 21, 2012 at 4:00 p.m. at:
Disabilities and Special Needs Department
100 Clear Water Way
Beaufort, SC 29906

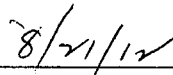
XI. ADJOURNMENT

MOTION WAS MADE BY NANCY PINKERTON AND SECONDED BY DAVID GREEN TO ADJOURN THE JUNE 19, 2012 MEETING. PASSED UNANIMOUSLY.

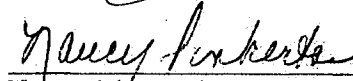
The meeting was adjourned at 5:05 p.m.



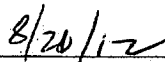
Helene Gruber, Chair



Date



Nancy Pinkerton, Secretary



Date

BEAUFORT COUNTY BOARD OF DISABILITIES AND SPECIAL NEEDS
100 Clear Water Way
Beaufort, SC 29906

April 16, 2013

MEMBERS PRESENT: Jonathan Brown, Gloria Criscuolo, Grace Dennis, Margaret Ann Gatch, Helene Gruber, David Green, Nancy Pinkerton, Gardenia Simmons-White, Ann Wirz and Morris Campbell (Ex-Officio)

MEMBERS ABSENT: Bobby Collar

STAFF PRESENT: Mitzi Wagner, Bill Love, Beth Cody and Joe Anne King

GUESTS PRESENT: None present

I. CALL TO ORDER – Helene Gruber, Chair
Ms. Gruber called the meeting to order at 4:00 p.m.

II. WELCOMING GUESTS
There were no guests present.

III. MINUTES OF THE MARCH 19, 2013 BOARD MEETING

MOTION WAS MADE BY GLORIA CRISCUOLO AND SECONDED BY NANCY PINKERTON TO APPROVE THE MARCH 19, 2013 BOARD MINUTES AS PRESENTED. PASSED UNANIMOUSLY.

IV. ADOPTION OF THE APRIL 16, 2013 AGENDA

MOTION WAS MADE BY GRACE DENNIS AND SECONDED BY ANN WIRZ TO ADOPT THE APRIL 19, 2013 AGENDA AS SUBMITTED. PASSED UNANIMOUSLY.

V. CHAIRMAN'S REPORT, Helene Gruber, Chair

Ms. Gruber reminded board members that it was time to appoint a nominating committee to recommend officers for the coming year and asked for volunteers. Ann Wirz, Gloria Criscuolo and Grace Dennis volunteered. Ms. Criscuolo will chair the committee and bring their recommendations to the board for vote.

Ms. Gruber mentioned that Ms. Criscuolo composed a letter to members of the county Council thanking them for listening to and supporting us. The letter comes from all board members and each board members name is on the letter. Ms. Gruber passed the letter around for each member to sign.

VI. EXECUTIVE DIRECTOR'S REPORT - Mitzi Wagner

Ms. Wagner asked Ms. Cody to update board members on the status of the DSN budget. Ms. Cody passed out budget information, reviewed each topic and answered questions. She said we are three-quarters through this budget year and are in good shape. Ms. Wagner mentioned that we done an analysis of our budgeted revenue versus what we will actually receive and found that we will have \$150,000 more in revenue than we originally budgeted for. She said more waivers were approved in the past four months than expected and we are serving more individuals in the day program. Ms.

Cody said we are buying food in bulk from Sysco that will prevent staff from spending hours shopping for all the homes and using that time to be more productive with our individuals. She said our menus are planned out for the week by a Sysco dietician and each house determines what menu they will provide that day. Ms. Wagner mentioned that if Sysco could not provide the service, we would get someone else to look at it.

Ms. Wagner said Mr. Love has done a fantastic job with our cleaning contracts. The individuals have done such a wonderful job with PALS that they asked us to submit a proposal to clean Buckwalter and Burton Wells facilities. We also found there may be an opportunity to clean the library and submitted a proposal for that. She said it is very exciting to see the recognition for DSN and the consumers and it elevates awareness in the community. Our individuals love working in the community and feel that they are part of it. With these contracts, we should have more than 50% of our consumers from the day program employed and Mr. Love is responsible for making that happen. Mr. Love said DSN has counterpart meetings that meet periodically to talk about what is happening. He said at the last meeting they were amazed at our relationship with the county and felt this population is part of the county and the county should assume responsibility for putting a face and a voice for them. He said we are the only county in the state doing this. He said that speaks for the support of Mr. Kubic and Mr. Campbell and if we did not have that kind of support this would not happen. This population is one of us and it is important to see consumers working in the community and making a difference.

Ms. Wagner said our "Volunteer Appreciation Day" would be held on April 26 spearheaded by Ms. Randel. She said invitations were mailed and hopes that all board members will attend. What they have planned is terrific. Mr. Kubic, Beaufort County Administration will open the ceremony and Mr. Love will present the gifts. Refreshments will be served, and everyone who attends will receive a gift. She said over 100 individuals have volunteered in some capacity at DSN in the last year.

Ms. Wagner said we are still working on the Flag Pole Project and if you know of someone who would like to buy a brick please thank them and give them a form. She said we have sold about 35 and need a minimum of 62 and really could use some help in selling them.

Ms. Wagner mentioned that she talked with two ladies today who want to be involved but did not know what they wanted to do. She said they were both delightful people; one of them made the decision to go with ABLE and the other will complete the application for the vacant position on the Advisory Board. ABLE now has ten members; all are enthusiastic and ready to go. Everybody is motivated and ideas going everywhere. ABLE's new treasurer is "Gung-ho" and Beth and I will try to clear up some things that are very confusing about the county and by this time next year ABLE will be doing amazing things.

Ms. Wagner said with the additional money we found in the budget there are some things we plan to do. She mentioned that we plan to get a storage shed and a large screen television that can be connected with the computers to help with the sound when we have training. Mr. Love will speak on our decision to put in a well.

VII. DEPUTY DIRECTOR'S REPORT – Bill Love

Mr. Love said that for the past six months we have been monitoring our water bill. Our water bill averages about \$1000.00 monthly and should be around \$350 to \$400 a month. Between the

irrigation and the fountain, we needed to do something different, so we put in a proposal for a well. Mr. Pinckney was selected to work with us to create a well with irrigation and water to the fountain. He said within a year, the well will pay for itself.

Mr. Love said Ms. Carol Lindsay, who was one of our service coordinators, was selected as our Breakers Coordinator. She has become very involved and engaged and done several things already that have given us the confidence that she will keep things going the way they have been going and we are pleased to have her with us.

Mr. Love said the security system is coming along well. They are finished with the wiring on this side of the building and are now working in the day program. We will have a total of 57 cameras, 19 will be on the outside for security, and the majority will be in the training rooms, the large room and in the dining area in the day program. A few will be located on this side of the building. There will be audio as well as visual, in the day program, which is positive. The crew is extremely accommodating, and is working until 9:00 and 10:00 at night to avoid any conflicts. They are scheduled to come after 3:00 p.m. when our individuals are gone.

Mr. Love said we mentioned a few weeks ago that we found mildew and water damage in the changing room. He said it has all been cleaned out and repaired. The repairs will be covered by the contractors insurance.

Mr. Love said our bluebirds are back and we have three eggs in the nest. The consumers are excited and are watching. Mr. Love thanked Ms. Gruber for enabling us to have the birdhouse, camera and television for watching the process. He said we are learning about bluebirds, watching them building the nest, laying their eggs and watching them hatch.

VIII. COMMITTEE REPORTS

- Hospitality Committee, Helene Gruber, Chair
The committee has not contacted us but look forward to hearing from them.
- Personnel Committee, Jonathan Brown, Chair
Mr. Brown said he would call to inquire about the application mentioned by Ms. Wagner.
- Policy/Directive Committee, Grace Dennis, Chair
No policies to review this month
- Public Relations Committee, David Green, Chair
Nothing to report.
- Goals Committee Reports
 1. Communication among boards
Ms. Wirz mentioned that in the past, we have had difficulty getting members of each board together and it was not very productive. It was suggested that one or two members could sign up to attend an ABLE Foundation meeting and bring the information back to board members. Much of the Human Rights meeting consists of confidential information and possibly someone from Human Rights could attend our meetings. She also said she knows that we were very intimidating but would like to be able to work with them and also ask for their support.

MOTION WAS MADE BY GARDENIA SIMMONS WHITE TO INVITE MEMBERS OF THE HUMAN RIGHTS COMMITTEE TO ATTEND OUR MEETING AS A GUEST AND TAKE THE INFORMATION BACK TO THEIR GROUP. PASSED UNANIMOUSLY.

MOTION WAS MADE THAT ANN WIRZ AND GRACE DENNIS ATTEND AN UPCOMING ABLE FOUNDATION MEETING OFFERING THE SUPPORT OF THE ADVISORY BOARD IN THEIR FUND RAISING PROJECTS. PASSED UNANIMOUSLY.

2. Grant money and fundraising
Nothing to report
3. Communication with County and State
Ms. Criscuolo said she had plans to attend the SC Commission meeting in June.
4. Educate Families for Eligibility.
Ms. Wagner said we owe Mr. Collar a debt of gratitude. He got us a place on the agenda for both the middle and elementary schools on this side of the Broad and we have dates later this month for the two schools on the other side of the Broad. The meeting we had was very successful. Mr. Love, Ms. Womack and Ms. Wagner attended. She said some of the teachers did not understand how important it was and were really "gung-ho" to make things happen. Ms. Wagner said it would make a big difference in getting people eligible for DSN services early on.

IX. PUBLIC COMMENT

Ms. Criscuolo said the Bluffton Sun has an article "Volunteer offers with Long Term Benefits" and would like to get the Public Relations person for the county involved. She suggests an interview with Mr. Love on the need for volunteers. Ms. Wagner said this is why we are having the Volunteer Celebration, and one of the things we want to do is use the video as a way to make people aware of the need. Some of the commentary in the video is to make people aware of the need for volunteers in this particular area.

Mr. Green said we might want to include our individuals on the work contracts in the video. He also said the Osprey Village Organization is conducting a survey of potential residents to see what type of housing they want to see. The survey can be taken on the website. Ms. Wagner asked him to send us the Website information and we will pass it along.

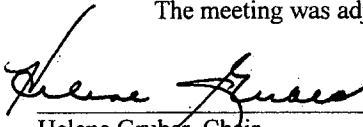
Mr. Campbell thanked members for serving on the board. He mentioned that the application for the potential member needed to be in by Monday in order for committee to review it. He also suggested that the chairman of each board, Advisory, ABLE and Human Rights, plan to meet on a quarterly basis and bring that information back to the group.

The next board meeting will be held on Tuesday, **May 21, 2013** at 4:00 p.m. at:
Disabilities and Special Needs Department
100 Clear Water Way
Beaufort, SC 29906

XI. ADJOURNMENT

MOTION WAS MADE BY NANCY PINKERTON AND SECONDED BY GLORIA CRISCUOLO TO
ADJOURN THE APRIL 16, 2013 MEETING. PASSED UNANIMOUSLY.

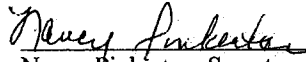
The meeting was adjourned at 5:15 p.m.



Helene Gruber, Chair

6/18/13

Date



Nancy Pinkerton, Secretary

6-18-2013

Date

16-CP-02-1825

Nelson, Joy

From: Holland, Alicia [aholland@bcgov.net]
Sent: Thursday, December 06, 2012 8:18 AM
To: Loper, Shannon
Subject: RE: Written Notes as PDF

You need to send an email to Dave, include Mitzi, myself, Joe, and Morris. If Mitzi can take over the Bluffton Gym, then Dave needs to give Carolina Cleaning a 30-day written notice. Let's say he gets that out today, then the effective date of the change order would be 1/6/2012 that Carolina Cleaning would not bill for Bluffton Gym anymore and DSN would begin billing for it.

Dave keeps telling me that he was under the impression that Mitzi/DSN could not handle the Bluffton Gym too.

-----Original Message-----

From: Loper, Shannon
Sent: Wednesday, December 05, 2012 4:41 PM
To: Holland, Alicia
Subject: RE: Written Notes as PDF

Do I need to send Dave an email to terminate? I will no longer verbally communicate with him.

-----Original Message-----

From: Holland, Alicia
Sent: Wednesday, December 05, 2012 3:32 PM
To: Loper, Shannon
Cc: Hill, Bryan
Subject: RE: Written Notes as PDF

The same reason we renewed with them last year and then did change orders for what DSN took over. Official communication has not happened for Carolina Cleaning to be terminated from the Bluffton Gym and DSN to take over the Bluffton Gym to my knowledge. I have Carolina Cleaning invoices on my desk for the months of November and December 2012 (not paid yet) and both months have billed for the Bluffton Gym. Today is 12/5/2012, so if termination is to occur the communication needs to be made.

The last I was told was that Bluffton Gym was not included in DSN's bid. In order for this to happen a change order needs to take place with the DSN contract (add) and a change order needs to take place with the Carolina Cleaning contract (delete).

I know DSN billed for the last week of October for the Bluffton Gym, but on November 8th, you were going to check with Mitzi to see if they could do the Bluffton Gym. I am not sure how they cleaned the Bluffton Gym any in October.

-----Original Message-----

From: Loper, Shannon
Sent: Wednesday, December 05, 2012 2:59 PM
To: Holland, Alicia
Cc: Hill, Bryan
Subject: RE: Written Notes as PDF

Why are we renewing with Carolina Cleaning for PALS?

-----Original Message-----

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Thomas, Dave

Exhibit

From:

Rosenau, Mark

Sent:

Thursday, June 28, 2012 4:02 PM

To:

Thomas, Dave; Wagner, Mitzi; Loper, Shannon; Donahue, John
Hill, Bryan; Campbell, Morris C; Dixon, Vanessa; Wooten, Elizabeth; Dimont, Richard;
Holland, Alicia; Kern, Nathan

Cc:

Subject:

RE: New Janitorial Scope of Work for North of the Broad Locations

Attachments:

Mondo Maintenance.pdf, image001.jpg

Dave,

Please find attached the Mondo maintenance requirements, we'll pass it along to the proposers. We'll schedule the walk-thru on the 10th at 1:00pm. Thursday at 10:00 is good.

Thank

From: Thomas, Dave

Sent: Thursday, June 28, 2012 10:22 AM

To: Rosenau, Mark; Wagner, Mitzi; Loper, Shannon; Donahue, John
Ort Hill, Bryan; Campbell, Morris C; Dixon, Vanessa; Wooten, Elizabeth; Dimont, Richard; Holland, Alicia
Subject: New Janitorial Scope of Work for North of the Broad Locations

All,

As you know we started this project with 10 locations. After reviewing the DSN proposal and dropping the requirement to clean the St. Helena Gym, we are left with the following locations:

1. DSN Building
2. Sheriff's Office DNA Lab
3. St. Helena Library

I also reviewed the scope of work provided by Mitzi and have a few questions from each of you concerning the scope of work areas (mainly the monthly requirements) that the DSN clients cannot handle.

With this in mind, as we discussed at the interviews, I would like to provide you with a list of requirements that must be accomplished before we may move forward:

1. Conduct a planning meeting (next Thursday at 10:00 am or Friday after 3:00 is good for Mitzi and myself) to review Mitzi's scope of work and finalize the corrected scope of work and requirements for the 3 buildings listed above.
2. Mark, please select a day to conduct a walk-thru for all three firms as soon as possible. (Tentative date/time July 10, 2012, 1:00 pm.)
3. Mark, provide the special cleaning requirements for the DSN Mondo flooring to all proposers.
4. Provide cleaning times for all buildings-need requirements from John, Mitzi, Mark, and Shannon.
5. Add locations and requirements for all buildings that Mitzi's clients cannot handle.
6. Note, the contract term will be July 31, 2012 to June 30, 2013 with four one year renewals.
7. Dave, once new scope of work is developed, mail best and final offers to all three companies. Target date to release new scope is Friday, July 13, 2012, with a due date of July 20, 2012.

Please let me know as soon as possible if you will be able to meet on Thursday, July 5, 2012 at 10:00 am. If not please provide an alternate day and time.

Thank you,

Dave

HD-812-7374

Encl 263-7842

Dave,
See Mark's email below. Please send Craig a letter to provide him with the 30 day written notice.

Thanks,
Alicia

From: Roseneau, Mark
Sent: Wednesday, December 12, 2012 2:25 PM
To: Holland, Alicia
Subject: RE: Amendment to contract adding Bluffton Gym

Alicia,
I received from Dave the DSN proposal this past Tuesday. The scope of work between the current contract and the DSN proposal differ. These items are detailed in the contracts and all parties should take note of this. I'm all for DSN Day Program and their janitorial program. Please proceed with DSN for janitorial services at the Bluffton Gym.

Thanks,
Mark

From: Holland, Alicia
Sent: Wednesday, December 12, 2012 10:11 AM
To: Roseneau, Mark
Subject: FW: Amendment to contract adding Bluffton Gym
Importance: High

Mark,
I am entering the requisition for Carolina Cleaning for the contract renewal period 11/1/2012 – 10/31/2013 (the FY2013 po will only cover through 6/30/2013). I will need for you to approve as soon as possible (you should get an email once I have entered) so that we can pay Carolina Cleaning for November 2012.

I have not heard from you regarding the Bluffton Gym. Dave Thomas will not send the 30 day written notice until you provide approval. I am following up with you as the Bluffton Gym cleaning services are paid from PALS general ledger account.

Thanks,
Alicia

From: Thomas, Dave
Sent: Monday, December 10, 2012 9:46 AM
To: Holland, Alicia; Roseneau, Mark
Cc: Dimont, Richard
Subject: RE: Amendment to contract adding Bluffton Gym

I have not received approval from Mark yet to change the contract. I have the following concerns:
As you know, Carolina Cleaning's contract price was based on the total number of facilities in the original RFP. Note, we have already cut his contract by 10%. With this in mind, I believe Carolina Cleaning will come back with a request for a 3 to 5 percent overall increase once he receives the change

16-07-1825

order to drop the Bluffton Gym from his contract. I know this is a good opportunity for DSN and PALS, but we need to make sure that Mark has a chance to review. Also, Carolina Cleaning should be notified properly with a meeting and in writing. Most importantly, if the scope of work from the original contract was changed by PALS in order to drop the price, Carolina Cleaning may protest that they were not given a chance to meet the pricing change.

We must remember, the Bluffton Gym was not part of the original *North of the Broad* RFP and we need to proceed fairly in order to obviate any legitimate protest.

Respectfully,
Dave

Dave Thomas, CPPO, CPPB
Purchasing Director
Beaufort County
phone: 843-255-2353
Fax: 843-255-9437
email: dthomas@bcgov.net

From: Holland, Alicia
Sent: Monday, December 10, 2012 9:15 AM
To: Thomas, Dave
Subject: FW: Amendment to contract adding Bluffton Gym

Following up on this letter going to Craig/Carolina Cleaning. Please advise the status.

Thanks,
Alicia

From: Loper, Shannon
Sent: Friday, December 07, 2012 2:09 PM
To: Thomas, Dave; Wagner, Mitzi; Penale, Joe; Love, William; Holland, Alicia; Roseneau, Mark
Cc: Dimont, Richard
Subject: RE: Amendment to contract adding Bluffton Gym

Dave,

I understand Mark is in charge of facilities and he was included in the bid process. This however comes from the PALS budget and we would like this letter sent today.

Thanks.

From: Thomas, Dave
Sent: Friday, December 07, 2012 2:06 PM
To: Wagner, Mitzi; Loper, Shannon; Penale, Joe; Love, William; Holland, Alicia; Roseneau, Mark
Cc: Dimont, Richard
Subject: RE: Amendment to contract adding Bluffton Gym

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16-CP-07-1833

Thank you Mitzi. I will need Mark's approval in order to move forward since he is in charge of all facilities.

Regards,

Dave

Dave Thomas, CPPO, CPPB
Purchasing Director
Beaufort County
phone: 843-255-2353
Fax: 843-255-9437
email: dthomas@bcgov.net

From: Wagner, Mitzi
Sent: Friday, December 07, 2012 1:56 PM
To: Thomas, Dave; Loper, Shannon; Penale, Joe; Love, William
Subject: FW: Amendment to contract adding Bluffton Gym

This is when I originally sent it.

Please note new address

Mitzi H Wagner
Executive Director
Beaufort County Disabilities & Special Needs
100 Clear Water Way
Beaufort, SC 29906
Phone 843-255-6290
Cell 843-812-7202
Email mwagner@bcgov.net
Fax 843-255-9417

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From: Wagner, Mitzi
Sent: Friday, September 28, 2012 4:39 PM
To: Penale, Joe; Loper, Shannon
Cc: Love, William; Thomas, Dave
Subject: Amendment to contract adding Bluffton Gym

Shannon,

Sorry we could not talk. Bill and I met with staff today and added Bluffton to our contract. The cost is a little higher for a couple of reasons. First there are more bathrooms requiring more time and because the supplies are greater for more bathrooms. By the way our group did clean it this week. Please let me

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116-CP-07-1825

know if you have issues or want to discuss this. Hope you are pleased with our services. Our staff and consumers are really enjoying this contract and seem to have developed good relationships at the sites. The areas I have changes are highlighted.

Thanks,
Mitzi

Please note new address

Mitzi H Wagner
Executive Director
Beaufort County Disabilities & Special Needs
100 Clear Water Way
Beaufort, SC 29906
Phone 843-255-6290
Cell 843-812-7202
Email mwdqner@bcgov.net
Fax 843-255-9417

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Dave Thomas, CPPO, CPPB
Purchasing Director
E-Mail: dthomas@bcgov.net

COUNTY COUNCIL OF BEAUFORT
Beaufort County Purchasing Department
Post Office Drawer 1228
Beaufort, South Carolina 29901-1228
Telephone (843) 255-2353 ♦ FAX (843) 255-9437

December 12, 2012

SENT VIA EMAIL & US MAIL

Carolina Cleaning
Craig Molloy
PO Box 22326
Hilton Head Island, SC 29925

Re: CHANGE ORDER: REMOVE BLUFFTON GYM from the Contract
for Janitorial Services for Beaufort County Facilities
Contract Number: 3910/100566

Dear Mr. Molloy,

Please be advised that we are removing the Bluffton Gym from your contract. In accordance with the contract above we are providing you with thirty-days (30) notice of this action. This is absolutely no reflection on your work; however as a cost-cutting measure, we have decided to take care of this facility in-house. All other terms, condition, amendments, and prices remain in effect.

We look forward to your continued success during the contract period. Please contact Richard Dimont at 843-255-2352 or rdimont@bcgov.net if you have any questions.

Sincerely,

Dave Thomas

Dave Thomas, CPPO, CPPB

cc: R. Dimont
M. Roseneau
A. Holland

NO 30 days
NO MATCH

DSN doc. of 4/24/12
mentioning they
are already working in
the PHS facilities

Carolina Cleaning

Email : admin@carolinacleaningcompany.com
CarolinaCleaningCompany.com
843-681-8461

8/5/2013

Mr Gary Kubic
Beaufort County

Gary,

I understand you and your staff are busy. However I have been trying to resolve the issues that continue with regards to the continued deductions from our work and the county not performing on their end of the contract.

I have put together some positive suggestions to our contract that warrant some serious consideration.

The following proposal will allow us to support your efforts to develop a DSN/Pals cleaning program while keeping a positive / good working relationship.

Please review and let me know your thoughts. I will contact you to meet the week of Aug. 5, 2013.

Regards,

Craig Molloy
Carolina Cleaning

156
152

This would leave Carolina Cleaning with the following buildings / charges :**SOUTH**

Day Porter So.	2,333.00
Hh airport	5,254.20
Admin So.	854.00
Hh library	2,190.00
Bluffton library	2,041.00
Myrtle park	2,678.00
Sheriff's ofc.	2,332.00

NORTH

Day Porter No.	2,585.00
Admin no	4,122.00
Art horne	2,051.00
Beauf library	1,972.00
Court house	4,599.00
Dss	3,948.00
Pub. works no.	1,155.00
(P works - Baths)	No / Chg
Li airport	517.00

Total / mo.	38,631.00
10 % deduct -	3,863.10

Total / mo.	\$ 34,767.90

2. Add the following to the above :

- Add a special services crew to perform Floor , tile , carpet services. (work that the DSN / Pals crew cannot perform and is not currently being done)	6,732.00 / mo.
- Add 10 % to the remaining buildings that we end up with	3,863.10
- Add 15 % to the Hilton Head airport for extensive extra / needed services for admin. security checks etc. that is not in the current requirements.	788.13
- Applicable sales / use tax for supplies in County facilities (estimated @ \$ 300.00 / month)	300.00
- a new 5 year contract or a 3 year extension	
Total added	11,683.23
Total all / month	46,451.13

Optional / Extra -

- 2 persons to help train , manage / consult with the
DSN crews for their cleaning jobs. (5,812.00/mo.)

Suggestion to revise our contract :

- this is after the latest 8/1/2013 deduct of 4,498.00 for the pals sites

2 N.2 B 3 2d
Request of BC
to Re-work
my contract

Support the DSN / Pals cleaning program by :

1) Assign the DSN / Pals program the following buildings and deduct from our schedules and billings :

biv 1	487.00
Biv 2	487.00
Biv 3	637.00
Biv 4	336.00
Biv 5	336.00

Swat	360.00
Sheriff lab	360.00
Coronor	150.00
Facility maint.	154.00
Stormwater	336.00
Fuel manager	150.00
Grounds maint	154.00

Sheriff gym	75.00
Sherriff annex	336.00
Ems	336.00

Sheldon magistrate	150.00
Mosquito	336.00
Lobeco lib.	336.00
Baler	225.00

P works south	336.00

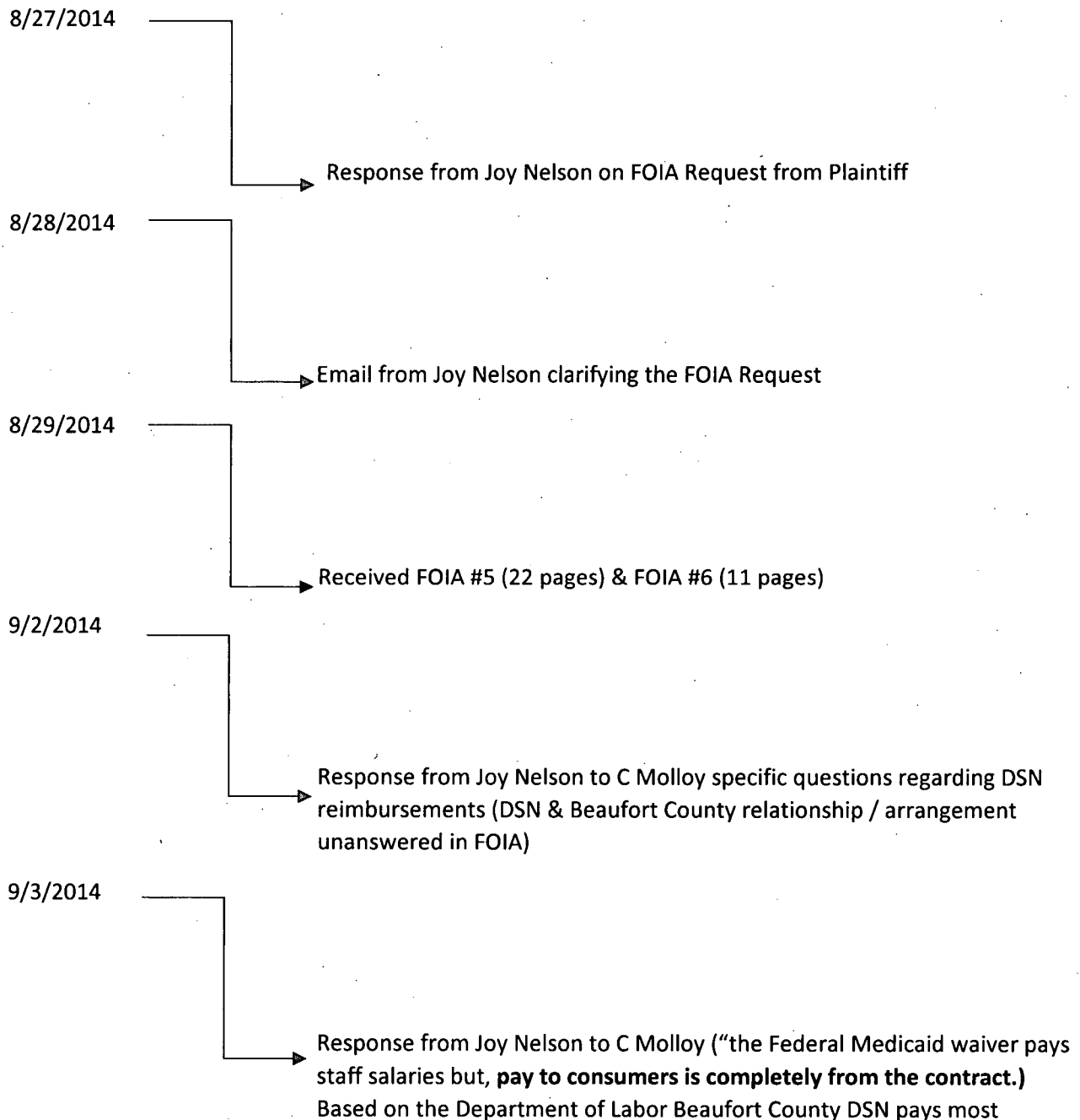
Total	(6,077.00)

(to deduct and give to BC in - house program)

TIMELINE –

FOIA REQUESTS AND RESPONSES (STATUTE OF LIMITATIONS)

CASE NO. 2016-CP-0701825



(all) consumer's under minimum wage and based on their ability to do the work through a wage and hour study.")

9/4/2014

FOIA - consumers

Response from Joy Nelson to C Molloy ("The supervisors of the consumers who go out to the sites are various care staff that receives payment of \$12.63 to \$17.67. According to the Freedom of Information Act, information in regard to employees who makes less than \$30,000 annually is exempt, but I did want to release what these supervisors make. In regard to the breakdown of pay for the consumers, there is a wide range of salaries. The monthly range is from \$286.38 to \$2.84. Some consumers work at multiple sites and when some are out other substitute. Some will work some days and not others.")

9/24/2014

Freedom of Information Act request dated September 10, 2014 asking for all communications regarding RFP 3910-120-221. (15 Attachments)

(Plaintiff could have never known of the actual contract violations and bad behavior by Beaufort County employees until receipt and evaluation of these documents. Lawsuit filed 8/2016, within the two (2) year statute.)**

*** (13 pages of Internal County emails of Defendants).

(2 pages) General Cleaning Contract Cost from CC)

(2 pages) Change Order #1 (Dated: 3/29/2011)

Change Order #2 (Dated: 11/1/2011)

(2 pages) CC Contract (Scope of Work)

(1 page) CC Contract Renewal 10% Reduction (Dated: 9/8/2011)

(1 page) CC Pricing Page (Dated: 8/7/2012) for FY 2013

(60 pages) Proposal Notice 140227 for Janitorial Services (Closing Date: 2/27/2013)

(4 pages) Day Contract Janitorial Proposal to clean Parks & Leisure Services Buildings- Revised 6-18-12

(4 pages) DSN needs in new contract (General Daily Cleaning)

(1 page) Little Flowers Proposal Cost Sheet FY2013

(1 page) Morrison Chemical Proposal Cost Sheet FY2013

(2 pages) BC recommendation Top Ranked CC (Dated: 9/7/2010)

(4 pages) RFP Cleaning Responsibilities (Dave Thomas)

(6 pages) Janitorial Proposal to clean Parks & Leisure Services Buildings- Revised 4/12/13 to include Buckwalter and Burton Wells

(5 pages) Janitorial Proposal to clean St. Helena Library- 4-12-13

11/4/2014

FOIA Request Communications, Funds from BCDSN, Breakdown of Pay to Consumers

11/10/2014

Response to FOIA (11/4/2014) Request from Joy Nelson (7 pages)

11/10/2014

Received Employing Individuals with Developmental Disabilities Guideline

11/10/2014

11/4/2014 FOIA Request Letter with Specific Requests

AFFIDAVIT

Re: BCDSN Participants hired by Beaufort County
Beaufort County, South Carolina

My name is Cynthia Bensch and I was a member of Beaufort County Council from 2012-2016. During my tenure on Council a County Council meeting was held that included the issue of changing cleaning companies for Beaufort County Facilities on the agenda. Council voted to accept the lower bid and discontinue a contract with the (then) vendor, a professional janitorial cleaning service, with a bare minimal of information given.

There was never any discussion or information provided by County Attorney Josh Gruber, or the Chairman of the Finance Committee, Stewart Rodman, regarding dissatisfaction with the contracted vendor. Nor was it disclosed Beaufort County had previously asked this vendor to employ the county's disabled individuals at sub-minimum wages. In fact, as a Council member, I understood the professional vendor had adequate labor personnel; if I had been made aware of pressure placed upon any vendor to use BCDSN consumers I would have been appalled and never voted for such an agreement. Now evidence suggests BCDSN clients were used as underpaid employees to clean County public facilities without the approval of County Council and without adequate training or safeguards. The following are questions of facts that need to be answered:

1. Why wasn't County Council informed of the contract or any agreement involving payments to BCDSN individuals with disabilities for cleaning County public facilities?
2. Who determined County Council would not be informed of such a serious breach of authority?
3. Who created the contract/agreement and where is the signed, authorized original?
4. Does the contract stipulate for BCDSN people to be hired and paid?
5. Who met with Bill Love and authorized any of these actions?
6. Did the contract state the BCDSN people were employed by Beaufort County; if so, were they given the same benefits as all other Beaufort County employees?
7. If they were employees of Beaufort County what fund did the County use to pay them?
8. Were they issued 1099's? Who was responsible for paying the taxes?
9. BCDSN Director Bill Love states he has four employees; this is not compatible with Dave Thomas's statement that BCDSN workers were County employees.
10. County Council was informed by Bill Love that BCDSN participants were placed in training programs to enhance their skills, not hired as employees of the County.
11. Was the BCDSN work program considered a for-profit or a not-for-profit entity?
12. How were the BCDSN employees able to save the County money, considering their limitations and inability to produce at the same rate and/or level compared to that of trained and able-bodied personnel?
13. How were the BCDSN members protected from chemicals and other hazards; who had oversight of their work?
14. Would it not require **more** people to oversee unskilled labor with physical disabilities, and it would it not **increase** the cost?
15. How were BCDSN people protected in the use of chemicals that could have respiratory/neurological or other exposure reactions when combined with certain medications?

16. Who researched each BCDSN person and determined the answer to this critical medical issue?
17. Who applied for a Federal program grant for BCDSN labor contracts with Beaufort County?
18. Were BCDSN clients paid from the Federal funds or from the County?
19. Was any money disbursed from the County general fund in order to pay the BCDSN people?
20. Were BCDSN members paid the same amount as received by the County from the Federal government for their employment?
21. Did BCDSN pay BCDSN participants from Federal money and/or from DSN funds from County and if so, what County account were they paid from?
22. Was each BCDSN person paid the same amount? Were they hourly or salaried employees?
23. Who dispersed checks from BCDSN to Clients and were bank accounts set up for them by BCDSN or did they have personal accounts set up by family members?
24. Were family members and/or guardians notified of this program, alerted to any potential dangers or hazards posed by work normally performed by trained professionals, *and were they informed they had the right to Appeal, on behalf of the disabled in their care, the payment of sub-minimum wages?*

I have stated my concerns and questions in this issue to the best of my recollection of the facts. It is very important to clarify if BCDSN used their clients as an underpaid labor source and by doing so needlessly exposed them to chemicals, without the BCDSN participants or their families and care takers ability to understand the consequences and without the knowledge of County Council. It is also critical to determine if there were/are financial illegalities with Federal funds or BCDSN funds and were any members of County staff involved in any improprieties involving BCDSN participants and Federal funds?

Name

Cynthia M. Bense

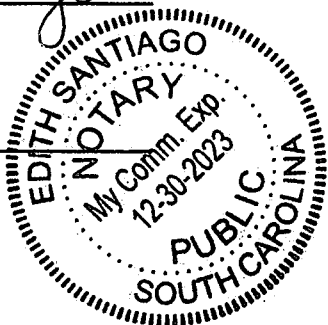
Date

April 20, 2018

Notary Public

Edith Santiago

Date

4-20-18

1 State of South Carolina) Court of Common Pleas
2 County of Beaufort) 14th Judicial Circuit
No.: 2016-CP-07-01825

3 Steven Craig Molloy and)
4 Island Group, Inc. dba)
5 Carolina Cleaning,)
Plaintiff(s),)

HEARING

6 vs.)

March 23, 2018

7 Beaufort County; Gary)
8 Kubic, Individually and as)
9 Beaufort County)
10 Administrator; Josh)
11 Gruber, Individually and)
12 as former Beaufort County)
13 In-House Attorney; Bryan)
14 Hill, Individually and as)
15 former Beaufort County)
Deputy Administrator; and)
Shannon Loper,)
Individually and as)
employee of the Beaufort)
13 County Parks and Leisure;)
14 Stu Rodman, as finance)
15 Chair of Beaufort County)
Council;;)
Defendant(s).)

16
17 Hearing reported by Deborah S. Thomas,
18 Certified Verbatim Reporter and Notary Public in and
19 for the State of South Carolina; said hearing held
20 before Honorable Marvin H. Dukes, III, Beaufort
21 County Master in Equity and Special Circuit Court
22 Judge in accordance with the South Carolina Rules of
23 Civil Procedure, at the Beaufort County Courthouse,
24 102 Ribaut Road, Room 212, Beaufort, South Carolina
25 on March 23, 2018, at the hour of 1:30 p.m.

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Appearances

Representing the Plaintiff(s):

LAUREN L. MARTEL
Attorney at Law
2 Corpus Christi Place, Suite 200
Hilton Head Island, South Carolina 29928
martellaw@hargray.com

Representing the Defendant(s):

M. DAWES COOKE, JR.
Barnwell Whaley Patterson & Helms, LLC
288 Meeting Street, Suite 200
Charleston, South Carolina 29401
mdc@barnwell-whaley.com

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* * * * *

EXHIBIT INDEX

Exhibits: Marked at Page

(Exhibits retained by Clerk of Court.)

NONE PROFFERED.

* * * * *

1 This hearing is conducted in
2 accordance with the South Carolina Rules of Civil
3 Procedure.

4 THE JUDGE: Good afternoon. We're
5 here in 2016-CP-07-01825. This is Molloy versus
6 Beaufort County, et al. I've got this scheduled as
7 I understand it for four motions. And you all
8 correct me if I'm wrong, what I've got down on the
9 docket is, in order of filed motions which is
10 usually the way we take them, Beaufort County's
11 motion for summary judgment. It looks like it was
12 filed July 21st of last year. Plaintiff's motion
13 for summary judgment filed December 4th of last
14 year. Beaufort County's motion for protective order
15 filed 12/26 of last year. Plaintiff's motion to
16 compel and motion to amend filed February 25th,
17 2018. Is anyone aware of any other motions that
18 have been filed that we have pending today?

19 MR. DAWES: That would be the motions
20 that we're aware of.

21 MS. MARTEL: Your Honor, just that my
22 motion to compel includes a motion to amend the
23 complaint as well.

24 THE JUDGE: Okay. I'm sorry. And
25 maybe I didn't say that loud enough. Yes. It says

1 -- that was the one filed February 25th, 2018.

2 MS. MARTEL: Correct.

3 THE JUDGE: And I might not have read
4 the whole thing, Plaintiff's motion to compel and
5 motion to amend is the fourth one I've got down.
6 All right. So that's the totality of what we've
7 got; is that correct, today?

8 MS. MARTEL: Yes.

9 THE JUDGE: All right. Thank you so
10 much. Ordinarily we'll take them in the order in
11 which they were filed which is, of course, first one
12 filed was the one filed last July which is Beaufort
13 County's motion for summary judgment. So I am happy
14 to hear that.

15 MR. DAWES: Thank you, Your Honor.

16 MS. MARTEL: And, Your Honor, just
17 with a little bit of grace from Dawes Cooke, I did
18 pursuant to this electronic filing -- it is often
19 easier to have a hard copy of everything. And I
20 made a hard copy for opposing counsel as well as
21 Your Honor. If I may approach and give this to you,
22 it may make this very complicated case, which I
23 think it should be deemed a complicated case, be
24 easier to have a hard copy. If I may approach.

25 THE JUDGE: Yes, please. Is this

1 something that you've already entered into --

2 MS. MARTEL: Yes.

3 THE JUDGE: -- the record?

4 MS. MARTEL: They're all the
5 electronic filed copies. And the ones that are on
6 the top are referred to in electronic filing and
7 have been, I believe, electronically filed early on
8 or -- but copies have been provided to all parties.
9 And these documents have been referred to and cited
10 in the complaint.

11 THE JUDGE: All right. So this
12 three-ring binder -- thank you very much. This is a
13 lot of work to put this together. Is this the whole
14 file? What is this?

15 MS. MARTEL: It is. It is. It's at
16 least all of the affidavits -- the basic affidavits
17 that were filed both from us and also from the
18 Defendants. And pleadings, memoranda, exhibits from
19 both of us.

20 THE JUDGE: All right. All tabbed
21 and everything. Thank you very much.

22 MS. MARTEL: You're welcome.

23 THE JUDGE: Okay. And let me turn to
24 the motion we've got here, and I'm happy to hear
25 from you.

1 MR. DAWES: Thank you, Your Honor.
2 For the record, I'm Dawes Cooke with the firm
3 Barnwell Whaley Patterson and Helms representing all
4 Defendants in this matter. This is before the Court
5 on the motion of all Defendants for summary judgment
6 as to all claims.

7 Now, we did file our briefs. We've
8 incorporated as our exhibits the affidavits that
9 were previously filed in connection with the motion
10 for preliminary injunction. And not knowing whether
11 that part of the file would have found its way to
12 you, I took a little different approach. I put mine
13 on a thumb drive and I'm happy to hand them to the
14 Court if you need copies of those. But they should
15 be in the Court's file.

16 THE JUDGE: They're in the Court's
17 file if e-filing is working. These are all caveats.
18 Then I have them in front of me. So if you can --
19 if you want to refer to something, give me just a
20 minute and I can scroll to it and attempt to open
21 it. But if you open -- if you downloaded the thumb
22 drive from the e-filing system, in theory, we have
23 the same thing.

24 MR. DAWES: Well, we didn't do it
25 that way, but it should be the same anyway. But if

1 you -- I just wasn't sure whether it was working, so
2 I brought this as failsafe in case you didn't have
3 access to it. But there are five affidavits and
4 some of those affidavits have a number of documents
5 attached to them. And I'll be referring to them in
6 the argument today. But they are the affidavits of
7 Lieutenant Brian Baird, Shannon Loper, William Love,
8 Dave Thomas and Alisha Paulet. And each of those
9 has, I think -- I think each of them. Several of
10 them at least have a number of documents attached as
11 well.

12 THE JUDGE: The way this works on my
13 end is it stacks them chronologically. So if you
14 refer to an exhibit or an affidavit that's been
15 filed, it would help me if you would throw in filed
16 on such-in-such a date. And then I can turn to it
17 very easily.

18 MR. DAWES: Okay. Well, everything
19 that I'm going to refer to, while I can't give you
20 the date, they would have been among the first
21 things filed because they were all filed in
22 connection with our opposition to the motion for
23 preliminary injunction which was filed soon after
24 the lawsuit. In fact --

25 THE JUDGE: Okay. I see that. And

1 that was filed on or about, the opposition, April
2 7th of 2017. Does that sound about right?

3 MR. DAWES: That sounds about right.

4 THE JUDGE: Okay. All right. I'm in
5 that section then. Okay. All right. Happy to hear
6 from you, sir.

7 MR. DAWES: Now in addition, I would
8 point out that we believe that the other motions,
9 the discovery-related motions are going to be moot.
10 This -- the Plaintiff has filed a cross motion for
11 summary judgment and has overruled in that motion that
12 there are no genuine issues of material fact. And
13 in fact, I would cite to the case of Mead versus
14 Beaufort County Assessor, 419 South Carolina 125 796
15 Southeastern 2nd 165. It was decided December
16 of 2016 by the Court of Appeals. Rehearing denied
17 February of 2017.

18 And they note there that cross motions for
19 summary judgment do authorize the court to assume
20 that there is no evidence which needs to be
21 considered other than that which has been filed by
22 the parties. And where cross-motions for summary
23 judgment are filed, the parties concede the issue
24 before us should be decided as a matter of law.

25 So while there have been a number of

1 affidavits by counsel filed saying that they wanted
2 to do discovery and we filed a motion for protective
3 order as to discovery, for the reasons that you will
4 hear, we don't believe any discovery is required.
5 The facts that we base our summary judgment on are
6 undisputed.

7 So this case arises out of a contract for
8 janitorial services that was entered into in 2010.
9 And several requests for proposals that Beaufort
10 County issued, again, for janitorial services which
11 the Plaintiff either was not awarded or was not
12 awarded in the way that they wanted to have been
13 awarded. And those were in 2012. So the contract
14 for 2010 was RFP Number 3910/10566.

15 If you're familiar with the contracting
16 process, these originate with a request for
17 proposals that the County issues, and it's very
18 detailed and has all the specifications. And then
19 the different people that want to be considered for
20 that submit proposals. It's not a bid, per se, it's
21 a request for proposals.

22 And so if the County accepts the contract
23 then it, in effect, incorporates the request for
24 proposals as the substantive terms of the contract
25 and then there's some additional terms as well. And

1 that -- the one that we're talking about is actually
2 one of the exhibits. And it's about this thick.
3 And it starts out contract for janitorial services
4 County of Beaufort, South Carolina. And it's got
5 appended to it the request for proposals.

6 Now, I'm only going to refer to several
7 provisions of that but the most important provision
8 of the contract is that allows essentially for
9 termination at will. And what happened in this case
10 was that the Plaintiff had been the janitorial
11 contractor for Beaufort County for quite some time.

12 THE JUDGE: Can I stop you a second
13 just to make sure we're looking at the same thing.
14 Again, this is sometimes a little more difficult
15 with the e-filing. I'm looking at something called
16 contract for janitorial services. Agreement made
17 the 25th day of October 2010, e-filed April 7th,
18 2017.

19 MR. DAWES: That's it.

20 THE JUDGE: That's it? Okay. I just
21 wanted to make sure I was following along with the
22 same document.

23 MR. DAWES: And on my copy it's got a
24 received stamp up in the upper right-hand corner.
25 You may have that as well.

1 THE JUDGE: Mine as well. October
2 19th, 2010. It says purchasing department.

3 MR. DAWES: That's it. So we're
4 looking at the same thing. It's quite voluminous.
5 The contract itself is only five pages, but it
6 incorporates the request for proposals which is
7 quite detailed and voluminous. And there are just
8 several provisions of that contract which will
9 dictate the Court's resolution of this case.

10 But by way of a brief history, as I said,
11 the Plaintiff had the janitorial contract for most
12 of the Beaufort facilities for a period of time.
13 This contract was entered into in 2010. It was
14 provided for one year to be -- with a provision to
15 be extended for an additional one-year periods. It
16 was ultimately extended until the end of October
17 2013.

18 But in around 2010, we were in the
19 recession as the Court knows and the County was
20 looking for ways to reduce its expenses. And it
21 came up with an idea that seemed to be a win-win
22 proposition. That is that they could utilize their
23 consumers from the Board of Disabilities and Special
24 Needs or the Department of Special Needs within the
25 County to provide services to Beaufort County. And

1 there was a provision with the Department
2 that allowed for people with special needs to
3 the Department to grant a waiver of the minimum wage
4 requirements so that these folks could be
5 essentially rated to be able to work with an
6 adjustment to their minimum wage commensurate with
7 their ability to work.

8 And there's a process of sort of an
9 approval process that you have to go through, but
10 the County did that. They did -- went through the
11 process to have it approved that the -- they call
12 them the consumers, the citizens who are the
13 beneficiaries of the Department of Special Needs to
14 be allowed to work in various capacities. Sometimes
15 with private companies. They could contract with
16 them. But the Department of Special Needs made a
17 proposal to take over janitorial services for
18 Beaufort County. And the idea was that it was a
19 win-win.

20 The Beaufort County Board of Disabilities
21 and Special Needs was enacted by an ordinance. And
22 the ordinance says it's to advocate for the
23 individuals with disabilities and special needs who
24 are served by the Beaufort County Disabilities and
25 Special Needs Department to provide assistance and



no

1 advice to the Beaufort County Disabilities and
2 Special Needs Department staff concerning matters of
3 policy and to promote community awareness at
4 Beaufort County Disabilities and Special Needs
5 Department programs and services.

6 And one of the affidavits that we
7 submitted describes this symbiotic relationship that
8 they proposed where their consumers could perform
9 janitorial services and they'd be paid for it. And
10 they would get job training. They would learn
11 responsibilities of being gainfully employed and all
12 the benefits that go with that. And it turned out
13 that they were able to do that more efficiently than
14 the County could contract most of those services to
15 outside vendors.

16 Now, the contract provides expressly for
17 just such an eventuality to where it may -- the time
18 may come when it's in the -- and the County deems it
19 will be in its best interest to cancel the contract.
20 And so Article 9 of the contract on Page 3 says,
21 either party may terminate this agreement upon
22 60-days written notice to the other party. Upon
23 such termination the County shall pay the contractor
24 for all services performed hereunder up through the
25 date of termination.

1 There's also a provision in the RFP itself
2 and it's Paragraph 16.0, Termination for
3 Convenience. The County may without cause terminate
4 this contract in whole or in part at any time for
5 its convenience. In such instances, an adjustment
6 shall be made to the contractor for the reasonable
7 cost of the work performed through the date of
8 termination. Termination costs do not include lost
9 profits, consequential damages, delay damages,
10 unabsorbed or under-absorbed overhead of the
11 contractor or subcontractor and/or failure to
12 include termination for convenience clause into its
13 subcontracts and material purchase orders shall not
14 expose the County to liability for lost profits in
15 conjunction with a termination for convenience,
16 settlement or equitable adjustment.

17 Contractor expressly waives any claims for
18 lost profit or consequential damages, delay damages
19 or indirect costs which may arise from the County's
20 election to terminate this contract in whole or in
21 part for its convenience.

22 And there's another provision that has --
23 that relates to the request for proposals itself
24 because you'll remember I said in 2012 the County
25 issued some requests for proposals for parts of the

1 janitorial work. And there's a provision that
2 appears in virtually every request for production --
3 for proposals and it's -- it's on -- if you look at
4 the one that you've got, this is a good example.
5 It's actually the first page after the five-page --
6 after the five-page contract.

7 And at the top it says County Council of
8 Beaufort County Purchasing Department Proposal
9 Notice Number 3910100566, Page 1 of 60. Down at the
10 very bottom it says, this solicitation does not
11 commit Beaufort County to award a contract, to pay
12 any costs incurred in the preparation of a proposal
13 or to procure or contract for the articles of goods
14 or services. The County reserves the right to
15 accept or reject any or all proposals received as a
16 result of this request, to negotiate with all
17 qualified offers, and to cancel in part or in its
18 entirety this proposal if it is in the best interest
19 of the County to do so.

20 Now, Mr. Molloy has pretty publicly stated
21 what his position is and he's got YouTube videos
22 posted and disseminates information and press
23 releases. And essentially his position is what the
24 County did that was offensive and illegal was it set
25 up a company -- effectively a company internally to

1 bid unfairly with his company for these contracts.

2 And the fundamental premise of that
3 argument is false. And that is that the Department
4 of Special Needs is not a separate company. It's
5 not a private entity. It's not required to bid
6 under the procurement code. It's part of Beaufort
7 County. And if Beaufort County wants to contract
8 with third-parties, it can do it. But if it wants
9 to keep services in-house, it can do it.

10 And as it says in these requests for
11 proposal, just because we're asking you for
12 proposals doesn't mean we're going to hire anybody
13 outside the County. We may decide to do it
14 in-house. And indeed, that's essentially what
15 happened.

16 On none of the request for proposals was
17 Carolina or the Plaintiff the low bidder. In one
18 they were I think third. In one they were 10th out
19 of 16 in terms of the grade that they were awarded
20 to the bidder. So they're -- and most importantly,
21 in none of these cases did they file a bid protest.
22 And they are required to do that under the Beaufort
23 County Procurement Code and under the terms of their
24 contracts, they are required to submit written
25 protests in the event that they feel that they were

1 somehow treated fairly in the letting -- contract
2 letting process.

3 Your Honor, there are a couple of
4 important cases that I think would dispose of this
5 action because essentially what I believe the
6 Plaintiff is going to say and I'm going to be brief
7 and allow Plaintiff to call to the Court's attention
8 whatever facts they think may undermine these
9 essential facts. But essentially what their saying
10 is, well, we're relying on the overall bad faith of
11 the County. We think that if we can do discovery,
12 we can show that they just acted in bad faith in
13 favoring the Department of Special Needs over us.

14 And so if I read that into a legal theory,
15 they are essentially alleging that there is an
16 implied covenant of good faith and fair dealing.
17 But the problem with that theory is that it does not
18 apply when a contractor has relied upon an express
19 contractual provision. And I would cite in support
20 of that among many cases, but this one in particular
21 is fairly recent, it's Hotel and Motel Holdings, LLC
22 versus BJC Enterprises, South Carolina Court of
23 Appeals decision from 2015, reported at 414 South
24 Carolina 635 780 Southeastern 2nd 263. And it
25 says -- it's quoting the previous case of G.J. Creel

1 and Sons, Inc., Adams versus Creel. However, there
2 is no breach of an implied covenant of good faith
3 where a party to a contract has done what provisions
4 of the contract expressly gave him the right to do.

5 In other words, when you have an express
6 provision in the contract that allows you to
7 terminate the contract with -- for your own
8 convenience, you are allowed to do that. And doing
9 that cannot be bad faith. Similarly, when you issue
10 a request for proposals and you're -- the very
11 proposal itself says we may or may not let this
12 contract out to a private contractor. You are
13 expressly reserving unto yourself the ability to do
14 that for whatever reasons you deem appropriate. And
15 so they cannot be a claim for bad faith in invoking
16 those provisions.

17 There's another case that I think is
18 helpful. It's Rotec Services, Inc. v. Encompass
19 Services. And that's at 359 South Carolina 467 597
20 Southeastern 2nd 881. That's a 2004 case from the
21 Court of Appeals. And essentially it says there's
22 no separate cause of action for breach of covenant
23 of good faith and fair dealing. It says our courts
24 have not addressed this precise question of whether
25 an independent cause of action may be maintained for

1 breach of the implied covenant of good faith and
2 fair dealing.

3 Our sister court in Georgia, however, has
4 recently comforted this issue and they go on to say
5 that the implied covenant of good faith modifies and
6 becomes part of the provisions in the contract
7 itself. As such, the covenant is not independent of
8 the contract. And therefore there is no separate
9 cause of action. It would be part of your contract
10 -- your cause of action for breach of contract.

11 Your Honor, we have addressed in our brief
12 and I would simply defer to that brief rather than
13 stand up here and read it to you. But we've got
14 separate independent basis for dismissal each of the
15 other causes of action. To the extent that any of
16 these claims can be interpreted as tort claims, and
17 some of them as you'll read the amended complaint
18 it's difficult to determine exactly what the legal
19 theory is, they're all barred by the statute of
20 limitations under the Tort Claims Act.

21 The last -- the conduct that they
22 complained of began in 2010 through 2012. The last
23 work that was done under any of these contracts was
24 in June 30th, 2014. And the suit was filed on
25 August 22nd, 2016. So that would be outside the

1 two-year statute of limitations for bringing a tort
2 claim against a governmental entity.

3 Your Honor, we have move separately to
4 dismiss individual cause of action. That have
5 breach of contract claims against individual
6 Defendants. It's part of book law that you can't
7 have a breach of contract action against somebody
8 who's not a party to the contract. So it should be
9 dismissed as to them.

10 There's a cause of action that appears to
11 be one for fraud. There's no allegation, at least
12 no factual allegation of any representation made by
13 the County or any of the Defendants for that matter
14 upon which the Defendant relied to its detriment --
15 or the Plaintiff relied to its detriment.

16 There's a cause of action for interference
17 with contractual relations. You cannot sue somebody
18 for interfering with a contract with them. And
19 we've cited cases in the brief for that as well.

20 There's a cause of action for unjust
21 enrichment, but the complaint fails to allege the
22 basis for unjust enrichment. There's not even an
23 allegation that the Plaintiff was not paid
24 everything that they were entitled to under the
25 contract.

1 There's a cause of action for Unfair Trade
2 Practices Act violation. We would contend that a
3 governmental entity is not a person under the
4 contemplation of the Unfair Trade Practices Act.

5 Also, this was a contract between an individual and
6 the County and therefore not a matter covered by the
7 Unfair Trade Practices Act. And most importantly,
8 you can't be guilty of an unfair trade practice for
9 following the precise terms of your contract. For
10 the same reason that we said there is no claim for
11 breach of covenant of good faith and fair dealing.

12 There's a claim for conspiracy. We've
13 cited cases there that stand for the proposition
14 that an entity, a business entity or a political
15 body cannot conspire with itself. And all of the
16 conspiracy that is being alleged in here is by
17 employees or representatives of the County. And so
18 they cannot, as a matter of law, conspire with
19 themselves.

20 There is a claim for assault against one
21 of the individual Defendants. This is a former
22 assistant county administrator who is alleged to
23 have thrown a basketball at the Plaintiff's son.
24 And there is no cause of action for what we call
25 filial loss of consortium in South Carolina. And

1 we've cited the cases for that as well. In other
2 words, Mr. Molloy, himself, does not have a cause of
3 action -- doesn't allege that there are any medical
4 bills or any physical injury associated with this.
5 So to the extent that there could be a claim, what
6 it's got to do with the contract is beyond us. But
7 to the extent that he seeks to allege that, there is
8 no cause of action for a parent or somebody else
9 throwing a basketball at their son.

10 So, Your Honor, I could go on quite a bit
11 more, but I think maybe the Courts time would be
12 better spent if we allow Ms. Martel to address the
13 Court. I would ask the Court for one indulgence and
14 that would be to perhaps focus on what are the
15 specific facts that the Plaintiff would cite to
16 because in everything that we've seen, it's been a
17 lot of invective and sort of conclusory broad
18 allegations of there being violations of law. And,
19 you know, all sorts of legal violations and
20 exploitation of handicapped people. Conspiracy.
21 Bad faith. And I think with all due respect because
22 the facts that determine this case are so simple and
23 concise and it will (inaudible/cough) cited to the
24 Court that perhaps the challenge for the Plaintiff
25 would be to identify for the court specific facts

1 and specific documents that they think create a
2 genuine issue of material fact. And then I would
3 like an opportunity if I may to reply to that.

4 THE JUDGE: Thank you so much. And I
5 may have some questions at some point, but,
6 Ms. Martel, I'm happy to hear from you.

7 MS. MARTEL: Thank you. And this is
8 just my opposition to the arguments that were made
9 on behalf of Mr. Cooke in favor of their Defendants'
10 motion, notice of motion, motion for summary
11 judgment filed on July 21st, 2017. And for the
12 purposes of just making everything very clear here,
13 it is our intention that this matter goes before a
14 trier of fact with the purposes of being able to
15 present all of the evidence and the credibility of
16 the witnesses. And to the extent that dueling or
17 cross-motions of summary judgment would inhibit that
18 as a matter of law, I propose to the Court that if
19 that comes down to it, we would withdraw our motion
20 for summary judgment because we believe that these
21 cross-motions for summary judgment deal specifically
22 with very different issues. And my motion for
23 summary judgment directly goes to the bid-rigging
24 and the procurement which is so clear to any
25 reasonable person that that occurred that no person

1 could find any reason that that didn't actually
2 happen, bid-rigging and procurement violation.

3 So we went to a very specific couple of
4 issues. But those are also the very specific couple
5 of issues that are the heart of the Plaintiff's
6 complaint -- amended complaint. And hopefully
7 second amended complaint that will be allowed to be
8 drafted.

9 So I just want to make perfectly clear
10 that we don't want any sort of like technicality.
11 That's not the intent coming before the master in
12 equity where these issues are equitable as well as
13 legal. And so the dueling cross-motions deal with
14 very different issues and very different causes.

15 The Defendants in their argument,
16 obviously, try to make a very good argument that
17 this is just a termination of contract that the
18 County can do at their leisure any time which is
19 well documented in the 2010 contract. And we would
20 submit that the 2010 contract is basically the same
21 contract that my client Mr. Molloy and Carolina
22 Cleaning had for 15 previous years.

23 He had been the commercial cleaning
24 company more than just janitorial that takes a level
25 expertise in an area of knowledge that he was

1 providing the very best services for Beaufort County
2 for almost 18 years before the shenanigans started
3 within Beaufort County. So at first blush it may
4 seem like this is a straight up, you know,
5 termination of contract at the well of Beaufort
6 County which thankfully we live in South Carolina
7 and it is an at will state.

8 But the law is very clear that contracts
9 cannot be terminated or dismantled or breached in
10 such a way that it causes an unconscionable -- it
11 causes unconscionable ripple effect or unnecessary
12 injury, not just loss of profits, but unnecessary
13 injury to the Plaintiffs. And I get into some of my
14 motion -- in some of my motion, but I may as well
15 just make some of these arguments right now in
16 contradiction to Mr. Cooke's arguments.

17 We basically have prima facie evidence
18 that has been filed with this Court that
19 specifically documents exactly what we are saying
20 here. And the issues that arise to a level of
21 genuine issue of material fact go to the level of
22 unconscionability and also whether or not you heard
23 Mr. Cooke say this was in the best interest of
24 Beaufort County.

25 And I would direct the Court's attention

1 to our very first complaint. We allege standing on
2 behalf of the Beaufort County taxpayers through
3 Mr. Molloy as well. So not only does he have
4 standing in this case as a Plaintiff -- as an
5 individual who was harmed, he is standing as the
6 person who has owned Carolina Cleaning which was the
7 cleaning company that did all the commercial
8 cleanings including the airport, the SLED offices,
9 the Sheriff's office and high levels of credibility
10 and character for almost 18 years.

11 He also is standing here as a
12 representative of the taxpayers of Beaufort County.
13 And under Sloan versus Greenville that is completely
14 acceptable, particularly where you have a
15 governmental entity that is acting so far outside
16 what it's limited job is. Very clearly each person
17 has a very limited job in Beaufort County. When
18 they start acting outside of that job, they start to
19 expose themselves to the South Carolina Tort Claims
20 Act. They start to expose themselves individually.

21 There's not an employee in Beaufort County
22 that has the right to assault a minor child.

23 So we submit that a trier of fact has to
24 hear all of the evidence after due process and
25 discovery, all of the witnesses and all of the

1 arguments to determine the level of
2 unconscionability of what happened between the years
3 of 2010 and we understand are still continuing on as
4 of today's date which is actually an unconscionable
5 continuance. And I believe that it should come to
6 light.

7 The reason why the Defendants want this to
8 go away so quickly is because they probably don't
9 want some of this stuff to come out. But
10 government's job is to be transparent and taxpayer
11 money -- it's entitled to have transparency.

12 The definition of unconscionable in
13 Merriam Webster's Dictionary is, shockingly unfair
14 or unjust. For example, unconscionable sales
15 practices, unconscionable business practices and
16 unconscionable government practices. That also
17 means not guided or controlled by conscious.

18 So in the contract it says that Beaufort
19 County can terminate the contract if it believes
20 that it's in Beaufort County's best interest or at
21 their will. But it doesn't say that it can go about
22 it unconscionably so that leads to such an egregious
23 wrong that it destroys a man who had provided
24 excellent service for many years.

25 And then what we will prove to the court

1 when we're allowed to go to trial through witnesses
2 and testimony and that a fact-finder can listen
3 carefully to all of the evidence testimony after due
4 process and discovery, we will prove that Beaufort
5 County acted so unconscionably, so maliciously, so
6 deceitfully, so arbitrarily, capriciously,
7 retaliatory to the Defendant when he wouldn't agree
8 to hire special needs people who he has a heart for
9 and pay them subminimum wage through his company
10 because that wasn't even legal to ask him to do
11 that. He can't get a waiver for that.

12 They acted so conspiratorially within
13 Beaufort County and outside of Beaufort County with
14 Medicaid without conscience. That's the key.
15 That's the linchpin of where this case is.

16 We're not just coming here before this
17 Court frivolously. Each party who is named here,
18 there is a document that they were involved in that
19 they personally signed off that this was an
20 acceptable way for Beaufort County to acted and say
21 that it's in Beaufort County's best interest. Some
22 of them may have said that. Some of them may have
23 not have even thought it all the way through. But
24 the bottom line is it's not saving taxpayers money.
25 And it ruined this man's business and took out his

1 whole family in a very, very stressful situation
2 that continues to this day.

3 Because my position is it's always the
4 right time to do the right thing. Now that we know
5 that this has been going on, the program continues.
6 The retaliation continues. And we will be able to
7 prove retaliation. So when it sets to cause
8 unnecessary harm to Mr. Molloy, Carolina Cleaning
9 and the taxpayers of Beaufort County this creates a
10 genuine material fact.

11 The Defendants would have you believe that
12 this would be barred again on a technicality because
13 they don't want to have a trier of fact hear all the
14 evidence nor do they want me to even be able to
15 engage. I've been threatened throughout this entire
16 lawsuit. I've been told no one will ever have their
17 depositions taken. I've been told there's no need
18 to answer any discovery, which contrary to the South
19 Carolina Rules of Civil Procedure, the Defendants
20 sent me discovery requests. And I did answer them.

21 I've sent discovery requests. And I've
22 even limited them down and just -- limited them to
23 just one defendant so that it was within the 50
24 interrogatories and requests to produce. I haven't
25 received any discovery legally through the court

1 system, through due process which is what you would
2 think would happen.

3 My client has successfully been able
4 through Freedom of Information a few times. When he
5 first freedom of informationed it was in the fall of
6 2014. It wasn't until March 2015 that he got
7 internal e-mails from Beaufort County on exactly how
8 they set up this Medicaid program which they,
9 quote/unquote, said this is to make money for
10 Beaufort County. And they created an entity because
11 the money had to apparently go through an entity.

12 And so he found those documents in 2015.
13 That is when he knew or should have known about the
14 unconscionability of the termination. So I submit
15 that we can't let this case go on a technicality of
16 statute of limitations because we are well within
17 our statute of limitations when I filed this on
18 August 2016.

19 There is nothing more unconscionable, I
20 believe, than for someone who has a fiduciary duty
21 to create a situation where handicap and special
22 needs people are taken advantage of and tried to
23 make it look like this is a charitable thing. The
24 fact that they get paid subminimum wage, two to
25 three dollars for a job that the taxpayers should

1 have had it commercial cleaned. That's who cleans
2 this ability. Who vacuums and cleans the paperwork
3 and cleans, you know, the messes off the tables and
4 such? That's a commercial cleaning company. Who
5 cleans the urinals? Who cleans the bathroom? Who
6 knows how many rolls of toilet paper it takes? Who
7 knows how man paper towels it takes? Who deals with
8 when toilets are stopped up? That kind of thing.

9 We have a program that's called a cleaning
10 enclave. And the special needs people are
11 considered consumers. They are paid subminimum
12 wage. And then apparently -- and this we haven't
13 gotten through discovery. But money goes in three
14 to one into some sort of general fund and there's no
15 real meaningful accounting for it. Then the people
16 who work the program get to go on cruises at the end
17 of the year and call it programs.

18 But these special needs -- this horrifies
19 me as a person who's a decent person. We shouldn't
20 need case law to really define in a decent society
21 what good faith and fair dealing is. And I can -- I
22 tell you right now that having a cleaning enclave
23 that -- we understand we have an affidavit from one
24 of the special needs kids who was about 19 at the
25 time. She put an affidavit in and indicates that

1 there's a genuine issue of material fact here
2 because this cleaning enclave has these people
3 cleaning urinals. Maybe without gloves. Craig
4 knows for sure without gloves.

5 So you've set up something that's so
6 subhuman and creates a business where the government
7 isn't supposed to be in business to compete with a
8 fair market independent contractor. It made no
9 sense.

10 Mr. Molloy and his company had previously
11 been granted that contract for five years. He had
12 put all the bids in. And all of his information was
13 given to Shannon Loper. All the people that we
14 listed on the complaint and they then in turn used
15 his specific information when bidding on behalf of
16 the DSN program. DSN actually puts a proposal on
17 their letterhead to compete with the guy who already
18 had the contract.

19 The way that we believe and we believe the
20 facts will show once we are able to go to trial is
21 that this was retaliatory. Mr. Molloy found this
22 ethically and morally unsound. He felt that his
23 commercial cleaning should continue as the way it
24 had for the past 15 years. And although he has a
25 heart for the special needs people and appreciated

1 what PALS and DSN were trying to do -- or were doing
2 in the past, programs, he recognized that this
3 wouldn't be the most cost-effective way to handle a
4 commercial cleaning. And it could subject him to a
5 lot more because it was actually asking him to pay
6 people subminimum wage. And that's really not
7 allowed. So he said no.

8 As soon as he said no, the County began
9 dismantling his contracts and then they engaged in
10 other retaliatory behaviors. And Brian Hill was
11 still here. It wasn't a month and a half after
12 Brian Hill did more than just shoot a basketball at
13 his son. He told him a lot of other things. And it
14 was frightening to a minor son.

15 My action and reference to that in this
16 civil litigation is not to get an action on behalf
17 of the child there. It's simply to demonstrate the
18 level of retaliation against Mr. Molloy. It really
19 goes to Mr. Molloy's damages and the
20 unconscionability of how they went about terminating
21 this. It wasn't just in 2012 they said, hey, look
22 you're done. Go on with your life. Try to sell
23 your company or go, you know, get some other -- you
24 know, get another county or something. They didn't
25 say that.

1 They left him to continually wonder what
2 was going on and then when he testifies to the
3 genuine issue of material fact of the
4 unconscionability and the fact that this isn't in
5 the best interest of Beaufort County, he will say
6 that he tried to rectify this and he would be given
7 a carrot that never actually came to fruition. You
8 have to meet with Brian Hill. You have to meet with
9 Mark Roseneau. You have to meet. Brian Hill is the
10 only who can make the answers.

11 A year goes by. He's trying to feed three
12 children and his wife. He's trying to figure this
13 all out. But he would never have known what was
14 really going on until he got the e-mails in the
15 Freedom of Information Act, interoffice e-mails.
16 And then some personal e-mails from Mr. Gruber to
17 some of the people who are involved in this
18 conspiracy.

19 So it would be a miscarriage of justice to
20 prematurely grant the Defendants' motion for summary
21 judgment when the Plaintiffs haven't had any
22 discovery responded to them but on their face have
23 clear documentation. And I direct the Court to --
24 just on the bid-rigging and the procurement, we have
25 right from Beaufort County, City Council, Beaufort

1 County purchasing department and it lists basically
2 the people who are named in this lawsuit.

3 THE JUDGE: Now, you said City. I
4 assume you are talking about County?

5 MS. MARTEL: It's the one that --
6 this one. It's --

7 MR. MOLLOY: The County.

8 MS. MARTEL: Yeah, the County.

9 THE JUDGE: County? Okay.

10 MS. MARTEL: County Council. Sorry.

11 This is dated August 13th, 2012. That's the --
12 where they award his buildings that he was cleaning
13 to DSN for special needs to clean at subminimum
14 wage. And when Craig was able to oversee some of
15 that just by virtue of being in the buildings, he
16 saw a nightmare, a mess. Special needs people using
17 cleaning, you know, chemicals that they would need
18 somebody else to supervise them. And all of these
19 kinds of things because it just was not setting it
20 up for a very good -- it certainly wasn't setting it
21 up to be the best interest for Beaufort County.

22 The documents behind that demonstrate the
23 janitorial proposal. So first of all we submit that
24 DSN should never have been bidding this contract
25 anyway. But when they did, they went outside of

1 procurement laws completely because this document
2 says get everything in by a certain period of time
3 and the document behind that allows -- I guess it
4 was March 22nd, 2012, all the bidding was supposed
5 to be in and doors shut. That's how -- why we have
6 procurement and bid-rigging laws so that this
7 doesn't happen.

8 Beaufort County Disabilities and Special
9 Needs revises their proposal on June 18th, 2012,
10 and takes out some of the things that they're going
11 to do. But they talk about what they're going to do
12 in the second page of that letter. It says empty
13 all trash containers, sweep, vacuum, pickup and
14 dispose of loose trash. And it goes on and on.
15 Talks about cleaning services.

16 It then goes on and in a different font
17 which we submit was basically copied and pasted of
18 my client's proposal. You notice the change in font
19 there. They add on what they can and cannot do. So
20 outside of the procurement and bidding process for
21 this 2012, they added things and changed things of
22 what Beaufort County -- giving themselves an unfair
23 advantage over Mr. Molloy and Carolina Cleaning.
24 And they change that. They change that twice.

25 We also have in the voluminous notebook

1 that I've given you, the Defendants would have you
2 believe that there's nothing specific and that this
3 is vague and general sweeping allegations, but most
4 of my complaint and even amended complaint
5 specifically referenced e-mails that are interoffice
6 e-mails.

7 And here's one that's -- that was from the
8 Bill Love's director's report. DSN came up with a
9 great way for us to make money because with those
10 waivers for every dollar there are three. And so we
11 will have a total of four dollars come back from the
12 state. These are -- these are -- this was proof of
13 the unconscionability that Mr. Molloy got in 2015.
14 So we're well within the statute of limitations to
15 move forward and present this to the fact finder.

16 Again, on a technicality, we don't want
17 the cross motions for summary judgment to get
18 dismissed entirely. That's not the intention at
19 all. The intention is to get to the transparency
20 and truth of the matter. So if we have to withdraw
21 our motion for summary judgment, we would rather go
22 forward on the bid-rigging and the procurement
23 violations in court with the genuine issues of
24 material fact where after due process and full
25 discovery a -- either jury or a court, a judge could

1 hear all of the evidence and then come to a
2 decision.

3 This isn't clear law. This isn't black
4 letter law. This is very, very important equitable
5 principles that are going on here as well as very
6 clear violations on behalf of the Defendants that
7 they're really trying to hide. And if they are
8 allowed to have -- go forward and have their summary
9 judgment granted, it won't benefit Beaufort County.
10 It won't benefit justice. It won't benefit special
11 needs people who are in this program right now.

12 It's not the job of government to compete
13 with the free markets. And it's not the job of
14 government to look for money from whatever ways they
15 can to it from Medicaid. And it's not the
16 government's job to terminate a contract where a man
17 had a \$900,000 business and would have sold his
18 business but because they started dismantling his
19 contract, he could not.

20 And he just kept going along to just try
21 to make ends meet for his family and his wife and
22 his three children. And they kept changing it up
23 just a little bit and he kept just dealing with it
24 but also asking to find out what was going or --
25 because he'd always been able to work with Beaufort

1 County in the past. He had 15 years of good
2 relations with Beaufort County. He knows this
3 County and the commercial cleaning needs better than
4 -- you know, almost as well as Mark Roseneau would.

5 He knew the facilities. He knew every
6 element of it. So he had every reason to believe
7 that working with them or waiting for these meetings
8 for somebody who was in authority would work itself
9 out.

10 But what they did was they dragged him
11 along in an unconscionable way that wasn't just
12 we're going to terminate you and we're going to move
13 over here. It was in such an unconscionable way
14 that they completely dismantled all the contracts
15 and his business was ruined. It's no longer a
16 viable business.

17 He has suffered. His family has suffered.
18 That's a whole another lawsuit about the son that
19 got assaulted. But to the extent that that was a
20 retaliation and how it was -- demonstrates to the
21 unconscionability, that's a fact that needs to go
22 before a fact finder, a fact trier.

23 So I guess, can I ask the Court a
24 question?

25 THE JUDGE: I'm not sure if I could

1 answer but sure. Go ahead, please.

2 MS. MARTEL: Are you of the
3 propensity that if we continue with our cross
4 motions for summary judgment that you would dismiss
5 this entire case? Because if that's the case, I
6 would want to withdraw my motion for summary
7 judgment and move forward on the facts.

8 THE JUDGE: Is your -- I'm not
9 necessarily going to dismiss the entire case because
10 you proceed with your summary judgment motion. Is
11 your question really is proceeding with your summary
12 judgment motion an acknowledgment that there is no
13 material issue of fact?

14 MS. MARTEL: Exactly.

15 THE JUDGE: I don't know if I've
16 actually read the case that was cited a minute ago.
17 But my understanding has always been that if both
18 parties come before the court and tell me there's no
19 material issue of fact, then who am I to disagree
20 with the two parties? However, I understand that
21 your summary judgment motion is a partial summary
22 judgment motion. So based on what you just told me
23 of what I've read, so my understanding is you have
24 not asserted -- you all correct me if I'm wrong, but
25 you have not asserted that there are not some

1 material issue of facts. You have focused on two
2 causes of action. It is that -- is that an accurate
3 statement?

4 MS. MARTEL: Yes, but those causes of
5 action go directly to the heart of the
6 unconscionability. You know, the bid-rigging and
7 the procurement and all the conversations that went
8 on and how they had to plan and scheme to make that
9 work. So, I mean, if that's the case, I will
10 withdraw our motion.

11 THE JUDGE: I'm not suggesting you
12 withdraw it or proceed with it. I'm just -- I was
13 just stating my understanding without reading the
14 case that the Defendant has offered. But my
15 understanding, and let me ask the Defendants'
16 counsel, the case that you talked about, I assume
17 both parties were moving for complete summary
18 judgment and not partial summary judgment on either
19 side because it would seem like if one party moved
20 for partial summary judgment the other move for
21 complete summary judgment that case would not be
22 applicable. Is that -- is that an accurate
23 statement?

24 MR. DAWES: I think that -- I think
25 that's fair. I mean, I think it's at least

1 hypothetically possible that somebody could be
2 moving for partial summary judgment, but I think
3 what Ms. Martel is saying, which I would say is a
4 concession of that, is their motion goes to the core
5 issue in this case which is what our motion goes to
6 as well. And that is whether there is any
7 illegality in the way this contract was terminated
8 and/or in the way that the requests for proposals
9 was administered and that contract administered. So
10 I think what she's admitting is that she is moving
11 for summary judgment on the same issues that we say
12 are dispositive of the whole case.

13 THE JUDGE: And so -- thank you so
14 much. I mean, I can't answer your question. I
15 mean, it sounds like a strategic decision for you to
16 make.

17 MS. MARTEL: I just -- yeah. I
18 simply wanted to be on the record that we believe
19 there are genuine issues of material fact and very
20 clear evidence of what happened. The genuine issue
21 of material fact comes to -- rises to the level of
22 unconscionability and whether it's in the best
23 interest Beaufort County and whether it was done
24 correctly and whether it was done maliciously and
25 deceitfully with an intent, not even just a fraud,

1 but with an intent to unconscionably harm this man.
2 And the way they did it because they were so focused
3 on making four dollars for every one dollar off of
4 these special needs at subminimum wage. They were
5 so focused on that that they caused him and his
6 business and his family unnecessary injury.

7 So I am not conceding anything. I just
8 want to make sure that the record is clear that we
9 believe that there is a genuine issue of material
10 facts. And I don't want the Defendants to bootstrap
11 something because their motion for summary judgment
12 was very generally done and doesn't specifically go
13 to the evidence that we've given. And that was done
14 in July. Ours came around when we had the evidence
15 of the clear purchasing orders and the clear
16 proposals from DSN and everything. And so we just
17 simply want to make sure that this, you know, one
18 little random case in 2016 is not the technical
19 reason that this Court would try to rely on to
20 dismiss the case.

21 THE JUDGE: You mean the motion?

22 MS. MARTEL: Well, one -- if one of
23 our motions was granted -- if his motion for summary
24 judgment was granted, the case would not go on.

25 THE JUDGE: No, but you said -- I

1 understand what you meant. You meant the motion
2 would cause that to be dismissed. But -- okay. And
3 you've made that statement. Thank you very much.
4 Anything else on the motion?

5 MS. MARTEL: Not on the rebuttal.
6 And I have a motion to compel and a motion to amend,
7 but I need to ask could we take a five minute
8 recess?

9 THE JUDGE: Let's take a five minute
10 recess and then I might have some questions for
11 counsel on the motions. So why don't we take five
12 minutes. Wander about freely. We'll be off the
13 record for five minutes.

14 (BREAK TAKEN)

15 THE JUDGE: Back on the record in
16 16-01825. We just heard Defendants' motion for
17 summary judgment and response by the Plaintiff. And
18 I just have a couple of questions. First maybe for
19 Ms. Martel. I'm looking at the contract here and
20 I've got your -- I've got your amended complaint
21 which is the most recent complaint. The amended
22 complaint of, I think, February 15th of last year,
23 2017.

24 Is this a breach of contract case?
25 Because as I read through it, I saw the word breach

1 several times. But my understanding of your
2 argument a second ago, it was based on tort.

3 MS. MARTEL: Right. Which is why I
4 filed a motion to amend the complaint for a second
5 amended complaint because we went through the
6 underlining that there is in fact. Well, the
7 behavior led to ultimately the contract to be
8 breached. But it's the manner in which it was done
9 that gives rise to the genuine issue of material
10 fact.

11 And my client wanted me to make really
12 clear just in case we don't, for some reason, get to
13 my motion to compel discovery and the motion for
14 answers to interrogatories and requests to produce
15 and to have -- engage in depositions that the South
16 Carolina Rule of Summary Judgment speaks to that.
17 And that I had scheduled depositions after Christmas
18 this past year. And to date, no one has made
19 themselves available. In fact, they've said that,
20 you know, they're never going to have their
21 depositions taken.

22 So we haven't had the benefit of
23 depositions. But I did want to amend and I've
24 acknowledged that I wanted to amend. And we did go
25 into arbitration for a window of time from about

1 late August until almost Christmas of this past year
2 where we were supposed to be in good faith dealing
3 with each other and trying to resolve some of these
4 issues. So at that point, it was after we
5 recognized that we weren't going to be able to
6 resolve that I scheduled the depositions.

7 But if the Court would wonder -- you know,
8 we certainly we're dragging our feet. And we
9 certainly have always wanted to take some
10 depositions at least of Mr. Gruber and a couple
11 other people. And that would not be unduly
12 burdensome prior to a summary judgment motion.

13 THE JUDGE: Well, let me -- let me
14 follow up on your answer then so I make sure. As we
15 sit here today, you are not asserting breach of
16 contract. However, you hope to amend to assert
17 breach of contract; is that right?

18 MS. MARTEL: Yes, because ultimately
19 that's underlying -- that's underlying what
20 ultimately happened is a breach of contract.

21 THE JUDGE: Okay. Now, follow-up
22 question. The contract that we spoke about a minute
23 ago which is contract for janitorial services County
24 of Beaufort, South Carolina which is stamped
25 received October 19th, 2010, which was signed the

1 25th day of October 2010, is that the contract?

2 MS. MARTEL: That's the contract that
3 was breached, but then what happened -- and this
4 isn't -- and this isn't something that wasn't --
5 didn't happen before. Some buildings come. Some
6 buildings go in these contracts. So there are --
7 there are modifications to the contract that
8 occurred as a natural course of this kind of a large
9 contract.

10 So in the past, there have been buildings
11 that shut down and those were no longer part of the
12 contract or there would be buildings that would be
13 added. Actually that's really more likely the
14 scenario in the first 15 years. Mr. Molloy and his
15 company were adding a lot of extra buildings.
16 They'd say, oh, really happy with what you're doing.
17 Lets add on, you know, the SLED building. Let's add
18 on the airport. So this contract although it sits
19 as it is, it wouldn't be unnatural for it to morph a
20 little bit as the natural course of the way the
21 Beaufort County commercial cleaning reality was.

22 So we are alleging that it is a breach of
23 this contract, but not just at the will because we
24 do acknowledge the language in the contract but that
25 it wasn't in the best interest of Beaufort County

1 and that it was done in such an unconscionable way
2 over a period of four years.

3 So they didn't just terminate this
4 contract. They then created in 2012 an issue and
5 also then eventually 2014 was the hard date on when
6 he was officially let go. They kind of let him go
7 and then they'd bring him back because they realized
8 that they really couldn't do what they said they
9 were going to do. They needed his workforce. They
10 needed his company.

11 So I wanted to amend my complaint to add
12 all of those things and more specifically because,
13 Your Honor, I -- and we even discussed this and
14 there was actually an agreement -- a discussion
15 about amending the complaint. And then we went into
16 arbitration and I kind of held back.

17 THE JUDGE: I assume you all
18 mediated.

19 MS. MARTEL: We mediated. Well, we
20 went with -- yeah. Barry Johnson mediated the case.
21 And so in -- we talked about the just consent of us
22 to go ahead and allow for the purposes of judicial
23 economy because if, for some reason, the second
24 amended -- or the amended complaint doesn't contain
25 the necessary specifics, it's a defect that can be

1 quickly remedied by amending the complaint one more
2 time.

3 THE JUDGE: So back to the contract
4 that we referenced a minute ago executed October
5 25th, 2010, or at least dated that. Let me scroll
6 down and see if it was executed the same day. It
7 appears to be October 19th is when your client
8 signed it, 2010. That's the contract. When we talk
9 about the contract in this case, that's a question.
10 I'm not trying to put words in your mouth, I just
11 want to make sure I'm dealing with the right
12 documents. So that is the contract?

13 MS. MARTEL: It was -- yes. It was
14 the original catalyst document that was a contract
15 between Beaufort County and Carolina Cleaning.

16 THE JUDGE: And this contract of
17 course has -- as was pointed out by Defendant, looks
18 like a one-year contract where the parties can
19 extend if they want to. And it has a 60-day out
20 provision, an Article 9. And there's more to it.
21 It has of course some attachments that are attached
22 to it. And I just want to make sure I'm dealing
23 with the right document here.

24 Now, the second question. This is going
25 to jump around just a second and then I'll be happy

1 to get your take on all of this in a second. To the
2 Defendants' point, having to do with the fact there
3 was no requirement that the County contract with any
4 third party. That the contract can perform it's own
5 cleaning services, perform all sorts of things for
6 itself if it would like to. Is it -- does the
7 Plaintiff disagree with the assertion that the
8 Department of Specialty Needs is not a Beaufort
9 County Department?

10 MS. MARTEL: Honestly, there's never
11 been any exact pleading on what any of the
12 particular entities are as far as incorporated or
13 who has authority to bid or not bid. There was a
14 mention of Little Flowers Cleaning Company at one
15 point which never officially bid. But to the extent
16 that Beaufort County created this as a cleaning
17 enclave and a program to competitively bid with what
18 was already granted in a contract with a normal
19 course of one-year renewals, yes, we believe that
20 that is not something that Beaufort County should be
21 able to do. And we believe that the way they did
22 it, even if somebody wanted to go far-reaching and
23 say that's something that Beaufort County had the
24 ability to do, would it be in the best interest of
25 Beaufort County, unequivocally no.

1 And we believe that a jury of Mr. Molloy's
2 peers will find after looking at all this evidence
3 that there's room in this contract for genuine
4 issues of material fact just raised on those points
5 alone.

6 THE JUDGE: Now, as I understand the
7 argument a moment ago -- there was this contract
8 that we talked about a second ago. The contract.
9 And that the first year of it, 2010 to 2011, if I'm
10 understanding the arguments and what I've read so
11 far, were okay.

12 MS. MARTEL: No. Actually, in our
13 first complaint and I believe the amended complaint,
14 we did allege that at that point ten percent started
15 to get moved around and my client was little bit
16 shocked about that. And they were trying to say
17 just like Mr. Cooke said, oh, the recession and, you
18 know, everybody's scrambling to look for extra
19 money. So they cut -- unilaterally cut without any
20 discussion at that point, ten percent. And he, you
21 know, had a problem with that and I was trying to --
22 from that point on, he was behind the eight ball
23 trying to figure out what was happening to him.

24 And pretty much every time he needed a
25 paycheck, whereas it had previously just gone right

1 to him and then he'd pay his employees, he had to
2 come and beg Beaufort County for his paycheck so
3 that then he could pay his employees. So it really
4 inhibited his ability to function as a business. So
5 the way it was handled, that --

6 THE JUDGE: And that was timeframe
7 2010 to 2011?

8 MS. MARTEL: 2010 to 2011. 2011 to
9 2012, they start asking him to, you know, have his
10 company engage in paying special needs people
11 subminimum wage. It's a moneymaking business. He
12 says no. By 2011 to 2012, they have DSN which is,
13 apparently, a department of Beaufort County and
14 shouldn't have been able to bid. Couldn't bid
15 because they were part of the -- Beaufort County is
16 in a contract with Mr. Molloy and Carolina Cleaning.
17 Then Beaufort County goes and has DSN sub part of
18 it.

19 THE JUDGE: Let me ask you this
20 because you --

21 MS. MARTEL: Create a second entity
22 which is the RF -- and then they do an RFP for 2012
23 and they rigged that RFP to award to it to DSN.

24 THE JUDGE: All right. So the RFP --
25 and you had handed me a copy of a document dated

1 August 13th, 2012. And it shows that Mr. Molloy's
2 company was not the only company that bid, Heavy
3 D's. He's Carolina Cleaning, is that correct? And
4 then Green Solutions also bid. I mean, under your
5 theory don't Heavy D and Green Solutions also have
6 the same cause of action?

7 MS. MARTEL: They might. They just
8 don't have the lawyer. I don't know how they have a
9 lawyer. And they may not have known.

10 See, this is where the statute of
11 limitations is so clear that we're within the
12 statute of limitations because it was only
13 Mr. Molloy who went and did the Freedom of
14 Information Act in the fall of 2014, getting
15 information by March 2015, which indicated -- see,
16 Mr. Molloy wasn't privy to this particular
17 information.

18 Well, he wasn't privy to the information
19 of how the bid-rigging occurred because that came
20 through interoffice, things from -- e-mails from
21 Dave Thomas. Things with -- that are on Dave
22 Thomas' e-mail that say how they're going to give
23 DSN an extra couple of months and they're going to
24 take things out of the DSN contract that the other
25 people bid on.

1 So this on its face does look okay. And
2 one of the reasons why I put this on here though is
3 to show the different people who are privy to all
4 this. The second sheet behind that is the one that
5 says the closing date of this RFP is March 22nd,
6 2012. And then the document thereafter indicates,
7 in two different fonts, so it looks like things are
8 copied and pasted from Mr. Molloy's bids. And it's
9 Ms. Mitzi Wagoner, the DSN executor director.

10 THE JUDGE: So, just so I'm clear, on
11 August 13th, 2012 -- I haven't read this whole thing
12 through, but I want to make sure I'm looking at
13 everything in the right way. That was the date that
14 the bid was awarded to DSN; is that right?

15 MR. MOLLOY: Yes.

16 MS. MARTEL: Correct.

17 THE JUDGE: Okay. So on August 13th,
18 presumably, 2012, is when the Plaintiff knew that he
19 didn't have this contract?

20 MS. MARTEL: Actually, no. He didn't
21 know about it until -- right. He didn't know about
22 it until he actually called and found out who they
23 awarded it to. And to-date we don't have the signed
24 contract. Nobody has the signed contracts. And it
25 was a separate bid and a separate contract in

1 addition to the 2010 contract. But this bid is what
2 the catalyst was that set up DSN being able to start
3 cleaning. And that's when then after this how DSN
4 started taking his other buildings.

5 So there's no hard date on this exact
6 termination of this contract. It was like -- it was
7 literally maliciously and deceitfully dismantling
8 his contract. But in order to do it, they had to
9 create an entity where the Medicaid money would go
10 through.

11 THE JUDGE: Okay. But --

12 MS. MARTEL: And they had to have an
13 award of a contract. And that was what set it off.

14 THE JUDGE: Here's the part I guess
15 I'm trying to figure out. So -- and again, you
16 handed me this, so I'm trying to figure it out.
17 August 13th, 2012, is the recommendation to choose
18 the DSN entity. And thereafter the contract was
19 signed I assume with DSN or whatever documents
20 associated with --

21 MS. MARTEL: But see -- now, this is
22 what we wanted in discovery and why we wanted to
23 take deposition because I personally have never
24 actually been able to get a copy. And I don't
25 believe we've been provided -- no one along the line

1 has provided us a copy that's the signed copy from
2 Beaufort County and all the different terms that
3 they have with DSN.

4 THE JUDGE: I guess my question is
5 when did he know it wasn't his contract? Because at
6 some point near August 13th, 2012, he would have
7 learned that he wasn't -- he was in the mix. And
8 then they awarded to DSN. And you're saying he
9 didn't find out --

10 MS. MARTEL: He learned about 2014
11 because remember this isn't a building that they
12 were bidding on, 2013, 2014. He -- this wasn't a
13 building that they were bidding on that he already
14 cleaned.

15 THE JUDGE: Wait. He learned two
16 years after the contract was awarded to someone else
17 that he didn't have the contract?

18 MS. MARTEL: About a year, I believe.

19 THE JUDGE: Didn't he notice somebody
20 else cleaning the building? I mean, that's -- I'm
21 --

22 MS. MARTEL: No, it wasn't a
23 building he was cleaning. See what you have to
24 understand is DSN needed a building to get so they
25 could create this cleaning enterprise where they'd

1 get Medicaid money. And we believe that they might
2 have opened a closed building to have this happen
3 because what they were bidding for was an old
4 building that he had -- used to have but had been
5 close. And so nobody was cleaning that building for
6 a while.

7 THE JUDGE: So we've got sort of two
8 contracts here I think. We have his contract that's
9 the contract that we talked about a minute ago that
10 was the -- had the various terms in it we discussed.
11 Then we have this RFP which in theory would lead to
12 another contract. And he was not awarded that
13 contract, the second contract.

14 MS. MARTEL: It was -- it was another
15 building. It was another RFP. Yes, it was a
16 different RFP number.

17 THE JUDGE: Okay. So I minute ago
18 you referenced a breach that you wanted to claim.
19 The breach would have to do with the first contract.
20 The tort claims that you assert have to do with the
21 County's failure to award him the second contract;
22 is that accurate?

23 MS. MARTEL: Not exactly. And this
24 is one of the reasons why it is a complicated case
25 and I wanted to try to present live under oath

1 testimony in this situation because it's very
2 complicated. There are a lot of documents. And you
3 have them all in front of you. And I have them all
4 in front of me. And they're entered into evidence,
5 but it would be helpful because my client is so
6 familiar with each one of the documents intimately
7 that for judicial economy that was one of the
8 reasons why I asked to have him be able to just
9 testify to these things.

10 But what ends up happening, my
11 understanding of all of his affidavits and I rely on
12 his sworn testimony that we have in all the
13 affidavits that he's filed and all the exhibits that
14 were incorporated in his affidavits, that the breach
15 of contract is the 2010. Part of the conspiracy is
16 how. And the deception above fraud, but to the
17 point where it was unconscionable was the manner in
18 the way -- and the way they had to set up a second
19 RFP and create an entity that they bid against him.
20 And they used his information. And they gave
21 themselves an unfair advantage.

22 It's not that he lost that business. It's
23 that because they intentionally set this up so that
24 he would lose the business because they needed an
25 entity that would work with State money, Medicaid

1 and the Federal and State dollars. They had to do
2 that so then they could get their program. So they
3 might not have even at that point -- I believe they
4 were and I believe testimony would demonstrate. But
5 at that point, the lust for just trying to get money
6 outweighed any sort of good sense on dealing with a
7 commercial cleaning business and the previous
8 contracts. So they created that without really
9 thinking about the ripple effects of everything.
10 And I believe that they opened up a closed business
11 to set that up.

12 THE JUDGE: Okay. But again, back to
13 the -- so there was the contract, capital C,
14 contract that we talked about a second ago. And
15 within that contract it appears to say it's a
16 one-year contract. Everybody can extend if they
17 agree. And either party can terminate on 60-days
18 notice. I mean, that appears to be what the four
19 corners of that contract say. That contract is not
20 the contract that he submitted the RFP on.

21 There was a whole -- of course, the RFP
22 was after the fact. So there was an RFP that he
23 submitted and wanted to be a part of that is the one
24 DSN got; is that right? And is there overlap in
25 that contract and the RFP contract?

1 MS. MARTEL: That's an excellent
2 question, Your Honor. If I may have one minute to
3 confer with my client, I'll answer it.

4 THE JUDGE: Okay. Go ahead, please.

5 (OFF RECORD DISCUSSION)

6 MS. MARTEL: Your Honor, I would
7 ask -- my client has filed like three different
8 affidavits in this case. I would ask the Court just
9 put him under oath to answer this specific question
10 on the stand so that he can, in his words, answer
11 this question. I believe that it will make it a lot
12 clearer and I'm just asking this for judicial
13 economy.

14 THE JUDGE: Let me ask counsel. I'm
15 only doing that if everybody consents.

16 MR. DAWES: Your Honor, I just think
17 that that is a very slippery slope, so we object.
18 There's been ample opportunity for affidavits or
19 affidavits explaining why affidavits are not
20 available. And I think we have to stick with that.

21 THE JUDGE: Okay. You all will --

22 MS. MARTEL: Well, Your Honor --

23 THE JUDGE: -- have to put up with my
24 crazy questions then, a few more questions while I
25 try to figure this out.

1 MS. MARTEL: Okay. Well, let me try
2 to answer that. And it is all contained in that big
3 binder that I gave you. I'm not saying that it's
4 not in there. I was just trying to do the Court
5 and, you know, the taxpayers a favor by trying to
6 get the questions answered from A to B under oath by
7 my client.

8 There was RFP 1 which is the 2010
9 contract. That was Craig's contract, Mr. Molloy's
10 cleaning company, Carolina Cleaning. It had 50
11 buildings. It was a contract that came as a result
12 of ten previous excellent years. And it was
13 supposed to be 2010 with one-year renewals. There
14 was no reason to think that it wasn't going to be
15 that way, but the contract was written so they could
16 at will with proper notice do that.

17 2012, there's a second RFP separately for
18 separate buildings. None of the buildings in the
19 2010 were in the 2012. That is where Beaufort
20 County rigged the bid to award it to the DSN. And
21 it was separate buildings than the 2010 contracts.

22 THE JUDGE: Okay. So there's no
23 overlap --

24 MS. MARTEL: Right.

25 THE JUDGE: -- in response to my

1 question.

2 MS. MARTEL: So that's why he went so
3 long without knowing who did the -- who the bid was
4 awarded to. And nor did Beaufort County ever share
5 the signed copy.

6 In 2014, June, that's is when they
7 officially, Mr. Gruber -- he thought he was going
8 again -- he thought he was going to try to negotiate
9 and stay alive with his business and the contracts
10 and re-work something. But that was when Mr. Gruber
11 officially let Carolina Cleaning go from the 2010
12 RFP.

13 THE JUDGE: Okay. So he's got the
14 2010 contract. Okay? Which is a year -- well, it
15 says what it says. And he works 2010 to 2011 on
16 that. And I think you indicated that they started
17 dialing him back on what was in the contract or what
18 the buildings he was going to clean. And then by
19 2013, he's down to much less. And he's hoping for
20 more, but in fact they let him go in 2014. They
21 terminate what was left of the 2010 contract at some
22 point in 2014. And it was asserted a minute ago
23 that was May, June, something.

24 MS. MARTEL: June 30th.

25 MR. DAWES: June 2014.

1 THE JUDGE: Okay. So parallel to
2 that but separate is he had hoped to be the
3 successful bidder on a different set of buildings in
4 this RFP that was in 2012. Okay? And he was not a
5 successful -- he was not successful in getting that
6 RFP because it was awarded to the Department of
7 Special Needs. And likewise, Heavy D's and Green
8 Solutions weren't successful either it looks like
9 from the document you handed me.

10 And so the cause action associated with
11 the second RFP, which I'll call it -- which may not
12 have been the second but the one that was referenced
13 in the August 13th, 2012 letter. Let's see. I can
14 probably find an RFP number here for the record.
15 Maybe I can't. But anyway, the second one. The
16 cause of action there is even though this was a
17 whole new building -- set of buildings, then he
18 should have been awarded the RFP rather than one of
19 the other bidders or rather than DSN because DSN --
20 finish it up.

21 MS. MARTEL: Actually -- so the
22 letter right behind the letter that you were just
23 talking about, it says proposal notice. And I guess
24 this is the 3910/120221.

25 THE JUDGE: Okay. There we go.

1 There's a number. All right. Thank you.

2 MS. MARTEL: Okay. And then it says
3 closing date and time March 22nd, 2012, at
4 3:00 p.m. And it's, you know, 1 of 56 pages. The
5 proposed title is Janitorial Services for Beaufort
6 County North of the Broad River, and there were just
7 eight locations. So that's what we're talking about
8 there in the 2012.

9 THE JUDGE: Okay. Which is again
10 separate and apart. And this is where I was getting
11 confused a minute ago. Separate and apart from the,
12 capital C, contract that we talked about a minute
13 ago.

14 MS. MARTEL: Right.

15 THE JUDGE: Okay. So back to the
16 times then. Let's talk about the -- any allegations
17 which may be in this complaint, not talking about
18 any amended complaint or anything associated with
19 the, capital C, contract. The one that was executed
20 that we've talked about already.

21 MS. MARTEL: Yes. I believe I put
22 that in my complaint as the first breach of
23 contract. I believe that this started as a breach
24 of contract and then intentional interference with
25 the contracts.

1 THE JUDGE: When did all that happen?
2 I'm trying to do a timeline amongst other things
3 here because, again, we have many claims and many
4 defenses. So --

5 MS. MARTEL: So the other key
6 document that's behind the one that I showed you
7 when the award was supposed to be in, the proposal,
8 you'll see Beaufort County Disabilities and Special
9 Needs janitorial proposal to clean Parks and Leisure
10 Services building, Revised 6/18/2012. So that's our
11 point is that Beaufort County rigged the bid and
12 gave themselves an extra -- well, March, April, May,
13 June -- three months. And then they took things in
14 and out of the contract to award it which is -- the
15 ultimate award then is August 13th, 2012. But
16 that's the clear violation of bid --

17 THE JUDGE: Okay. Now, you're back
18 to the RFP. I was asking about the, capital C,
19 contract. But that's okay. We can talk about --

20 MS. MARTEL: Right. But the reason
21 I'm trying to say this is because it's not that he
22 was just this angry janitor that didn't get -- that
23 got outbid.

24 THE JUDGE: That -- I didn't suggest
25 he was.

1 MS. MARTEL: Because he wouldn't have
2 even known that at that point. He had enough work.
3 And if Beaufort County wasn't starting to de-mantle
4 his work, he would have been fine just doing the
5 work that he had. So it's not necessarily that, per
6 se, that he was outbid. The cause of action comes
7 in by whom he was outbid and by how he was outbid.
8 Does that make sense?

9 THE JUDGE: It does, but my questions
10 right now are when was he outbid?

11 MS. MARTEL: Right. In 2012.

12 THE JUDGE: Okay. And this case was
13 brought in 2016 I believe.

14 MS. MARTEL: But -- correct. He did
15 not know who the bid went to until he was talking to
16 someone and then he let that go because just like I
17 told you in the big scope of commercial cleaning,
18 some buildings come and some buildings go. And so,
19 again, he had enough work to continue, but he was
20 just bidding things because that is what he had
21 done. That's what he had always done in the past.

22 What ended up happening is from 2012 when
23 Beaufort County sets up their cleaning enclave with
24 special needs people that they're paying minimum
25 wage to -- something that my client refused to do

1 because it wasn't right, was unconscionable. They
2 set this up. And then it was from 2012 slowly
3 through 2014 when they let him go that they kept
4 moving his buildings one at a time almost or just
5 partially at a time over from his contract in 2010
6 to the DSN cleaning in 2000 and -- so he did not get
7 actually let go.

8 And he was still kind of hoping that he'd
9 be able to stay afloat because having Beaufort
10 County commercial cleaning was a good job. And
11 again, as I told you before in the past, he had
12 always been dealt fairly by Beaufort County and in
13 good faith. And so they were always able to usually
14 come to a resolution.

15 So during that window of time, Brian Hill,
16 you know, assaulted his son in the gym. Some other
17 stuff goes down. He doesn't -- he's having these
18 things come at him slowly but doesn't realize that
19 its a pure termination until the 2014. And he
20 didn't realize the manner in which the termination
21 happened until he would obtain interoffice e-mails
22 from Dave Thomas, who's the procurement director, of
23 how it went down and how he got outbid. Because
24 even if the DSN had some cleaning buildings,
25 Beaufort County themselves were then making him beg

1 for his check every week. Because he didn't agree
2 to participate in the special needs program, he was
3 retaliated against. He was --

4 THE JUDGE: But I mean the
5 retaliation you've asserted happened in 2012.

6 MS. MARTEL: It happened throughout
7 and it was a slow drip. And then the whole way in
8 which it was -- because it was such a slow drip,
9 they were kind of, like I said, holding the carrot
10 out. Well, if you can just meet with Brian Hill, he
11 can help you decide that. Well, then they would set
12 up a meeting but Brian Hill wouldn't show up. Or
13 they'd send somebody else who wasn't in authority to
14 make a decision, but they'd kind of lead him on down
15 the line, down the line.

16 Meanwhile, he's begging for a check so he
17 can pay his employees. And it's just -- it was
18 really a slow termination. And then they kind of --
19 the did in some -- at one point have to bring him
20 back in for more buildings because they bit off more
21 than they could chew with the special needs entity
22 couldn't handle some of the buildings, so he came
23 back in. And once we got to a trial on this, and
24 this is in all the affidavits that we've already
25 filed that demonstrated genuine issue of material

1 fact on the unconscionability they --

2 THE JUDGE: Now, which -- and again,
3 this is what I've got to figure out, which contract
4 we're talking about, because he had the first
5 contract that essentially the four corners of it
6 abound by. You know? And we all are, I think --
7 unless there's some assertion of ambiguity, and I
8 didn't see in the pleadings an assertion of
9 ambiguity. Nobody has really talked about one.

10 MS. MARTEL: But remember I've also
11 alleged taxpayer standing. And I've also alleged
12 that it wasn't in the best interest. So they were
13 allowed to let him go if it -- at their leisure but
14 it was if it was in the best interest of Beaufort
15 County. The way it's worded you can also find that
16 it's not completely black letter law. I believe
17 that that contract is ambiguous to those words. And
18 that different people -- reasonable people could
19 find that the way that this was handled when you
20 couple it with the totality of the circumstances and
21 all that happened over the year -- the years 2010 to
22 2016.

23 THE JUDGE: And you say he brought
24 this after he discovered -- somewhere in the
25 affidavits I assume it says this. He finally

1 discovered somehow or heard something that caused
2 him to bring this lawsuit. I mean, I guess I'm
3 trying to figure out because the Plaintiff, of
4 course, has asserted statute of limitations. And
5 it's a two-year statute of limitations in a
6 situation like this as you know. And the standard
7 is, you know, knew or through the exercise of due
8 diligence should have known.

9 Now, he knew, you would think or through
10 the exercise of due diligence, at some point after
11 he did not receive the RFP that he didn't have the
12 RFP. I mean, I would think most people who would
13 submit a package of something and just never hear
14 anything back, there would be some duty to call and
15 say, hey, what happened to that? Did I get this?
16 Did I not get this? I mean, to say he didn't even
17 know about it until two years after he submitted the
18 package --

19 MS. MARTEL: Your Honor, I just
20 believe that these questions alone are prima facie
21 evidence that indicates that we have a genuine issue
22 of material fact. And I believe that these are
23 questions that are answered at length in the
24 documents that we filed, so they are public record.

25 THE JUDGE: Well, tell -- and again,

1 I haven't read all three of his affidavits.

2 MS. MARTEL: Right.

3 THE JUDGE: How does he explain that?
4 What in is affidavits explains why using the regular
5 standard we're all bound by for a statute of
6 limitations that it didn't end in, at the very
7 latest, in whatever the date you all gave me a
8 minute ago, May 2014 was.

9 MS. MARTEL: Because when he Freedom
10 of Informationed --

11 THE JUDGE: Start that date. I'm
12 sorry.

13 MS. MARTEL: After he was let go, he
14 -- within a reasonable period of time -- Freedom of
15 Information Act communication and documents
16 pertaining to his contracts and some of the things
17 that were going. That is when he saw e-mails,
18 interoffice e-mails between the Beaufort County
19 employees that are listed and also particularly Dave
20 Thomas' procurement and realized that what they had
21 done was to create this entity so that they could
22 make money. And it bid against him. It set up to
23 dismantle his company which that in and of itself
24 with the end result was an unconscionable act.

25 I don't think Mr. Molloy would say, you

1 know, they let him go and it was really clear and
2 they didn't drag him on for four years to the extent
3 of what they did and then how they did it including
4 some retaliatory actions that we've referenced. And
5 I can get into it in an amended complaint. There's
6 a little bit more detail. But that's how he found
7 out. And so he couldn't have known the depth of the
8 deceit until he was provided those documents.

9 THE JUDGE: When did he ask for those
10 document I guess is my question?

11 MS. MARTEL: Like 8/2014. And they
12 started coming in after that in the fall of 2014,
13 and he recalls the last of them being March of 2015.
14 And we still actually have documents coming in
15 because what's odd is now they've been sanitized and
16 some aren't the same and they're redacted
17 differently now. And we continue as we go through
18 this case which is one reason why we really want to
19 have depositions before any decisions are made on
20 trying to dismiss this case is that through Freedom
21 of Information things have been sort of
22 manipulative, possibly, which would go to even
23 further of the conspiracy.

24 Through this process some affidavits have
25 been filed from the Defendants. And we would say

1 that some of those affidavits contain contrary
2 information. We don't even know why Brian Baird
3 with the Sheriff's office wrote an affidavit for our
4 motion for temporary restraining order of this
5 program in an independent forensic audit. But in
6 fact he did.

7 And there are some parts in his affidavit
8 that then we found internal e-mails with, you know,
9 Kubic and Gruber and Baird and where it contradicts
10 what's even in his affidavit. So I would submit
11 that the affidavits that we've submitted and even
12 including we've relied on affidavits that the
13 Defendants have submitted. And we can't figure out
14 why they even submitted that one. That actually
15 creates more genuine issues of material fact because
16 why did Brian Baird mention anything. And then we
17 have e-mails that are contrary. And Mr. Molloy
18 submitted those to the court.

19 THE JUDGE: Now, thank you for
20 mentioning that because it brings me to a point I
21 probably would have forgotten and then I'm going to
22 let you rest and move back to the other side for a
23 second because I appreciate you --

24 MS. MARTEL: Because I thought you
25 had water here, even if it was swamp water.

1 THE JUDGE: Sorry. The ninth cause
2 of action. The assault cause of action. During
3 your initial argument, you said, well, we just sort
4 of threw that in there to show the overall
5 unconscionability or something or how this was.
6 What is that cause of action? Is it -- it's not a
7 loss of consortium. It's not captioned as you would
8 usually see a minor case caption. Is that --

9 MS. MARTEL: You know --

10 THE JUDGE: What are you seeking?
11 Because if it's an assault cause of action, it
12 probably needs to be severed from this case,
13 differently captioned. You know, it's not -- I
14 don't get it.

15 MS. MARTEL: Yes, I believe that that
16 is a separate lawsuit. I mean, certain that child
17 is entitled to his own damages and, you know,
18 whether a guardian stands in, that's a whole
19 separate case. And that case has quite a bit of
20 statute of limitations left on it.

21 The reason why we mentioned it here was
22 because as anyone who is a parent, there is nothing
23 worse than someone injuring or harming or
24 threatening to harm your child.

25 THE JUDGE: I agree with that.

1 MS. MARTEL: That'll pretty much stop
2 someone in their tracks from being afraid.

3 THE JUDGE: But from a technical
4 perspective -- and I understand early on you were
5 saying, you know, you didn't want to deal with the
6 technicalities. But unfortunately, they've stuck me
7 with the technicalities in this case. I mean,
8 that's why I'm here. Are you, it sounds like,
9 agreeing with the proposition that that ninth cause
10 of action is not really a part of this contract
11 action?

12 MS. MARTEL: If the Court were to
13 piecemeal the complaint and then allow me to amend
14 again, I think that that would be fair that the
15 child assault action would be brought in a separate
16 lawsuit and that that could be dismissed without
17 prejudice.

18 THE JUDGE: Well, I mean if I
19 dismissed, it would be without prejudice because
20 we're talking about a minor. And it wasn't even
21 necessarily properly brought in the minor's name.
22 It would be horribly unfair to dismiss it with
23 prejudice I think.

24 MS. MARTEL: Right. And the
25 intention there was more to demonstrate the

1 retaliation and as it affected Mr. Molloy and
2 Carolina Cleaning because that really started to
3 shut him down.

4 THE JUDGE: Okay. So that was more
5 of an assertion of --

6 MS. MARTEL: Retaliation.

7 THE JUDGE: -- allegation of facts,
8 not a claim on behalf of the minor child, you're
9 saying?

10 MS. MARTEL: Correct. That would be
11 brought in a separate lawsuit which, again, without
12 hearing a whole lot more about that sounds like that
13 probably ought to be stricken without prejudice from
14 this. And if he chooses to bring it separately,
15 fine. I just don't see that those two things can be
16 tried together.

17 Your Honor, we don't have a problem with
18 that being stricken for the trial child, for his
19 son, Whit, and that -- or W, his child W.

20 THE JUDGE: Well, let me -- let me --

21 MS. MARTEL: That's not his full name
22 for the purposes of not identifying anyone. But
23 that his -- but just that we would be allowed to
24 amend to correctly and thoroughly state that it was
25 retaliation. The assault was retaliation. The

1 assault was meant to stop Mr. Molloy.

2 THE JUDGE: Okay. And I don't know
3 if I'm going to make any deals on dismissing and
4 amending, but I think that -- I think it's probably
5 a different case that certainly could have been
6 brought perhaps already. But I think I wouldn't
7 dismiss it with prejudice because, again, we're
8 talking about a minor child here.

9 MS. MARTEL: Your Honor, my client
10 would like to have it be at least referenced in this
11 because, again, it's not a one moment thing in this
12 case. It's really a pattern of behavior that
13 occurred over time. And it's the totality of the
14 circumstances that really brings the genuine issue
15 of material fact on --

16 THE JUDGE: Whether or not that
17 allegation would go to a jury if it gets that far
18 would be up to the trial judge. I mean, they're not
19 going to have -- the jury isn't even going to have
20 the pleadings. So the question as to whether or not
21 this incident, as I'll call it, is appropriate -- it
22 has more probative value than prejudicial fact is
23 going to be a trial judge call, not mine. And it
24 doesn't matter if it's in the pleadings. They're
25 not going to get a (inaudible) of the pleadings.

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1 But I understand what you say. It's
2 important to him and he wants his story heard. So I
3 get it, but I'm not doing it right now. But it just
4 seems like that is sort of a different part of this
5 case that probably deserves it's own case number.
6 Anyway, thank you and I'll get back to you in a
7 second.

8 MS. MARTEL: Thank you.

9 THE JUDGE: Yes, sir?

10 MR. DAWES: Thank you. I think I see
11 where your line of questioning is going and we agree
12 that --

13 THE JUDGE: I'm glad you see where
14 it's going because I'm not sure. Based on my notes,
15 it went all over the place.

16 MR. DAWES: Well, I think what you've
17 gotten to so far is that conceptually we're talking
18 about two different transactions. There's the
19 capital C contract from 2010 and what claims arise
20 out of that. And then there's a whatever causes of
21 action they have which appear to be tort claims
22 arising out of their failure to get the RFP in 2012.
23 And so I hadn't thought of it quite that way, but

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1 cause of action, Your Honor is correct. That was a
2 one-year contract that provided for annual renewals.
3 And we've stated this in the affidavits and in our
4 brief. But it was extended until October 31, 2013.
5 And then after that it was continued on a
6 month-to-month basis until it was terminated on June
7 30th, 2014. That was the last service that was
8 provided under that contract. So that would be --
9 that would be their claim.

10 Is -- I mean, how can you have a breach of
11 a contract that itself provides that it's already
12 expired and that if it hadn't expired, it can be
13 terminated on 60-days notice. And if you don't feel
14 like giving 60-days notice, you could terminate it
15 through the convenience of the County. So it's
16 really terminated on any of three basis. One for
17 the convenience clause. Two on the 60-day notice.
18 And three, the fact that it already expired on it's
19 own terms and was being continued on a
20 month-to-month basis. So I think that by itself
21 without getting overly complicated would dispose of
22 any claim arising out of that contract.

23 And so now we turn to the RFP. And I
24 think Your Honor is on target again with when did
25 you have a claim? And as you know under a statute

1 of limitations analysis, it's not when you know of
2 all the evidence that's going to support your claim
3 or you have a full-blown cause of action. It's when
4 you know that you've been aggrieved. And he was
5 aggrieved when he did not get the contract which was
6 awarded in August of 2012. And of course, that
7 was -- it's a public body.

8 I believe that contract was advertised and
9 the fact that the DSN was given it. So, I mean,
10 maybe he didn't watch the news or didn't go online
11 or didn't go to meetings, but how long could that
12 have happened? Would that be a year? But the
13 lawsuit wasn't brought until August, I think,
14 28th, 2016. And so, I mean, surely by August
15 of 2014, anybody would be aware that the contract
16 you had submitted a proposal for back in early 2012
17 was not awarded. So I mean, I think the Court can
18 easily rule as a matter of law that they -- he knew
19 or should have known that he had a potential claim.

20 Now, here's what he says he discovered
21 later. He says he discovered later that the County
22 had a profit motive. Do you remember you were
23 handed up something that said that, you know, we
24 have a great way to make money here and that there's
25 a three to one return and something about Medicaid?

1 Well, that's addressed. First of all if it were
2 true, so what. I mean, there is no rule of law or
3 ethics that says that the County can't try to
4 generate revenue. And contrary to what counsel
5 says, it is not the role of County to create
6 opportunities for private enterprise. The County's
7 job is to provide services for its citizens and to
8 do it as economically as they can.

9 But the affidavit of Mr. Love that was
10 submitted last year addresses that contention
11 directly. And I'm just going to read you from the
12 relevant paragraphs beginning at Paragraph 42. In
13 his affidavit, Mr. Molloy also says that, quote,
14 public Beaufort County meeting minutes show the
15 director of DSN stating, quote, we have found a
16 great way to make money. And it's like winning the
17 lottery. And refers to the significant financial
18 gain as the Big Apple. Plaintiff also attaches a
19 single page from the minutes for the February 16,
20 2016, meeting of the Beaufort County Disabilities
21 and Special Needs advisory board.

22 This is inaccurate for several reasons.
23 First, the quoted language was not spoken by me.
24 Rather, these words were spoken by Erin Womack who
25 was at the meeting to answer some questions by board

1 members.

2 Second, none of the language cited by
3 Mr. Molloy had any reference to the employment of
4 DSN consumers to perform janitorial work. Instead,
5 Ms. Womack was speaking about certain waivers that
6 permitted additional federal money to be paid to the
7 families of severely disabled individuals for their
8 care. Again, the lottery and Big Apple statements
9 had nothing to do with either the employment of DSN
10 individuals or the payment of federal money to
11 Beaufort County. And that's true.

12 Medicaid, as Your Honor probably knows, is
13 a provision for medical benefits for people with
14 disabilities or people that otherwise qualify. It
15 does not pay janitorial services. There are no
16 federal funds to pay these janitorial services.

17 I will say that this program is audited
18 regularly. And then we have -- and that is set out
19 in the affidavits as well. We've even set out in
20 the affidavits the very few deficiencies that the
21 audits turned up with regard to the management of
22 the special needs employment program.

23 And so there is no claim. Plain and
24 simple, there is no claim arising out of the
25 so-called supposed receipt of Medicaid benefits to

1 support this program. These wages are paid by
2 Beaufort County for janitorial services provided to
3 Beaufort County.

4 Your Honor, I just addressed as far as I
5 can tell the only actual fact that counsel tendered.
6 I heard many references to there are documents in
7 this stack here. There are e-mails. There are
8 minutes of meetings, but counsel has yet to show any
9 actual material issue of fact. The changes the fact
10 that that contract was terminable for the
11 convenience of County. It was terminable on 60-days
12 notice. And it had already terminated by its own
13 terms by June of 2014. And there's nothing that
14 alters the fact that the County is not required by
15 virtue of issuing a request for proposals to award
16 to anybody. And it has every right to perform those
17 services in-house. And that's what it chose to do
18 here.

19 So, Your Honor, we would ask that you --
20 this is a motion for summary judgment. It's not
21 just a motion to dismiss. It's a motion for summary
22 judgment. We ask that the motion be granted. We
23 think it's too late to file an amended complaint.
24 You could do that in response to a motion to dismiss
25 as long as the dismissal is without prejudice. But

1 we're asking for dismissal with prejudice because
2 the Plaintiff has failed to create a genuine issue
3 of material fact.

4 THE JUDGE: All right. Now, the
5 ninth cause of action which, again, I think it's
6 kind of separate and apart. That would not be
7 without prejudice talking about a minor child. I
8 assume -- I don't know how old this child is or how
9 long -- is the child still a minor?

10 MR. DAWES: Well, the dismissal would
11 be with prejudice as to any claim that Mr. Molloy
12 has, but it would not have anything to do with the
13 child's claim.

14 THE JUDGE: I just wanted to make
15 sure everybody was on the same page on that.

16 MR. DAWES: Yeah, I think we can
17 agree to that.

18 THE JUDGE: Okay. Thank you so much.

19 MS. MARTEL: Your Honor?

20 THE JUDGE: Go ahead. I'm sorry.

21 MS. MARTEL: Everyone in here is
22 probably smarter than I am. And I will tell you
23 right now that the way you have gone with this, it
24 sounds really good and it sounds like a great way to
25 just dismiss this right away quickly. But it is

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1 actually wrong. And maybe I haven't communicated
2 well enough everything that is filed.

3 THE JUDGE: I'm just talking about
4 the ninth cause of action when I was talking about
5 dismissal a minute ago.

6 MS. MARTEL: Right, but I kind of see
7 where you're going with that that if you wanted to
8 exculp the ninth cause of action, then you don't
9 have a problem dismissing everything else with
10 prejudice.

11 THE JUDGE: I didn't say that.

12 MS. MARTEL: Which would be a --
13 well, that's a concern. That's a looming concern,
14 obviously, because that's one of the things that Mr.
15 Cooke is asking for with the summary judgment
16 motion. And the way that you are putting it is a
17 great intelligent argument for trying to dismiss it
18 swiftly, but it's really not based on the totality
19 of the facts.

20 The bottom line is is that we're not an
21 aggrieved -- he wasn't an aggrieved person for not
22 winning the bid in 2012. That's not it. We're not
23 saying that they breached the contract in 2012.
24 What that -- what that did is add an entity then
25 that slowly over from 2012 to 2014 took his

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1 business. So when you look at it in the totality of
2 the circumstances of what I'm trying to show the
3 Court, it creates a genuine issue of material fact.

4 Everybody agrees that you're not
5 guaranteed you are going to win a bid. That's what
6 the competitive bids are. That's why Beaufort
7 County has a duty to get certain amount of bids and
8 to bid frequently for things. That is best
9 practices. It's the way then it was unfairly rigged
10 so that Beaufort County would win it themselves.
11 And they were a party to the original contract in
12 2010. So this is far larger than just not awarding
13 a contract because they didn't have to.

14 And the information that came out later
15 after Freedom of Information Act in 2015 when he
16 finally got all the Freedom of Information Act in
17 demonstrates internal communication in Beaufort
18 County about how they wanted to promote this
19 program. And how in order to promote this program,
20 they had to ruin this guy's business. And by
21 ruining this guy's business, they shortchanged every
22 single Beaufort County taxpayer because they lost
23 one of the best commercial cleaning guys that they
24 every had who could go in and clean this place in
25 like 30 minutes.

1 Now you set up something -- well, you
2 know, I make it a point. Now you set up something
3 where you have an enclave that creates all sort of
4 additional paperwork and bureaucracy. One of the
5 things that Mr. Molloy will say in his affidavits
6 that you'll read is clearly that Beaufort County
7 used the 2012 RFP to award it to DSN.

8 They then used that entity to dismantle
9 his 2010 contract. (Inaudible) 2012 RFP dismantles
10 the 2010 over time and takes an additional two years
11 before he finally is given the last gut. There are
12 Beaufort County internal e-mails that demonstrate
13 the slow process of how this took place and how he
14 kept asking for meetings and they kept saying we'll
15 give you a meeting and then they didn't show up with
16 anybody who could do anything for him. In the
17 meantime, his kids are getting threatened. His
18 family, his livelihood is threatened and he's having
19 to come like a beggar to get a check so he could pay
20 his employees. And he's trying to keep a business
21 going afloat.

22 And the 2012 business that they created,
23 Beaufort County disabilities and special needs --
24 I'm looking for the date on this. This was printed
25 12/29/2014. This is just an example of some of the

1 Freedom of Information that came in. This
2 indicates, you know, that Beaufort County was trying
3 to comply with the Department of Labor. A
4 certificate authorizing special minimum wage rates
5 under Section 14 of the Fair Labor Standards Act
6 because really paying somebody two dollars an hour
7 is blatantly illegal and unethical and unmoral and
8 unconscionable especially if they're handicapped and
9 their parents are looking for a -- you know, afraid
10 to question anything. And now the DSN board that
11 used to be made up of parents who had voting rights
12 are now appointed by Beaufort County Council that's
13 making all of these decisions on how this is going
14 to work.

15 So we got from Freedom of Information the
16 Department of Labor on how Beaufort County was
17 starting to justify how they could pay these people
18 that low of amount and they mentioned Merry Maids
19 and Island Carwash. So we reached out to them and
20 asked them if they, you know, participated or how
21 they were involved in this. And the wrote
22 affidavits that are on file with this Court. And
23 they said they really were never involved in this
24 program. They just made that -- a phone call to say
25 how much do you charge your carwash people or

1 whatever.

2 So -- and in order to comply with the
3 Department of Labor, you're supposed to present like
4 serious compliance documents every six months.

5 THE JUDGE: Let me --

6 MS. MARTEL: And these are the --
7 this is the only stack that we have that prove --

8 THE JUDGE: Let me ask you this
9 though. I mean, you have made some allegations
10 that, you know, if they're true, somebody needs to
11 look into them for sure.

12 MS. MARTEL: Yes.

13 THE JUDGE: You know, you shouldn't
14 take advantage of disabled people. Everyone I would
15 think knows that. You shouldn't pay less than the
16 law allows to pay people. You certain shouldn't
17 allow people to work around hazardous chemicals
18 without gloves. I mean, some of the things you've
19 said are shocking. I hope they're not true. If
20 they are, somebody needs to look into them and make
21 sure. But those would be causes of action for those
22 aggrieved parties. I mean, and if they are
23 aggrieved, somebody should bring a lawsuit and look
24 into it. I don't disagree with that. No one should
25 hurt children. I am horrified by that. And

1 someone, you know, should look into that.

2 But I guess what I'm trying to figure out
3 is the Plaintiffs in this case are Mr. Molloy and
4 his company. And I understand the reason that
5 you're telling me all of this is that they had an
6 improper purpose in not rehiring him. Or as you
7 stated systematically deconstructing, I think was
8 your term, his contract.

9 But it sounds like from what you are
10 arguing just a minute ago, we're back to breach of
11 contract on the 2010 contract because as I
12 understand your theory as you're stating it, they
13 hired him in 2010. And then they renewed him but
14 kept reducing, reducing, reducing what he had until
15 2014 he was all done. And they did that by way of
16 an RFP in which they brought in a competitor which
17 the competitor was the Department of Special Needs
18 which is, I think, a county department. If that's
19 an issue, perhaps we need somebody to brief on that.
20 But I thought it was a county department. Maybe I'm
21 wrong. I think you think it's a county department.
22 Maybe not. I don't know.

23 MS. MARTEL: It's part of like PALS.
24 It's part of -- PALS and DSN, they're separate
25 entities, but they work, you know, together.

1 THE JUDGE: Okay. But I mean --

2 MS. MARTEL: Shannon Loper was
3 involved in learning about his business. She's with
4 PALS. Mitzi Wagner, Bill Love, Dave Thomas, all the
5 people who are named in our complaint. And, Your
6 Honor, it's correct that this is a breach of the
7 2010 contract and then it's more than that. Because
8 everything of what you're seeing the insight into --
9 and if it is true it is a bad situation. And we're
10 saying that there's enough genuine issue of material
11 fact that I should be entitled to depositions before
12 any sort of dismissal is so that we can get into
13 the --

14 THE JUDGE: I guess --

15 MS. MARTEL: Because it does go back
16 to the best interest as mentioned in here. And so,
17 we're saying that this should go before a jury
18 because the way the contract was terminated wasn't
19 just even fraudulently, it was over time a clear,
20 intentionally, unconscionable manner that left
21 somebody not just with a loss profits. Left him
22 with a complete business dissolved and basically
23 bankrupt.

24 And what you were just saying about the
25 entity that they set up in 2012 and all the issues

1 that I'm raising with that that are true because
2 there's documents there that I didn't create.
3 They're from the Department of Labor. They're from
4 Beaufort County's own interoffice e-mails. That
5 goes to all my other causes of actions that
6 shouldn't be dismissed at this time. To the
7 interference. To the conspiracy. To the --

8 THE JUDGE: How are these his causes
9 of action? Wouldn't these be the aggrieved parties,
10 the people who are forced to work without the gloves
11 and all of that. I mean, why is it not their cause
12 of action?

13 MS. MARTEL: Well, they have causes
14 of action, too.

15 THE JUDGE: But I mean --

16 MS. MARTEL: I would -- I'm surprised
17 that somebody does eventually -- it's not easy to
18 come to court. And people get scared because
19 they're so afraid that if they do come to court that
20 they don't ever get a chance to tell their story
21 because everything gets dismissed now days. So a
22 lot of people -- but those people probably should
23 come to court. And they probably do have causes of
24 actions. I'm not their lawyer. I'm the lawyer for
25 Mr. Molloy and Carolina Cleaning and their causes of

1 action are because the way this was handled, doing
2 these kind of things is so egregious, so deceptive
3 and so much over time. And he didn't know they were
4 leading him on because they needed to use him. Just
5 like they're using the cleaning enclaves. Because
6 you want to know why? The ultimate goal is Beaufort
7 County wants to make as much money as they can
8 without any thought to decency or conscionability.

9 And I went back to the Merriam-Webster
10 definition to begin with. And that's what creates
11 the material cause of facts in this case, shockingly
12 unfair or unjust. That's how Mr. Molloy was
13 handled.

14 He was not handled by Beaufort County ten
15 years before all of his dealings before. And he had
16 every right to think, based on the past dealings,
17 that he would be able to problem solve with them.
18 So he was trying to work with them. That's why it
19 took some many years. But 2012 wasn't the end date
20 of a breach of contract. That's actually just when
21 the subversive entity was created that would then
22 bid against him and take all of the rest of his
23 business.

24 THE JUDGE: Okay. Thank you very
25 much for the answer.

1 MR. DAWES: I think I would be
2 repeating myself, but I would be glad to answer any
3 questions.

4 THE JUDGE: Oh, no. I was just going
5 to give you the opportunity to respond to any of
6 that if you had any response.

7 All right. Obviously there's no way I'm
8 going to rule from the bench on any of this today
9 with as much as we've got in front of us. So the
10 next item -- I understand that's everything for
11 Beaufort County's motion for summary judgment and
12 all the response associated therewith; is that
13 right?

14 MS. MARTEL: Well, yes. We relied
15 generally on all the pleadings that have been filed.
16 And there have been affidavits. There was an
17 affidavit by Cynthia Bensch when she was on County
18 Council. And she sent up a red flag that she was
19 concerned about the program. And that only is put
20 in there to give rise to the fact that how things
21 were being handled was not aboveboard and with good
22 faith dealing or the best interest of Beaufort
23 County.

24 We also have Jill, who was one of the
25 special needs parents, who filed an affidavit. I

1 have the affidavit of Merry Maids.

2 THE JUDGE: Have you got --

3 MS. MARTEL: We have the affidavit of
4 Island Carwash. We have Cynthia -- the affidavit of
5 Cynthia Bensch while she was on County Council.
6 Everybody is sounding an alarm here. And just like
7 what you said, based on what I've said in this open
8 courtroom, there should be immediate investigations
9 into all of this.

10 THE JUDGE: Can I ask you to do one
11 thing for me? You look -- it sounds like you're
12 reading from a list of what you're relying on in the
13 summary judgment. Can you share that list with me
14 and counsel just so I can check boxes --

15 MS. MARTEL: Yes. I believe it --
16 this was one of my return motion in opposition to
17 summary judgment. But I personally also filed an
18 affidavit that went along with my motion to compel
19 and why I should have a motion to amend as well.
20 And it was simply because no discovery has ever been
21 offered to me. I jump through different hurdles
22 than Beaufort County has had to jump through.

23 THE JUDGE: But let me just finish my
24 thought just because I want to make sure I'm looking
25 at everything. So in the Beaufort County's motion

1 for summary judgment in response to that, you're
2 relying on a certain set of affidavits and filings
3 that you've got?

4 MS. MARTEL: Yes. And they were
5 filed on August 1st, 2017, entitled return motion
6 in opposition to summary judgment.

7 THE JUDGE: Okay. And that's
8 everything you're relying on in the defense to the
9 motion for summary judgment?

10 MS. MARTEL: Well, yeah. And of
11 course, I have my catchall, all previously filed
12 pleadings, affidavits, and memorandum of law on
13 behalf of the Plaintiff. And since this was filed,
14 the Plaintiff has filed supplemental affidavits
15 which, as again, Freedom of Information continues to
16 trickle in. And that's another point that
17 demonstrates the --

18 THE JUDGE: Okay. So there's not
19 really so much a list of what you've got prepared
20 for today it's basically everything on file is what
21 you've got?

22 MS. MARTEL: Well, yeah. And the
23 exhibits that go -- the DSN board member, parent set
24 out at Beaufort County County Council meetings. And
25 they're all electronically filed.

1 THE JUDGE: I'm not trying to limit
2 you. I'm just trying -- if there are documents
3 unassociated in defense to this summary judgment, I
4 wasn't going to focus on those. But if there are
5 all related, I'll focus on all of them. No problem.

6 MS. MARTEL: I believe it's all
7 related. And I believe that once Your Honor does
8 read even the affidavits that there's such
9 contradictory evidence within the affidavits that
10 demonstrates the manner in which the County dealt
11 with Mr. Molloy.

12 THE JUDGE: All right. Thank you.
13 Thank you so much. I can't remember if I had the
14 same question for you. It doesn't matter because
15 I'll just look at the whole file anyway. So as I go
16 through chronologically, I'm going to pick your
17 stuff, too.

18 MR. DAWES: And ours are pretty
19 simple. It's the five affidavits that are
20 referenced in our memorandum in support of our
21 motion for summary judgment. They're the same five
22 affidavits with the attachments to those that were
23 filed in response to the preliminary injunction
24 motion.

25 THE JUDGE: Okay. All right. Thank

1 you.

2 MS. MARTEL: Does Your Honor want to
3 hear my motion to compel?

4 THE JUDGE: Well, I was going to move
5 to your motion for summary judgment next. It was
6 the one that was filed next. But is that the way
7 you want to do next?

8 MS. MARTEL: Your Honor, can I take a
9 brief recess? I've been talking a long time.

10 THE JUDGE: Yeah, no problem. Why
11 don't we take another five minutes.

12 (BREAK TAKEN)

13 THE JUDGE: Back on the record then
14 in 2017-CP-07-01825. And I think we were going to
15 start with Plaintiff's motion for summary judgment
16 filed December 4th, 2017. And I am happy to hear
17 from you.

18 MS. MARTEL: Yes, Your Honor. After
19 due diligence and reflection, I want to withdraw my
20 motion for summary judgment. And I believe that it
21 would be premature because we haven't been allowed
22 to have any depositions so that any motion that I
23 may bring in the future for summary judgment would
24 only be after the -- or the rules, requirement to
25 allow some depositions. And so I do withdraw right

1 now my motion for summary judgment.

2 THE JUDGE: All right. Plaintiff's
3 motion withdrawn. That then takes us to Beaufort
4 County's motion for protective order filed
5 12/26/2017.

6 MR. DAWES: Your Honor, I think that
7 could probably be considered in conjunction with
8 Plaintiff's motion to compel. They all go to the
9 same issue and that is should discovery go forward
10 while the motion for summary judgment is pending?

11 What we would propose in that regard and
12 we've made our argument that discovery is not
13 necessary because the Plaintiff has not shown a
14 genuine issue of material fact. And they have not
15 submitted as Rule 54 provides an affidavit to
16 explain what facts, if any, they expect to discover
17 if they are allowed to do discovery. It's incumbent
18 upon them to show a genuine issue of material fact.

19 But if the Court denies summary judgment,
20 we would propose that the Court take control of the
21 discovery process. Certainly if summary judgment is
22 not granted, Plaintiffs are entitled to some
23 discovery. But this case threatens to become a
24 political vehicle of some kind.

25 And I would call the Court's attention to

1 a -- looks like police perhaps or a media alert that
2 was issued today. And if I could hand up a copy, it
3 would give the Court an idea of how we are concerned
4 that this case could spin out of control and the
5 object not be what a piece of litigation is intended
6 to be but rather a vehicle for some sort of public
7 statement and public exploitation.

8 So we think that some limited discovery
9 would be appropriate if summary judgment is denied,
10 but we would ask with all due respect that the Court
11 take control and maybe we have a discovery
12 conference to decide what discovery needs to be done
13 and is appropriate because our concern is that with
14 a term discovery is really going to be just sort of
15 a far-reaching effort to uncover what they call wide
16 corruption throughout government involving
17 procurement violations entrenched in the --

18 MS. MARTEL: Your Honor, I actually
19 object to that. You know, I think one of the
20 reasons why Dawes is kind of reading it is because
21 it's really not appropriate to bring any new -- you
22 know, new documents and that -- we don't know where
23 that came from or what that's even about.

24 Obviously, this is a Court that is open to
25 the public.

1 THE JUDGE: Yeah, I agree with you.

2 I mean --

3 MS. MARTEL: You know, its
4 self-serving.

5 THE JUDGE: I don't know if that was
6 -- I mean, unless you're going to tell me that was
7 produced by Plaintiff's counsel or something. I
8 mean, if it's just something out where people have a
9 general concern about this or something else, I'm
10 not -- that's not going to influence me. You know,
11 if at some point there's a concern about a potential
12 jury pool being affected, you know, file a motion
13 and we'll deal with it.

14 MR. DAWES: That's fair enough. My
15 point is that there are YouTube videos. There --
16 this -- it goes beyond the proper purpose of a
17 lawsuit. And my concern is that there will be an
18 effort to use discovery in this lawsuit to promote
19 some sort of political agenda. And so that -- for
20 that reason if the Court should deny summary
21 judgment, we would ask that the Court take control
22 over discovery in the case.

23 THE JUDGE: Okay. I appreciate it.
24 It's a new world with -- I guess YouTube has been
25 around forever. But anyway it's a lot of stuff out

1 there. So you're saying basically then that the
2 motion for protective order which I was going to
3 hear next should be heard in conjunction with the
4 motion to compel but that the response of the County
5 is essentially rather than responding necessarily to
6 whatever Ms. Martel is about to tell me, the
7 County's preference is to do what all judges hate
8 and that's to sit down and micromanage the -- which
9 I don't mean that in a negative way. It's just the
10 way it works -- the discovery which maybe is the
11 best thing to do. I don't know. But -- and that
12 does solve the problem of issuing an order and then
13 having somebody come back over and over and over
14 again and say we didn't get this answer. So before
15 I get into the motion, Ms. Martel, what are your
16 thoughts on that? And this is --

17 MS. MARTEL: Your Honor, I believe
18 that Mr. Cooke should have to go now and demonstrate
19 why Beaufort County should be different than any
20 other defendant in this case. Why they should be
21 protected from, you know, normal depositions that
22 anyone else would go through in this court. I don't
23 believe that they have the elements that are
24 required under the rules to get protection for just
25 the discovery. And Your Honor knows that I have

1 been practicing law in South Carolina since 1992.
2 And it is not my modus operandi to just go
3 frivolously looking for --

4 THE JUDGE: Well, let me stop you
5 real --

6 MS. MARTEL: -- you know, big fishing
7 expeditions.

8 THE JUDGE: Hold one. Let me stop
9 you real quick.

10 MS. MARTEL: So I'm taking a bit of
11 offense.

12 THE JUDGE: Hold on just a second
13 because I think what I heard him say was, and
14 correct me if I'm wrong, you all are happy to
15 cooperate with discovery. You want to wait and see
16 whether or not I can or do make a decision on your
17 summary judgment motion. If I do not grant your
18 summary judgment motion in whole because if it were
19 in part, it would still be discovery.

20 Then what you're asking is not that
21 Beaufort County -- you're not asking today that
22 Beaufort County be permitted not to respond to
23 discovery. What you're asking for is then a
24 discovery conference where counsel could sit at the
25 table and I would be presented with the first issue.

1 It might be when is this deposition going
2 to be and we would deal with that deposition.
3 Second would be how many interrogatories are you
4 permitted? How many parties? And are any of these
5 objectionable and let's deal with it right now. I
6 think that's what you meant. Not you shouldn't be
7 required to respond is that -- at least that's what
8 I heard?

9 MR. DAWES: No. That's exactly. But
10 I was even going to go a step further and say that
11 perhaps the first thing you would do would be to say
12 parties confer and submit a proposal to the Court on
13 --

14 THE JUDGE: Oh, yeah. I always try
15 that.

16 MR. DAWES: -- that discovery plan.
17 But yes, exactly right. We've had this motion
18 pending since I think you said July of last year.

19 THE JUDGE: December.

20 MR. DAWES: And so we objected to
21 discovery because our --

22 THE JUDGE: Oh, that motion. Yeah,
23 July.

24 MR. DAWES: -- because our -- because
25 our position was that there was no genuine issue of

1 material facts and therefore discovery was not
2 reasonably designed to calculate and to lead to
3 admissible evidence because it would not be
4 relevant. If the Court disagrees, then absolutely I
5 think we should proceed with discovery.

6 THE JUDGE: Okay. And that was the
7 part I was going to get you to respond to Ms. Martel
8 not just a --

9 MS. MARTEL: Well, I set up
10 depositions for, I believe, three different dates
11 that in e-mails back and forth between us both of us
12 had said we were available for court if necessary.
13 So I knew that there was availability. And I didn't
14 unilaterally pick those dates just to cause
15 Mr. Cooke, you know, undue burden of anything. I
16 realized that those were dates that were stated
17 available for this matter.

18 So I had set those at Coastal Court
19 Reporting for depositions and had sent subpoenas out
20 and requested very specific information to be
21 brought to the depositions in the subpoenas. You
22 know, certainly I can boil things down, for example,
23 you know, some of the questions are about the three
24 time reimbursement to Bill Love and Mitzi Wagner on
25 how that's actually done and calculated and where

1 the money comes from and where it goes. Simple
2 questions like that.

3 Dave Thomas, you know, aren't really that
4 in-depth. It's sort of please provide the section
5 of procurement law that speaks to fair and equitable
6 dealings with -- and states the acceptable law for
7 employees within the entity of Beaufort County. You
8 know, those kind of procurement law issues and what
9 was going on when they were doing that.

10 Josh Gruber to explain, you know, some of
11 the personal e-mails that he used that we got in a
12 Freedom of Information Act and certain other things
13 in decision making process and what was going on at
14 the time. And certainly the different specific job
15 descriptions because we have alleged some of the
16 tort actions whether or not that, you know, some of
17 these things that were going on from what we can see
18 and what we've alleged did go outside the scope of
19 what their jobs were.

20 Loper -- Shannon Loper, some of her
21 experience with working with the DSN consumers and
22 how that program works.

23 So there are some very specific questions
24 that aren't all just who are your witnesses and
25 basic questions and other, you know, asking for the

1 bank records or all tax returns. You know?

2 Although, I do think those are things I
3 should be able to be entitled to get from them as
4 well. They're certainly a bunch of things on the
5 public domain. But when I as an attorney ask for
6 certain things, you would think that those discovery
7 items and the access to certain of these Defendants
8 in depositions would be not limited to the point
9 that it would exculpate important information.

10 THE JUDGE: All right. But I mean,
11 the question as I understand it is deal with the
12 summary judgment that we've got and then move ahead
13 is what the County is saying.

14 MS. MARTEL: Yes. We would like to
15 leave here today if it's possible with dates for
16 depositions. You know, exchange available dates for
17 depositions and exchange names that could be
18 deposed. And we can easily set those up at Coastal
19 Court Reporting which is on Hilton Head and it's
20 easy to get to right over the Cross Island.

21 THE JUDGE: Let me ask you this.
22 Assume for the moment I said while I'm -- it's going
23 to take me a while to read this. While you -- while
24 I do this, do some depositions. Who would you
25 depose?

1 MS. MARTEL: I would depose Dave
2 Thomas. I would depose Josh Gruber. I would depose
3 Shannon Loper. I may depose Bill Love. I may
4 depose, although he's not named as a party, Mark
5 Roseneau.

6 THE JUDGE: Now, let's assume you
7 depose all of these people. What we talked about a
8 second ago is I think this is, as you described it a
9 minute ago -- and I'm trying to wrap my head around
10 exactly what it is because I agree with you it's
11 complicated. It was a long-term contractual
12 relationship between your client and the County that
13 went on. But essentially it was in one-year
14 increments for 15 years, essentially.

15 MS. MARTEL: Eighteen.

16 THE JUDGE: Eighteen. Okay.

17 MS. MARTEL: Before they actually --

18 THE JUDGE: A long time. The four
19 corners of the contract essentially say we're going
20 to do this every year. We can't do it every year
21 and we can stop it in 60 days or if the County
22 decides we want to stop it. And so at some point
23 they stop it.

24 Now, the allegations in the complaint I'm
25 still trying to wrap my head around because you had

1 described it a little bit as breach of contract.
2 The contract however says they can stop it on 60
3 days. And think nobody is saying they didn't do
4 that. And they can -- of course, if they can stop
5 it, they have the ability to reduce and it. It
6 would be inherent in the ability to kill it
7 completely that you would have the ability to
8 reduced it. But they reduced it, reduced it, and
9 down to nothing in 2014.

10 And the allegation of the Plaintiff is
11 they did that in order to bring in DSN which is, I
12 think, the County, but I'm happy to be proven wrong
13 if that matters. You know, maybe we'll do some
14 post-hearing briefs.

15 MS. MARTEL: Right where -- Dave
16 Thomas is in charge of procurement for the County.

17 THE JUDGE: Okay. So --

18 MS. MARTEL: And Dave Thomas dealt
19 with Mr. Molloy and Carolina Cleaning in his
20 bidding.

21 THE JUDGE: Okay. So what sort of
22 questions -- and I don't want you to give your
23 entire trial strategy away. But I think you've told
24 me the story. What is -- what sort of things, if I
25 said, yes, let's do some discovery while we're

1 waiting for me to read through a thousand pages or
2 whatever this is, would you ask him because I'm
3 still troubled by the allegations that you said with
4 the people not using gloves and all that kind of
5 thing. But I'm struggling with the relevance of
6 that in this case.

7 If you've got Jane Doe, you know,
8 represented by a guardian suing Beaufort County or
9 suing the Department of Special Needs for putting
10 her in a situation where she's dealing with poison,
11 you know, I get it. You know? But in this case
12 which has -- is primarily contract as best I
13 understand it. His complaint is that he didn't get
14 a renewed contract. His reasons are because they
15 wanted to do something terrible. But it's still
16 just a contract action. If he had that contract
17 here today, we wouldn't be here, right? I mean, if
18 they had renewed the contract.

19 MS. MARTEL: Right. Or if they had
20 dealt with him fairly. If they had dealt with him
21 in breaching the contractor or even in terminating
22 the contract. If they had done that in -- with fair
23 dealing and above board, that would have been
24 probably fine. I don't think the outcome would have
25 been that he'd completely lost his entire business.

1 It was the manner in which they let him go that
2 became unconscionable.

3 THE JUDGE: But the manner is
4 specified in the contract. And that's the part I'm
5 still struggling with because the contract just says
6 we don't like the pickup truck you come to work in.
7 I mean it's anything, right? I mean, it's
8 employment at will. It has a 60-day or a best
9 interest of the County, but failing that 60-day,
10 failing that a year, it's just over. I mean,
11 there's no -- there's no entitlement to a vendor to
12 continue on.

13 MS. MARTEL: Exactly. Best interest
14 of the County that you just raised is a crucial
15 point, too, which needs to let us go on to further
16 pursue this in front of a trial -- a jury with a
17 genuine issue of material fact because I say even in
18 my amended complaint, and we have a third amended
19 complaint almost drafted.

20 There was a window of time between
21 September and almost December that we were supposed
22 to be in good faith open mediation dealing with
23 it -- you know, trying to resolve this. And that
24 put on hold some of his probably discovery or some
25 of my intended discovery because we were trying to

1 see if there would be -- it was open. It was an
2 open mediation at that time.

3 THE JUDGE: Let me -- let me --

4 MS. MARTEL: But I've alleged here
5 Plaintiff Steven Craig Molloy has owned and operated
6 janitorial cleaning company in Beaufort County,
7 South Carolina since 1994. Plaintiff Molloy is a
8 taxpayer in Beaufort County, South Carolina and has
9 taxpayer standing in this case as well as being in
10 individually and specifically harmed and injured by
11 the Defendants.

12 And so the bottom line is that that
13 contract was terminated and it wasn't in the best
14 interest of Beaufort County. And then it
15 unconscionably and wrongfully and unnecessarily
16 injured this man.

17 THE JUDGE: Okay. So you're seeking
18 an independent cause of action for Mr. Molloy as a
19 taxpayer suing Beaufort County for some sort of like
20 a declaratory judgment that it was -- that it was
21 not in the County's best interest? I'm just
22 wondering.

23 I don't deny that taxpayers often can have
24 standing to sue government bodies for a variety of
25 things. I'm trying to think what the remedy is in a

1 situation like that.

2 MS. MARTEL: It would be to at least
3 get into some discovery and if need to stop this
4 program like tomorrow. I really don't know why that
5 program isn't somebody makes a phone call and stop
6 it now. It's unconscionable.

7 THE JUDGE: Well, I don't know enough
8 about it other than what I've heard today. But the
9 -- but back to this case, is he seeking by way of --
10 what sort -- as a taxpayer -- and again, I'm trying
11 to work my way through the pleadings and understand
12 all of this. So you're saying he is in this case
13 personally as a Plaintiff for two reasons as I
14 understand it now because his -- clearly the
15 corporate entity is the entity that contracted with
16 the County. He didn't individually contract with
17 the County. So the corporate entity would have the
18 cause of action, if it exists, against the County
19 for whatever alleged shenanigans you've got or
20 breach of contract or whatever. It wouldn't be him
21 individually. It would be the corporate entity.
22 And I assume you agree with that. Maybe not.

23 But individually, he is the parent of the
24 child, but I'm not sure if that case was brought
25 appropriately because, you know, ordinarily, it's a

1 guardian thing and all that the way these are
2 brought. But anyway, we talked about that. I'm not
3 so sure it's not a different case anyway. But
4 you're saying the second reason that he is in as a
5 Plaintiff is as a Beaufort County taxpayer?

6 MS. MARTEL: Yes, under Sloan versus
7 Greenville.

8 THE JUDGE: Okay. And so what relief
9 does he seek because -- as a Beaufort County
10 taxpayer?

11 MS. MARTEL: Well, to be honest with
12 you, he saved Beaufort County hundreds of thousands
13 of dollars over this period of time. And so he
14 would actually like to have, as we move forward with
15 this as a taxpayer standing, money returned to the
16 Beaufort County taxpayers that he would have saved
17 them had his contract gone on. And that because
18 they did it in such a perilous, unconstitutional --
19 I mean, not -- unconscionable in direct violation
20 with bid-rigging and competition and created this
21 entity that they had such a myopic view to try to
22 get the Medicare dollars that they didn't think
23 about what was going on and what was really in
24 Beaufort County's best interest which was to provide
25 commercial cleaning services competitively.

1 And Mr. Molloy had always bid
2 competitively. And the reason why he had previously
3 won the bids was because he was saving Beaufort
4 County -- the last bid that he won, he carved out
5 \$200,000 to save the taxpayers a year.

6 THE JUDGE: So I don't know if I
7 actually read that -- those allegations in the
8 pleadings.

9 MS. MARTEL: Yes.

10 THE JUDGE: And since I asked the
11 question, I guess it's only fair to see if Defendant
12 has any comments on Mr. Molloy as an individual
13 plaintiff.

14 MS. MARTEL: And just to -- just to
15 let you know that my amended complaint which I
16 really do have a third amended complaint, too, that
17 will be much more even specific. So I would just
18 ask that the Court grant me an opportunity to amend
19 once again because, you know, any potential defect
20 that's in the second amended complaint can be
21 clearly corrected in a third -- this is the amended
22 complaint -- second amended complaint let's call it.

23 THE JUDGE: And we're not necessarily
24 there, yet. I was still trying to figure out the
25 other part. But I didn't have a copy of the

1 proposed amended third -- second amended complaint.

2 MS. MARTEL: Well, it's still being
3 worked on right now because we actually just got
4 more Freedom of Information yesterday, 500 pages.

5 THE JUDGE: But I mean, how do we
6 hear that -- so we don't really -- ordinarily of
7 course as you know, we would deal with the motion to
8 amend with the proposal -- the amended proposal in
9 front us.

10 MS. MARTEL: Right. We can pull it
11 up. You know, we can pull it up now. It alleges a
12 little bit more specificity. It relies on the case
13 law that is clear on unconscionability and, you
14 know, stating that these facts coupled with the law
15 rise to a level that this Court can grant a jury
16 trial, that there are genuine issues of material
17 fact as to go to the manner in which the contract
18 was terminated.

19 THE JUDGE: Well, let me ask counsel
20 because -- again, I'm not saying I guess this can't
21 happen, but I haven't dealt with a motion to amend
22 in which the proposed amended wasn't available for
23 the other side to at least look at and make comments
24 on. So you don't have it either obviously because
25 it sounds like it isn't out there. What --

1 MS. MARTEL: I could get it by
2 tonight. I mean, I could have something proposed up
3 by tonight. We've been talking about that unamended
4 -- you know, Mr. Fletcher has asked me a couple of
5 times, who works with Mr. Cooke's office, do you
6 have one? Then it became like we thought we could
7 just consent to that. Then it became that we
8 couldn't consent and I had to file the motion to
9 amend.

10 So I mean, there's something that's very
11 tangible that could be easily sent to the Court by,
12 you know, Monday morning.

13 THE JUDGE: I mean, if you all can
14 consent, my problem is solved. But obviously it's
15 very difficult for counsel to argue for or against
16 an amendment that they don't have in front of them.
17 But I'm happy to hear if you say no problem, but I
18 just don't know what it is.

19 MR. DAWES: Well, I think it is a
20 problem, Your Honor. And the fact that the case has
21 gone on so long. There has been an amendment. We
22 asked for an amendment early because we honestly
23 couldn't understand what the causes of actions were.
24 The second one is what it is.

25 But no, we've had a motion for summary

1 judgment pending, you know, what, nine months now
2 based on the current pleadings. And so we would
3 respectfully submit that the time for moving to
4 amend has passed. And we have asked for dismissal
5 with prejudice.

6 Going to your earlier question, the
7 current complaint does allege that he's acting both
8 as a taxpayer and as an individual, but it's not in
9 defense of the DSN consumers. It's just what he
10 just said. That is, in breaching my contract,
11 you've cost the taxpayers money. So I think our
12 contention would be it's no greater nor less than
13 the claim that he's asserted already. Breach of
14 agreement and the putting him out of business,
15 so-to-speak. But I don't think there's a separate
16 claim by the taxpayers for that.

17 MS. MARTEL: Well, Your Honor, I
18 haven't -- it may seem like a lot of time has gone
19 by, but there was a window of time when there was an
20 open mediation. And the Court can see when that
21 started and when it ended. And that there was hope
22 that there would be some dialogue. Actually right
23 out of the gate, you know, this probably isn't the
24 forum for me to mention anything there.

25 But I will say throughout this case I and

1 my client have been threatened. And I will say that
2 we're just trying to get some -- an opportunity to
3 get the facts out. And all I've asked for is just
4 normal discovery. And that's why I've withdrawn by
5 motion for summary judgment because to dismiss this
6 on summary judgment without depositions would be a
7 huge error. And it would be extremely prejudicial
8 to Mr. Molloy.

9 He's written this affidavit in support of
10 the motion to compel. And I'll just go ahead and
11 read it. I am Craig Molloy, the Plaintiff in this
12 case. Beaufort County and various named employees
13 and various members of Beaufort County are the
14 Defendant. The interrogatories and requests to
15 produce documents were originally served on the
16 Defendant on March 15th, 2017.

17 And just as a sidebar, the Defendants
18 served to us in January, two months before I served
19 discovery on them, they served discovery on us,
20 interrogatories and requests to produce.

21 Despite repeated attempts to get answers
22 to discovery, the Defendants have refused to
23 cooperate and indicated that they think it's unduly
24 burdensome and -- Craig Molloy says, I will be
25 severely prejudiced if not granted my right to

1 engage in some discovery in this manner.

2 Particularly where the Defendants have already
3 engaged in the discovery process. Meaning they sent
4 interrogatories and requests to produce to us. We
5 did answer them.

6 Also, they have failed to cooperate with
7 some of the basic Freedom of Information requests
8 that he had sent and simple depositions pursuant to
9 the Rules of South Carolina Civil Procedure.

10 We set depositions for a date and time
11 that the Defendants had acknowledged they were
12 available. There is attached communication. And
13 none of the Defendants availed themselves to be
14 deposed or have not cooperated in the discovery
15 process.

16 I have cooperated with the process. I
17 have availed myself to answer their discovery. I
18 have availed myself in good faith to mediation. I
19 believe I was threatened. And he states this in his
20 affidavit that he was threatened and the Rules of
21 Confidentiality may not apply there where his
22 80-year-old father was personally threatened, also.

23 I have in good-faith attempted to try to
24 resolve this, in good faith participated in the
25 process. On the other hand, they have not

1 cooperated in good faith nor have they used the same
2 rules in responding to discovery.

3 Also, at this point, I have new
4 information and will need to amend my complaint and
5 add parties and causes of action. Namely that
6 during the Defendants' action, they continued to be
7 so willful and unconscionable that it falls into a
8 category where the law favors my claims.

9 In this case, I have brought forward hard
10 evidence showing the Defendants' illegal misconduct
11 including conspiracy and collusion to commit at a
12 minimum unfair trade practices procurement
13 violations and contract interference as well as --
14 well, I'm just going to read it the way it is. The
15 various laws violated by Beaufort County include and
16 are not limited to Title 39 of the South Carolina
17 Code of Laws and the Division IV of the Beaufort
18 County Procurement Laws as cited by Beaufort County
19 Purchasing Ordinance.

20 The evidence against the Defendant is --
21 the evidence against the Defendants is directly from
22 their own internal e-mails, documents and show the
23 violations of the laws above. They also show
24 Beaufort County's later actions coincide with the
25 conversations discussed in their early e-mails. The

1 Defendants' actions were premeditated and planned
2 which is to the conspiracy to commit these crimes.

3 Now, I -- we have a civil case here, but
4 there may be parallel, you know, other actions. The
5 Defendant -- and I'm not threatening that. I'm just
6 mentioning that that might be the case and that's
7 why he uses that word. The Defendants have denied
8 depositions and discovery where questions of
9 material fact exists. The Defendants have no legal
10 defense or excuse to deny depositions unless guilty.
11 Obviously, the Defendants do not want to wish to
12 expose themselves to additional actions. Therefore,
13 the Defendants along with their attorney's tactics
14 have denied this information.

15 The Defendants are -- you know, and he
16 indicates what he believes are part of the causes of
17 actions which are set forth in the amended
18 complaint, the collusion, unfair trade practices and
19 unconscionable behavior.

20 If this Court allows summary judgment to
21 the Defendants, it would be an absolute injustice
22 and mockery of the court and legal system and would
23 place serious question.

24 One Defendant in particular, Josh Gruber
25 has stated in front of people, I will never submit

1 to a deposition in this case. We met with the
2 Defendants' attorney a few times and detailed
3 Beaufort County's actions, procurement violations
4 and included recent actions and reasons for
5 additional cases to be filed.

6 Beaufort County has stated the request to
7 be overly burdensome. I ask the Court why would the
8 Defendants and their attorneys refuse simple
9 requests. All affidavits submitted by Beaufort
10 County so far contradict the law and their actions.
11 One affidavit in particular, Detective Brian Baird
12 blatantly contradicts his earlier statements and
13 actions.

14 If Beaufort County -- he basically states
15 that he's concerned about the venue here and he's
16 concerned that Beaufort County is in fact the
17 Defendant and we're in Beaufort County and
18 everybody's part of Beaufort County.

19 THE JUDGE: That's the way it works.

20 MS. MARTEL: But that he believes
21 that -- he's asking the Court to demand depositions
22 of the requested parties so that we can, you know,
23 find out some of the answers to questions that even
24 you have about some of these programs, that the
25 Court allow this case to continue, and that he would

1 be for severely prejudiced to have anything
2 dismissed without his right to have these
3 depositions.

4 And then I filed my affidavit which is
5 electronically filed.

6 THE JUDGE: When was that filed?

7 MS. MARTEL: In conjunction with the
8 motion to compel. And I basically just stated that
9 we mailed discovery on March 15th, 2017. And I
10 believe I sent the certified green card just so the
11 Court has that information. I don't think that the
12 Defendants are disputing that they received
13 discovery, but at least that shows the Court exactly
14 when it was sent.

15 And just that the depositions that were
16 set on December 20th, we set them for a date and
17 time that the parties acknowledge that they would be
18 available. And I attached that communication and
19 have the dates and who we wanted to depose and all
20 the copies of the subpoenas. And I'm just stating
21 that nobody's availed themselves to be deposed or
22 have cooperated in getting the deposition date.

23 So the affidavit goes on to just say that
24 we've cooperated with the process. We've in good
25 faith availed ourselves. We've handed documents and

1 documents over to the Defendants, but we really
2 haven't had any of our own opportunity to have
3 discovery.

4 But despite that -- despite that, we still
5 have presented, I believe, a case that rises to the
6 level that there is a genuine issue of material fact
7 even on these pleadings. Even if we had to stand on
8 these pleadings because as the Court knows, the law
9 in Detravell and some of the other cases that I
10 cited in my affidavit that we were relying on, why
11 we needed -- we basically were saying that we have
12 some new information and we could amend the
13 complaint.

14 And also to add parties because, you know,
15 Brian Baird of the Sheriff's Department is not
16 involved. And Mark Roseneau wasn't named. And some
17 other people weren't named. We basically named the
18 people that were on one little list in the County
19 Council who -- the head of finance who made the
20 decision to create this sort of new entity that then
21 broke the procurement laws and bid against my client
22 and dismantled his contract.

23 But we state that the Defendants' actions
24 are willful, unconscionable and so arbitrary and
25 malicious that it falls into the category where the

1 law of WMTC versus Georgia Braun falls into play or
2 Detravell versus OMC, Philadelphia Storage versus
3 Mutual Tire Sales and Games and Gun, which all of
4 that case law is the law of the land right now.

5 And we have enough general issues of
6 material fact that a trier of fact should be able to
7 hear it all after due process and discovery and then
8 make a decision on was it the best interest for the
9 County because if that -- if it wasn't the best
10 interest for the County and that's what triggered
11 the breach of the contract and then they created the
12 entity to bid against the contract and then they
13 dragged my client on for basically three more years.
14 That's unconscionable and that caused -- that caused
15 unnecessary injury and that's what the law of land
16 is. That's what those cases say that if -- you
17 know, a termination of contract, sure that's allowed
18 in South Carolina. We all say that.

19 And the fact is that how you terminate a
20 contract matters. And that's the position that we
21 take that the way they terminated this contract and
22 how they did it and over time the deceptive nature
23 of it and then when you look at the retaliatory part
24 of it because my client wouldn't do what they were
25 asking him to do which was illegal, pay people

1 subminimum wage. So because he doesn't do it, they
2 create something that bids against him and takes his
3 whole entire contract over a period of years.

4 THE JUDGE: What was -- I'm sorry.
5 Anything else.

6 MS. MARTEL: I think I'm okay for
7 now. I'll sit down.

8 THE JUDGE: All right. I mean, back
9 to the amend issue. I honestly don't know how that
10 can be down without the other side having a copy of
11 what it is you seek to amend because first you were
12 talking about causing of action and cleaning things
13 up and simplifying things. And then a second ago
14 you're talking about adding parties which is a whole
15 different kettle of fish. And honestly, you know,
16 I'm not going to rule on something that's not before
17 me. But if you added John Smith right now for
18 something that happened during all of this time,
19 there is no way the Statute of Limitations would
20 allow that. I mean, anybody who hasn't been
21 served -- hadn't been named and served at this point
22 for stuff that happened between 2010 and 2014 is
23 gone, right? I mean, who else could you add that
24 wouldn't -- it's not going to relate back to an
25 individual who's not a party.

1 MS. MARTEL: Well, it spins -- this
2 case does -- the retaliatory nature of this case
3 does spin out of control. But for the purposes of
4 today and for the purposes of this action staying in
5 place with the named parties, we believe that we
6 have enough to go on with just these named parties.
7 But if the Court really wants me to answer that
8 question, we didn't know that there was never an
9 actual Sheriff's report filed on the assault which
10 would have been something that anyone would think
11 that when something like that occurs that some sort
12 of official report would have been made.

13 THE JUDGE: Okay. But I mean --

14 MS. MARTEL: And so that adds to how
15 they were really hiding things and covering up
16 things that were hurting him. And he wasn't getting
17 any -- he was going forward and doing what normal
18 people do. I'm reporting this because my son in
19 this situation and the internal --

20 THE JUDGE: Now, the Sheriff's
21 Department is a different -- I mean, it's a -- falls
22 under your Beaufort County tax bill.

23 MS. MARTEL: But they --

24 THE JUDGE: But it -- actually I
25 think it's its own line item. But I mean, it's a

1 whole different group.

2 MS. MARTEL: Yes, but they got into
3 discussions. Yeah, and why did they Brian Baird
4 write an affidavit in this case then. It's weird.
5 That's odd.

6 THE JUDGE: Well, anyway -- okay.
7 Well, I don't think I can deal with the motion to
8 amend until you have given counsel the proposed
9 motion -- the opposed amended pleadings because they
10 can't respond and I can't look at them because
11 they're not here.

12 MS. MARTEL: And my pleadings would
13 really just reference those cases that I had and
14 would show where our case either differentiates
15 itself from but meets the standard that's required
16 so that a remedy can be granted by the court.

17 THE JUDGE: Well, can I suggest that
18 we -- if you would prepare those. Run those by
19 counsel which I think is sort of the usual way we do
20 it. I'm not saying it's the only way we can do it.
21 But -- and then if you have an objection, I think we
22 can take this issue back up strictly with regard to
23 the amendment. But I think it's impossible to hear
24 a motion to amend and modify the existing complaint
25 without the proposed modification in front of us

1 especially if it includes parties and causes of
2 action.

3 Let me ask --

4 MS. MARTEL: Your Honor, there is --
5 there is a -- we have a draft. It's -- as you know,
6 typos are my Achilles' heel and things like that.

7 THE JUDGE: Mine too.

8 MS. MARTEL: But, I mean, we have a
9 draft that my -- somebody who's helping me do this
10 work can go down, get her computer, e-mail me the
11 draft that she's been working on and I can have it
12 if the e-mails working. The last time I just looked
13 at this, the public Internet wasn't working here.
14 But, yeah, it looks like it is working now. And so
15 I can have that -- maybe not but maybe there's a
16 password that I could be given so that my e-mail
17 would work. If she would be allowed to bring her
18 computer in, she could e-mail me at least the draft
19 that we have that adds the causes of action and, I
20 mean, I can accommodate the Court that way.

21 THE JUDGE: Well, let me ask counsel
22 if that's good with him because ordinarily he would
23 want to at least give it a cursory look-over and
24 see. You know, I don't know. I'm at you all's
25 disposal to reschedule just that part if we want.

1 But, you know, I haven't seen it. I'm learning
2 today you haven't seen it and I'm reluctant to say
3 go print it. I don't know. What do you -- if you
4 want to waive time, I'm good with it.

5 MR. DAWES: Well, first of all, I
6 think I tried to anticipate because we saw the same
7 motion you did. And she talks about wanting to
8 amend to plead the Detravell case, but that's
9 essentially breach of covenant of good faith and
10 fair dealing. And that's why I addressed that right
11 at the beginning. I think any amendment would be
12 futile and I don't think it would get around it. If
13 the Court should agree with our position on summary
14 judgment, I don't think an amendment is going to
15 make any difference.

16 I'm concerned. We're actually on the
17 trial docket. The case could be called for trial.
18 And again frankly I think it's too late. I know
19 it's discretionary with the Court. But you know,
20 you're not supposed to have a summary judgment filed
21 and then nine months later when you're having to
22 defend it say, well, we want to amend. You could
23 prolong it forever with that. So we just
24 respectfully object to it.

25 I mean, if the Court wanted to look at the

1 proposed amendment and see if it's not already
2 addressed by summary judgment, but I -- we would
3 still object to the amendment.

4 THE JUDGE: I understand. But as far
5 as printing it somewhere today, looking at it. I
6 mean, I guess, let's not do that because it's like a
7 40-page -- and I understand the changes aren't 40
8 pages I guess. I mean, I haven't seen it. But I
9 think it would be probably inappropriate to deal
10 with that without the actual document in front of
11 us. You know, it takes me a couple of minutes to
12 read 40 pages. I don't know. And we don't even
13 have -- we aren't even positive we can print it.
14 So -- because I think Heather is gone for the day.
15 She understands our printer.

16 So a couple of quick questions back to the
17 original summary judgment, Ms. Martel. So the
18 fraud, your fourth cause of action, fraud. Of
19 course, it requires, you know, the factors you've
20 sought fraud against each and every individual in
21 this case. Is that -- is that really what you meant
22 each individual Defendant?

23 MS. MARTEL: Your Honor, each one of
24 them -- and I didn't frivolously add people to the
25 cause of action or anything. Each one was added

1 after we saw Beaufort County documents themselves
2 from either County Council members who were head of
3 the finance committee or other people who were
4 okaying off on all of these transactions that were
5 going down over time.

6 THE JUDGE: Okay.

7 MS. MARTEL: And so what we did say
8 and I believe that this comes out maybe in broad
9 strokes, but I believe that even if we were left to
10 this 40-page complaint that it contains enough law
11 and equity that we are alleging was breached that
12 they knew or should have known that this scheme that
13 was created in 2012 and the procurement violations
14 and the bid-rigging that was done, all of them would
15 have been privy to.

16 THE JUDGE: Well, let me ask it a
17 different way. I'm sorry. And the factors -- I
18 mean, we're all aware of what you have to do to show
19 fraud and allege fraud. It requires a
20 representation. And in this case we're talking
21 about -- as I understand it, we were talking about a
22 representation to the corporation. A representation
23 was made. And this, of course, would be the day to
24 assert that somewhere. And I'm sure it is somewhere
25 in one of these affidavits that your client has

1 given me. What was that representation and who made
2 it because I guess I should have asked the question
3 a different way? Certainly each of these Defendants
4 didn't -- or maybe they did -- I don't know --
5 represent something to the corporation. Who made
6 the representation? What was it? And he would know
7 that. This wouldn't be available through discovery.
8 This would be what the corporation knows. So what
9 was the representation? When was it made? And who
10 made it?

11 MS. MARTEL: The contract is between
12 Beaufort County and Carolina Cleaning. So we named
13 people who were acting in their capacity on behalf
14 of Beaufort County. Each individual one in
15 individual e-mails made certain representations that
16 then ended up affecting how the breach of this
17 contract went. And it was the fraud that was
18 created by each one of these individuals doing
19 something. For example, the head of finance
20 accepting the bid in 2012. The head of finance
21 changing up how this was working with Mr. Molloy.
22 And so we have a letter -- or we have the Beaufort
23 County minutes where that's done and it's signed off
24 on all of the people. And the bottom line is that
25 they all knew or should have known that what they

1 were doing, creating this new entity was wrong.

2 And by creating that and then signing off
3 on it, they were committing fraud.

4 THE JUDGE: But what was the
5 representation to your client that was made? I
6 mean, can it be articulated? What was -- did
7 someone say to your client, don't worry about this
8 other entity. You're getting this thing. Don't
9 worry about it. You're guaranteed this contact or
10 something. I don't --

11 MS. MARTEL: Well, he didn't really
12 figure -- yeah, he didn't -- he didn't know about
13 what they were doing until after. You know what I'm
14 saying? Nobody told him he was going to get it or
15 not get it. So that's the statute of limitations.

16 But he found out from interoffice e-mails
17 with Alisha Holland --

18 THE JUDGE: No, no. I'm sorry. I
19 asked the question wrong. In the fraud cause
20 action, he would be able to articulate. He being
21 the corporation. It would be able to articulate
22 what the representation was because the
23 representation, of course, would have been made to
24 the defrauded party. And so that's something that
25 certainly doesn't even require any discovery. It is

1 -- it would be part of what you assert.

2 You would assert that a representation was
3 made to the defrauded party. And I'm not -- I'm
4 telling you things you already know. But, I mean,
5 I'm just trying to figure out whether or not that's
6 a part of this. Was it -- is it asserted because
7 the cause of action just says 1 through 50 are
8 incorporated and these things were done. But it
9 doesn't -- there's no meat on the bones. I mean, it
10 just says a representation was made. And I'm
11 curious whether or not in the affidavits, which
12 granted I haven't read all three -- I might have
13 read one of them. But you've got a lot of stuff
14 here. And some of it was just submitted. Does that
15 get into what the representation was, when it was
16 made and who made it? Because back to my original
17 question, are you asserting that each of these
18 Defendants, individually made a representation that
19 was false?

20 MS. MARTEL: More importantly it says
21 in one of the things that was sent to Mr. Molloy
22 from Dave Thomas the procurement director that says
23 most importantly if the scope of work from the
24 original contract was changed by PALS in order to
25 drop the price. And actually I believe Dave Thomas

1 was sending this to -- and so this was an
2 interoffice e-mail. It says if the scope of work
3 from the original contract was changed by PALS in
4 order to drop the price, Carolina Cleaning may
5 protest and they were not given a chance to meet the
6 pricing change.

7 THE JUDGE: Okay. Now --

8 MS. MARTEL: In fact, it was --

9 THE JUDGE: All right. But again --

10 MS. MARTEL: And in effect he --

11 THE JUDGE: What did they send to you
12 --

13 MS. MARTEL: He didn't know about
14 this until he got the interoffice e-mails. But my
15 point of alleging fraud, too, isn't necessarily
16 fraud as it's directed to him. It's the fraudulent
17 behavior that was engaged in by Beaufort County that
18 then in turn did affect him.

19 THE JUDGE: Okay. But, I mean, he
20 can't be a Plaintiff for fraudulent activity
21 somewhere else. He's got -- he's got to prove the
22 elements of fraud as it relates to him as a
23 plaintiff. I mean, you get what I'm saying? I
24 mean, if there's fraud somewhere else and echoes of
25 that fraud somehow affect one -- and I don't know

1 what that fraud is. I understand the allegations.
2 But I mean I'm bound by the factors. And I guess
3 I'm just curious if you could help me point --
4 because I was surprised that each Defendant was
5 accused of making a representation. I get it if
6 it's the County or if it's one or two people or
7 something like that, but when you had pointed to
8 each and every Defendant saying each and every one
9 of them had defrauded him, was it in a different
10 way? Was it in a similar way? Again, there were no
11 -- this is a very -- Paragraph 51 --

12 MS. MARTEL: Okay. Let's just say
13 the representation that was made was that the best
14 interests of the County was going to be taken into
15 consideration.

16 THE JUDGE: All right. Who made that
17 and when?

18 MS. MARTEL: Well, Beaufort County.

19 THE JUDGE: Okay. And --

20 MS. MARTEL: So -- and individually,
21 each one of these people participated then in the
22 dismantling of this contract.

23 THE JUDGE: All right. Well --

24 MS. MARTEL: Which was outside of the
25 scope of their jobs because their job is not to

1 engage in bid-rigging and unfair competition. And
2 that's what they did. So a representation was made.
3 It was false. Beaufort County said they're going to
4 deal with people in good faith and they didn't. It
5 was material because it totally ruined my client's
6 business.

7 The Defendants knew of the falsity or they
8 certainly should have known, but they knew it. Most
9 of everybody that I put on there individual, signed
10 off on something that said this was okay when it's
11 not okay. The Defendants intended that the
12 representation be acted on.

13 The Plaintiffs were ignorant of the
14 falsity. He was ignorant of what was going on until
15 he got the Freedom of Information Act in 2015. And
16 the final stuff that came in that demonstrated these
17 interoffice e-mails that I just read to you.

18 He had the right to rely on the fact that
19 they would deal with him in good faith. He had done
20 that for, you know, 15 years before. And then was
21 just cobbling along as they were totally blowing him
22 out of the water and in an unconscionable way.

23 And the Plaintiffs' consequent and
24 proximate injury is that his entire business, a
25 900,000 viable business was completely ruined. And

1 his son was assaulted and doesn't believe in the
2 system anymore because nobody even reported on that.
3 And other people who had jobs were jobless. And
4 they created an entity that pays special needs
5 people subminimum wage. And the only thing we can
6 get from the Department of Labor is like this little
7 tiny -- this much of compliance that we have two
8 affidavits from people that sent in information and
9 said we don't participate in this, Merry Maids and
10 Island Carwash. They reference them for the
11 Department of Labor records to say this is legit.

12 If that's not fraud -- you know, that's
13 what I learned in Syracuse University Law School.

14 THE JUDGE: Thank you so much. Happy
15 to hear any response or not.

16 MR. DAWES: I think Your Honor is on
17 to it. There's no evidence of any representations
18 made to the Plaintiff that the Plaintiff relied on
19 it in any way whatsoever to alter his position. So
20 they have not submitted any evidence to support
21 anything that was brought against anybody.

22 THE JUDGE: Moving to the fifth cause
23 of action, Ms. Martel, just a quick question about
24 that one. The tortious interference that you assert
25 is from within the County? From DSN? From -- who

1 tortiously interfered with the contract?

2 MS. MARTEL: Well, yes. The County
3 interfered with his contractual relations by, you
4 know, creating and then changing the bids and
5 violating the procurement laws and bidding it to
6 themselves. And then after that, dismantling the
7 contract. So they clearly interfered with this
8 contract.

9 THE JUDGE: Now, Mr. Cooke has cited
10 case law that tortious interference is not available
11 when one of the parties -- when the parties are the
12 parties to the contract. Breach of contract would
13 be -- would be the right way to go there. I don't
14 know if had any -- I don't know if I asked you about
15 that earlier. I kind of thought that was the case
16 law, but I'm happy to hear -- and I'm probably going
17 to get you all to do some post-hearing briefs, so
18 don't feel like if you forgot to tell me something
19 today it's gone forever. But help me out with that
20 because that's the way I thought it was. I didn't
21 think you could tortiously interfere if you were a
22 party to the contract.

23 You can breach a contract if you're within
24 a contract. But I didn't know if you could
25 tortiously interfere with it.

1 MS. MARTEL: Well, this is where I
2 did get creative. And the parties that we named
3 individually, Your Honor, is we were saying that
4 they were operating outside of their scope of their
5 job as Beaufort County employees. And there were
6 certain people that went and interfered with some
7 witnesses and interfered with some of the business
8 that went along. And one was Shannon Loper and
9 that's why she's on there individually.

10 A lot of times what happens in this kind
11 of small community, people see each other at soccer
12 fields. People see each other in other places. And
13 so part of our cause of action there is that
14 individually these people really weren't parties to
15 this contract. So if these people acted so far
16 outside of the scope of their business as Beaufort
17 County employees, then they were acting as
18 individuals that were just on their own trying to
19 interfere and dismantle this man's contract.

20 THE JUDGE: All right. I'm not sure
21 if I have anymore questions for right now. Let's
22 see. Is that everything other than the motion to
23 amend which I understand you're going to share the
24 proposed amend, Ms. Martel. And then once it's been
25 shared --

1 MS. MARTEL: Yes. And I believe I
2 need until up -- if you can just give me until
3 Monday morning. This is the eleventh hour on Friday
4 and I haven't --

5 THE JUDGE: Oh, sure. Good heavens.
6 I wouldn't dream of asking you to do something --

7 MS. MARTEL: So Monday morning?

8 THE JUDGE: Well, you can do it --
9 Monday afternoon is fine. And then perhaps once
10 you've had a chance to look at it, Mr. Cooke, you
11 can either say no problem or -- and if that's the
12 case just you all can send me an order that says
13 that. Obviously without prejudice to the rest of
14 the stuff, you know, if you agree to it. But if so,
15 please -- if there is an issue -- well, it would
16 come with the order anyway. So just let me know if
17 we need to follow up on that issue.

18 MS. MARTEL: And the unjust
19 enrichment comes from that program again, too,
20 because they themselves created a program where
21 apparently the money was used to go on cruises and
22 things like that. And so we believe that each cause
23 of action that we named has evidence that would back
24 it up. And we believe that given the right to have
25 some depositions that we can backup everything with

1 specific facts but also that we already have in the
2 affidavits that we provided. There's enough
3 evidence here of genuine issue of material fact to
4 allow this court case to go forward.

5 THE JUDGE: Well, let me look at all
6 of it. Any desire from counsel to do any
7 post-hearing summary briefs? I don't know about you
8 all. I had read the complaint several times, the
9 amended complaint when I could in here, but I have a
10 better understanding, I think, of what is sought
11 here today. I don't know if that helps either one
12 of you or would help you to write a summary brief,
13 but --

14 MS. MARTEL: Your Honor, actually, we
15 do want -- we just -- I'm visual anyway. We do want
16 to have a copy of the transcript from today. So if
17 I ask to have that expedited, could we have an
18 opportunity to get the transcript back and go over
19 it and then submit post-hearing briefs?

20 THE JUDGE: What is -- you all are on
21 the trial docket right now.

22 MS. MARTEL: It's been continued.

23 THE JUDGE: Continued and --

24 MS. MARTEL: It's been continued out.

25 And I think that we entered into a scheduling order

1 saying that, you know, subject to whatever happened
2 here, there would be a need for a window of time for
3 discovery and for things so that a trial wouldn't
4 happen before July.

5 THE JUDGE: So it's not before July;
6 is that correct?

7 MS. MARTEL: That's what we had
8 suggested. I had sent up something indicating that
9 it was a complicated case, too. And I might need to
10 have a motion hearing on that just to have it deemed
11 a complicated case. But if Your Honor, I'd like to
12 approach the court reporter and just give her the
13 request for the transcript.

14 THE JUDGE: Sure. Why don't we go
15 off the record for a second, though.

16 (OFF RECORD DISCUSSION)

17 THE JUDGE: Back on the record in
18 16-1825. Yeah, Ms. Martel, you wanted to formally
19 ask for a copy of the transcript. You are welcome
20 to come forward and do that.

21 While we were off the record for a few
22 seconds, our court reporter indicated that her
23 schedule was such that she hoped to be able to come
24 up with that transcript within a couple weeks. We
25 will see.

1 Is there any -- is it possible to start
2 working on those post-hearing briefs before you get
3 the transcript? A lot of it is not transcript
4 dependent.

5 MS. MARTEL: I'll start.

6 THE JUDGE: So maybe if we could --
7 I'd love to look at those sooner rather than later.
8 Maybe within 30 days if possible? Is that -- maybe
9 sooner. I don't know. Today -- it's not April yet.
10 Let's see. It's still March. And so we're -- so
11 July. All right. Is -- if we were to meet before
12 all that happened with regard to some possible
13 discovery by consent, would that be a productive
14 meeting or would that simply be a waste of
15 everyone's time? What a loaded question.

16 MR. DAWES: I believe that -- we'll
17 do whatever the Court wants us to do. I -- we're
18 dead serious and positing that the summary judgment
19 motion stands on its own. The affidavits have been
20 filed. And so we don't believe any discovery is
21 necessary. And I think it would be a slippery
22 slope. It would be hard to have a reasonable scope
23 of discovery in all candor.

24 THE JUDGE: Well -- and I was trying
25 to figure out how some limited discovery could be

1 done because both of you probably have questions
2 about the other's case. But let's assume for the
3 moment that this thing goes on and on and on. You
4 could end up with a situation where people are
5 disposed twice if we limit it and that kind of
6 thing. It could cost lots of money. So maybe
7 that's a bad idea. I would almost -- I would be
8 reluctant to do that unless you all could reach some
9 sort of consent on some limited discovery with
10 regard to this particular issue. And I don't think
11 you all are going to reach that based --

12 MR. DAWES: And I know it's been
13 said, but the County has responded to quite a few
14 requests. So it's not as though that they don't
15 have some -- the documents that they say that they
16 need in order to respond to the summary judgment
17 motion.

18 THE JUDGE: Okay. And I'm sure
19 whatever is in here is in here. And in here. So
20 I'll be -- I'll be happy to look at it.

21 Now, I'd be remiss if I didn't ask, would
22 a follow-up mediation help the parties at all? I
23 understand that the first mediation ended in an
24 impasse.

25 MS. MARTEL: Yes, I believe so, Your

1 Honor. I actually was surprised that it got shut
2 down when it did. I thought we were still in --
3 with open discussions. So we're always of the
4 opinion that we're open to reasonable discussions.

5 MR. DAWES: We don't think it would
6 be helpful. I'm going to be very careful to not
7 breach the confidentiality of the mediation process.

8 THE JUDGE: Oh, no. Of course not.
9 I'm not ask you to.

10 MR. DAWES: You asked the question.
11 We don't think it would be helpful.

12 THE JUDGE: Okay. And it kind of
13 takes two to tango. I mean, occasionally I ask that
14 question after a second, even third mediation and I
15 get a lukewarm maybe. And I take that as a good
16 sign and I'll order a second or third mediation.
17 But if I don't sort of get a maybe on at least both
18 sides, it probably is a waste money. As much as I
19 love to see these things end in a settlement, I get
20 it. Some can't.

21 All right. So scheduling-wise then, I'm
22 going to start looking at these things. You've
23 requested a transcript. Hopefully you'll have that
24 in two weeks, but no promises. And can we do some
25 post-hearing briefs because I think some of the

1 issues probably were narrowed a little bit by what
2 we talked about today. Within about 30 days, if
3 somebody runs into an issue on that and needs a few
4 more days, no problem. Just copy everybody and
5 we'll see what we can do.

6 Any questions? Thoughts? Anything before
7 we conclude?

8 MR. DAWES: I've never turned down an
9 opportunity to brief something, but I'm -- I mean,
10 maybe --

11 THE JUDGE: You can stand on your
12 brief if you want. I'm not requiring it. I'm
13 just -- was giving that as an opportunity because it
14 sounds like some of the things that we talked about
15 today were made at least more clear to me as far as
16 what's being sought and what the defenses are. And
17 if you wanted to narrow your arguments in on that,
18 great. If you -- no requirement. Absolutely none.

19 MR. DAWES: Let me -- let me take a
20 look at it and see. I just -- we've just dumped so
21 much stuff on the Court and I'm trying to be --

22 THE JUDGE: Once I have this much, a
23 few more pages doesn't matter. So anyway, I'm happy
24 to --

25 MR. DAWES: I'm -- I mean, maybe we

1 could brief if you wanted a brief on the question of
2 the Department of Special Needs being part of the
3 County. We could do that if you think that would be
4 helpful.

5 THE JUDGE: I'm not sure if that's
6 even -- is that in dispute? You don't have to
7 answer that right now.

8 MS. MARTEL: We're --

9 THE JUDGE: Why don't you look into
10 it and see. If it's in dispute, let Mr. Cooke know
11 and we can deal with it.

12 MS. MARTEL: See, those are some of
13 the things that we don't know. And how the money
14 goes in and where it goes. I don't know if it goes
15 through Beaufort County's general fund first then
16 goes in -- how that -- how it all works. Those are
17 things we need to find out.

18 THE JUDGE: And I -- that may or may
19 not matter. I was thinking the threshold issue is
20 is it part of Beaufort County? You know, it goes to
21 a lot of those causes of action. Is an independent,
22 semi-private organization or is it part of Beaufort
23 County. I always thought it was part of Beaufort
24 County, but I could be wrong. I never really gave
25 it much thought.

1 MS. MARTEL: We understand that
2 Beaufort County employees are working there. We
3 don't understand how the -- you know, and this is
4 still for discovery how the -- they called them
5 consumers. But the special needs people get paid.

6 THE JUDGE: I don't know.

7 MS. MARTEL: And where their benefits
8 go and how that goes into play. And all of that
9 only goes into the totality of all of this of how
10 this was created and why. And that's the
11 unconscionability of it because it was schematically
12 set up and had to be so intentionally done because
13 you don't create something like this just in a
14 vacuum. It's something that has to take a few
15 people and a few ideas and intentional conscientious
16 of what you're doing. Sadly the behavior was
17 extremely unconscionable.

18 THE JUDGE: All right. Well, you all
19 let me know. I understand that you may not want to
20 submit anything. That's perfectly all right.
21 Ms. Martel, if you would let me know whether or not
22 you're going to submit anything.

23 MS. MARTEL: I will, but it will be
24 after we get the transcript.

25 THE JUDGE: Okay. All right. Then

1 that option will remain open to both for 30 days.
2 Anything else for this record? All right. Thank
3 you all.

4 MR. DAWES: Thank you for your time.

5 MS. MARTEL: Thank you.

6 (Whereupon, the hearing was concluded
7 at 4:52 p.m.)

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