

## DISTRICT OF COLUMBIA CONTRACT APPEALS BOARD

APPEAL OF:

TUCKER & COMPANY, INC.	)	
	)	CAB No. D-1323
Under Solicitation No. GAO6004943-PO193799	)	

For the Appellant, Tucker & Company, Inc.: Mr. Othello Mahone, Chief Financial Officer, *pro se*. For the District of Columbia Public Schools: Donna W. Russell, Esq., Supervisory Attorney Advisor.

Opinion by Administrative Judge Warren J. Nash, with Chief Administrative Judge Jonathan D. Zischkau, concurring.

### OPINION

*Filing ID 28239647*

Tucker & Company, Inc. (“Tucker”), appeals the denial of its claim for extra costs associated with preparing a PowerPoint presentation under a contract for alternative school review services. The contracting officer for the District of Columbia Public Schools (“DCPS”) found Tucker’s claim unsupported. DCPS argues that the appeal should be denied on the grounds that the claimed costs after hearing of \$12,489 are unsubstantiated and unreasonable. We agree with DCPS that Tucker failed to prove its extra costs and to show that such costs were reasonable. Accordingly, we deny the appeal.

### BACKGROUND

On June 8, 2006, DCPS issued a Request for Quotation (“RFQ”) seeking a vendor to review and evaluate four alternative education schools. The RFQ sought a vendor “with significant background and experience in the design, review, and evaluation of alternative schools, and with a demonstrated history of achieving promising results in similar projects.” (Ex. A, DCPS Motion To Dismiss). According to the RFQ, DCPS would make a decision to either modify or discontinue alternative schools based on the vendor’s evaluation and recommendations. Among other requirements, the RFQ required the vendor to submit a report to the Board of Education detailing its findings and recommendations and “design and deliver a presentation to the Board during its regularly scheduled meeting in September 2006.” (Ex. A, DCPS Motion To Dismiss). On July 8, 2006, Tucker submitted a quote for \$208, 235. On July 10, 2006, Tucker submitted a revised quote for \$98, 227. On August 7, 2006, DCPS issued a purchase order for a fixed price of \$98,227.

On December 5, 2006, Mildred Washington from the DCPS sent Tucker an email detailing what should be included in the presentation to the Board of Education. (Ex. E, DCPS Motion To Dismiss). The email stated that the presentation should be in a Microsoft PowerPoint format. On January 25, 2007, Mr. Othello Mahone, Tucker’s Chief Financial Officer, sought guidance from DCPS on the color of paper stock for the main report, PowerPoint presentation,

and abstract, indicating that the PowerPoint was already prepared and that it was 93 pages in length. Mahone stated that the PowerPoint involved extra work as he alleged it to be not a part of the original scope of work. DCPS replied that the PowerPoint was to summarize the main report's findings in 10 frames or less. (Ex. G, DCPS Motion To Dismiss).

On August 15, 2007, Mr. Mahone submitted a claim to the DCPS Chief Procurement Officer, Kevin Greene. According to Tucker, DCPS ordered Tucker to complete additional assignments that were beyond the scope of the original contract. Tucker claimed that DCPS owed it an additional \$19,290. The claim consisted of the following components:

- |   |         |
|---|---------|
| 1) Non-Personnel Expenditures from first billing period | \$6,216 |
| 2) Non-Personnel Expenditures from 10/1/2006            | \$3,139 |
| 3) Non-Personnel Printing of Final Report               | \$1,185 |
| 4) Power Point First Draft                              | \$7,500 |
| 5) Power Point Second Draft                             | \$1,250 |

On November 5, 2007, the DCPS contracting officer issued a final decision denying Tucker's claim. In his final decision, the contracting officer stated that Tucker received payment for the full amount of the purchase order, \$98,227, and that Tucker's revised quote stated that any change or adjustment that would affect the cost of services "shall be mutually agreed to prior to the commencement of work on the change order." The contracting officer stated that because there was no record of such mutual agreement, Tucker's claim had to be denied. (Notice of Appeal).

The Board held a hearing on the merits. Mr. Franklin Tucker testified about his involvement with the formation of the contract. At no point did Mr. Tucker offer any documentation or supporting evidence as to the additional costs claimed or how the claimed extra PowerPoint costs were calculated. Tucker called witnesses from DCPS. However, no testimony was elicited from these witnesses that substantiated Tucker's claims. Tucker was given an additional opportunity to introduce into the record evidence detailing the claimed extra costs. After reconvening the hearing a week later, Tucker introduced a letter from a Tucker vendor named Mr. Ron Sefchik. Tucker seems to allege that Sefchik prepared the PowerPoint presentation for Tucker under the DCPS contract. However, the letter from Sefchik fails to identify any reasonable detail of the costs for preparing the PowerPoint presentation. Additionally, the letter fails to lend any support to Mr. Tucker's claim that DCPS owes Tucker any payment beyond what was agreed to in the original purchase order. In fact, in the letter, Sefchik states that he has yet to receive payment from Mr. Tucker. Mr. Tucker failed to bring forth evidence of additional claimed expenses after the Board suspended the hearing for one week.

## **DISCUSSION**

Even if Tucker had shown that the PowerPoint presentation was outside the scope of the original contract statement of work, it failed to meet its burden of proving what additional expenses it incurred. Since Tucker failed to introduce reliable evidence to support its claim for extra costs, we find that Tucker failed to meet its burden. Tucker did not provide reasonable

notice to DCPS that it believed that the PowerPoint presentation constituted extra work until after it had embarked on the performance of the work.

### **CONCLUSION**

Having failed to prove that it incurred costs for extra work, we deny Tucker & Co.'s appeal.

**SO ORDERED.**

DATED: November 25, 2009

/s/ Warren J. Nash  
WARREN J. NASH  
Administrative Judge

CONCURRING:

/s/ Jonathan D. Zischkau  
JONATHAN D. ZISCHKAU  
Chief Administrative Judge