
SETTLEMENT AGREEMENT

No. 1999-820-254

This Settlement Agreement ("Agreement") is made and entered into as of the 25th day of October, 1999, by and between the State of Utah (the "State"), by and through the Utah Attorney General (the Attorney General) and Visual Technology, Inc., a Utah corporation, 474 Bearcat Drive, Salt Lake City, Utah 84115 ("VTI").

I. RECITALS

A. VTI is engaged in the business of selling and installing audio equipment and visual equipment in Utah and in other states. Its principal offices are located in Salt Lake County, Utah.

B. On or about January 22, 1998, the University of Utah ("University") issued its Request For Quote/Bid # 31892, soliciting bids for the purchase of certain audio-visual equipment for its Biology Research Building (the "Project"). This Request asked for bids for the Project on an "all-or-nothing" basis for the entire audio-visual system and were due on February 12, 1998 (the "Original Bid"). VTI submitted its bid in response to this initial request on that date.

C. The University received bids on the Original Bid from several bidders, each of whom bid for some (but not all) of the equipment requested by the University. The University did not make an award pursuant to the Original Bid because no bid was received for the entire system. Instead, it re-bid the Project on a basis which allowed bidders to bid on any or all of six "packages" which, together, comprised the complete audio-visual system (the "Re-Bid"). Bids for some or all of these six packages were received from five bidders, including VTI. VTI was awarded a purchase order dated April 29, 1998, for Bid Packages 1, 2, 4, 5 and 6, in the amount of \$107,739.81.

D. The Utah Attorney General's Office has conducted a preliminary investigation into the

manner in which VTI prepared its Original Bid and its Re-Bid for the Project, including an examination of any improper communications or other activities or practices between VTI and any of its competitors with respect to the Original Bid and/or the Re-Bid.

E. Based on this investigation, the State alleges that in obtaining the purchase order, VTI engaged in the following actions in violation of Utah and federal antitrust laws and Utah public bidding/procurement laws:

1. in preparing its Original Bid, VTI engaged in communications between an employee of VTI and an employee of one other competing bidder (which bid on the Original Bid but not on the Re-Bid) which included the exchange of information relating to the items of equipment to be included by VTI and this competing bidder in their respective responses to the Original Bid, including information concerning their costs and prices for this equipment;

2. in preparing its bid on the Re-Bid, VTI's employee engaged in further communications, including the exchange of information relating to equipment, costs and prices, with this same person, who had become employed by another competitor which submitted a bid on the Re-Bid;

3. in preparing its bids on the Original Bid and the Re-Bid, VTI engaged in a practice whereby it and other prospective bidders offered to sell or buy various components of the required audio-visual equipment to or from each other at a uniform, fixed percentage over the selling dealer's cost.

F. VTI denies any wrongdoing, including violation of any law, regulation, or contract term and enters into this Agreement to avoid the substantial expense, inconvenience, distraction, uncertainty, and other negative consequences of litigation.

G. In connection with this investigation, the Attorney General's Office has been informed that VTI's employee who was involved in the activities referred to in Paragraphs I.E.1 and I.E.2, is no longer employed by VTI and that VTI's competitor in these activities in connection with the Original Bid is no longer in the business of selling audio/visual equipment in Utah.

H. VTI has cooperated with the Attorney General's Office in the investigation and has submitted documents relating to its Original Bid and its Re-Bid to, and has met with, the Attorney General's Office when requested. VTI has been represented by the legal counsel named below in connection with this investigation.

I. VTI has expressed its willingness to conduct a program to educate its employees and independent sales agents about the provisions of Utah and federal antitrust laws and Utah public bidding/procurement laws which VTI must comply with in connection with its business activities.

J. The Attorney General's Office has determined that it is in the best interest of the State of Utah to resolve this matter and to settle the disputed claims described herein in order to avoid the uncertainty, expense and delay that further investigation and possible litigation would require.

NOW, THEREFORE, without adjudication of any issue of fact or law, or admission of wrongdoing by VTI, and in consideration for the mutual promises, covenants and undertakings stated herein, the parties enter into this Agreement and agree as stated below.

II. AGREEMENTS

A. Definitions

1. "Claim" or "claims" means any and all claims, causes of action, rights and remedies of the State with respect to the project, known or unknown, now existing or hereafter arising.
2. "Person" or "persons" means one or more individuals, corporations, partnerships, limited

liability companies, or other entities.

3. "Purchase order" means the purchase order dated April 29, 1999, awarded to VTI for Bid Packages 1,2,4,5 and 6, in the amount of \$107,739.81.

4. "Project" means the sale and installation of audio-visual equipment purchased by the University of Utah pursuant to its Request for Quote/Bid # 31892, for its Biology Research Building, including the "Original Bid" and the "Re-Bid" for such equipment as defined and described in the Recitals hereto.

5. "Relating to" means pertaining in any way to, referring to, alluding to, responding to, regarding, discussing, showing, analyzing, reflecting, recording, mentioning, describing, or concerning, directly or indirectly.

6. "State" means the State of Utah and its departments, institutions and agencies, including, without limitation, the University of Utah.

B. Compliance Agreement

VTI agrees to comply in all respects with the provisions of Utah and federal antitrust laws and Utah laws regarding bidding or submitting proposals on public projects. Without limiting the generality of the preceding sentence, VTI agrees that it will comply with the provisions of the Utah Antitrust Act, §§ 76-10-911 through 76-10-926, Utah Code Annotated 1953, as amended, the Utah Procurement Code, Chapter 56, Title 63, Utah Code Annotated 1953, as amended, § 1 of the Sherman Act, 15 U.S.C § 1, and applicable rules and regulations promulgated under these statutes and that it will not engage in any of the activities described in Paragraph I.E, above, or any similar activity.

C. Educational and Compliance Program

1. The Attorney General recognizes the importance of having Utah businesses maintain

internal programs designed to educate employees and agents regarding antitrust laws and regulations and laws and regulations relating to bidding on public projects and to raise ethical standards relating to these laws and regulations.

2. VTI agrees to undertake and complete an ongoing educational and compliance program, over a period of not less than three (3) years from the date of this Agreement, whereby each of its employees and independent sales agents will be taught the obligations VTI has under applicable Utah and federal antitrust and public bidding/procurement laws and the steps each employee and independent sales agent must take and/or avoid to fulfill these obligations and to comply with these laws.

3. This instruction shall be given to each VTI employee and independent sales agent within three months from the date of this Agreement and shall be repeated to them once each year thereafter during the term stated in the Paragraph II.C.2. In addition, VTI shall give this instruction to each new employee and new independent sales agent within three months of being hired or retained and once each year thereafter during this term.

D. Compliance Inspections; Certifications

For the purpose of determining and securing compliance with this Agreement, VTI agrees that it will:

1. permit representatives of the Utah Attorney General's Office, from time to time, upon written request and reasonable notice, subject to the right of VTI to have counsel present and subject to any legally recognized privilege, during normal business hours, to: (i) interview, either informally or on the record, officers, directors, employees and agents of VTI relating to the subject matter of this Agreement, subject to their right to have counsel present and to the reasonable convenience of

VTI (but without restraint or interference from VTI); and (ii) inspect and copy all files, purchase orders, sales records, contracts, correspondence, memoranda, journals, minutes, agendas, calendars, books, accounts, advertizing copy or other documents, or electronically-stored information, in the possession or under the control of VTI relating to the subject matter of this Agreement;

2. file with the Attorney General's Office, Attorney General's Office, 160 East 300 South, Fifth Floor, Salt Lake City, Utah 84111 (or such other address as the Attorney General's Office may specify from time to time by written notice to VTI), on or before October 1 of each year during the three (3) year period referred to in Paragraph II. C. 2, a certification signed by VTI's President, under oath, certifying as to the following:

a. the dates on which it held the instructional program referred to in Paragraph II. C, above, the number of persons required to attend and the number attending, the name(s) of the person(s) presenting the instruction and attaching an outline of the instructional material presented;

b. the number of bids, proposals or quotations to governmental entities and agencies submitted by VTI during the reporting period, the names of the governmental entities and agencies to whom these were submitted and the identification (by governmental entity or agency, project or bid/proposal/quotation number and date, and dollar amount) of the contracts/purchase orders VTI was awarded during the reporting period;

c. that during the reporting period VTI has not engaged in any activity in violation of this agreement, including, without limitation, any activity similar to the activities with respect to the Project described in Paragraph I.E, above, or any activity otherwise in violation of Utah or federal antitrust laws or Utah laws regarding bidding or submitting proposals on public projects.

d. any other pertinent information relating to the fact and manner of compliance with

the provisions of this Agreement.

E. Payment

1. Upon the execution of this Agreement by both parties, VTI shall pay to the State the sum of NINE THOUSAND DOLLARS (\$9,000), as a civil penalty pursuant to Utah Code Annotated § 76-10-918, to be made payable to the Utah Attorney General and deposited in the antitrust revolving account pursuant to Utah Code Annotated § 76-10-922.

2. No part of the payment amount referred to in the foregoing paragraph of this Paragraph II. E shall constitute, nor shall it be construed or treated as constituting, a payment in lieu of damages (including treble damages), nor has the State sought the recovery of any of the foregoing as part of this Agreement.

F. Default; Remedies

1. VTI agrees that any default by it in performing any of its obligations under this Agreement will cause any and all claims against VTI referred to in Paragraph II.G.1, to be available to be pursued by the State, in its sole discretion, as though this Agreement had not been entered into, and that all applicable statutes of limitation pertaining to the claims shall be deemed to have been tolled during the period preceding the receipt by the Attorney General's Office of notice of the occurrence of a default and shall not be deemed to be extinguished. VTI further agrees that any waiver by the State of any default by VTI under this Agreement shall not be deemed to waive any other default by VTI nor shall such waiver be deemed to commence the running of any applicable statute of limitations pertaining to, or to extinguish, any of the claims.

2. VTI agrees that the Utah Attorney General can apply to the federal or state courts of this State for any orders needed to enforce this Agreement and further agrees to submit to the jurisdiction

of any such court and agrees not to assert any statute of limitations or laches defenses in any suit by the Attorney General to enforce the terms of this Agreement. VTI further agrees that any such court may enter its order and decree permanently enjoining VTI from violating any of the provisions of this Agreement.

G. No Further Action Covenant; Reservations

1. Based on the course of activities known to the Office of the Attorney General as of the date of this Agreement, the Office of the Attorney General shall take no further action against VTI, its officers, directors, employees or agents, with respect to the acts and practices of, and violations by, VTI of Utah and federal antitrust laws and Utah public bidding and procurement laws in connection with obtaining the purchase order, as alleged herein, including, without limitation, the acts, practices and violations of law alleged in Paragraph 1.E hereof and any claims for damages (including treble damages) resulting therefrom, as long as VTI is not in default under this Agreement.

2. The no further action covenant contained in Paragraph G.1 is intended only to apply to claims of the State relating to the acts and practices of, and violations by, VTI of Utah and federal antitrust laws and Utah public bidding and procurement laws in connection with obtaining the purchase order and not with other matters such as the performance by VTI of its obligations under the purchase order and is not intended to and does not, waive, release, compromise, or discharge any claims of the State, all of which are expressly reserved by the State, including, without limitation, the following,

a. any claims of the State arising from or relating to any breach of this Agreement, in whole or in part, by VTI;

b. any claims arising from or relating to the acts, practices or violations of law alleged in Paragraph I.E, which the State has or may have against any person other than VTI;

c. any claims arising from or relating to the performance by VTI of any of its obligations under any purchase order or amendment thereto issued to it by the University of Utah in connection with the Project;

d. any claims arising from or relating to any warranty or other representation made by any person relating to any of the equipment, products or services provided by VTI in connection with the Project.

H. Compromise; No Admission of Wrongdoing

The Attorney General acknowledges and agrees that this is a compromise settlement of allegations with respect to which VTI admits no wrongdoing and that it shall not be deemed at any time or for any purpose as having admitted liability, wrongdoing or violation of any law.

I. Duration of Agreement; Survival

Except as otherwise provided herein, the terms and agreements set forth in this Agreement shall be and remain continuously in effect for a period of five (5) years from the date of this Agreement; provided, that, the provisions of Paragraphs II.B, II.F, II.G, II.H and II.J shall survive termination of this Agreement.

J. Confidentiality

No information or documents obtained from VTI pursuant to the provisions of Paragraph II. D shall be divulged by the Attorney General's Office to any person other than a duly authorized employee or agent of the State, except for the purpose of securing compliance with this Agreement.

K. General Provisions

1. This Agreement may be executed in separate counterparts, with the same effect as if all parties had signed the same copy.

2. This Agreement shall be binding upon and shall inure to the benefit of each of the parties and its successors and assigns.

3. This Agreement contains the entire agreement and understanding of the parties. This Agreement shall not be modified except in writing, signed by each of the parties hereto or by their authorized representatives.

4. Any notice required or permitted to be given under this Agreement may be given by mailing a copy thereof, postage prepaid, addressed as follows:

If to VTI:

Visual Technology, Inc., 474 Bearcat Drive, Salt Lake City, Utah 84115
Attention: President

If to the State:

Consumer Rights Division, Utah Attorney General's Office, 160 East 300
South, Fifth Floor
Attention: Antitrust Unit

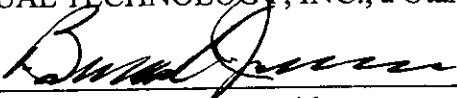
Each party may change its address at anytime, by giving notice of such change, in writing, to the other party and such changed address shall become the address for giving notice to such party, until further changed in the same manner.

5. This Agreement and its provisions shall be a "public record" as defined in the Utah Government Records Access and Management Act (Title 63, Chapter 2, Utah Code Annotated) and will be available to any person who requests a copy.


6. This Agreement is made and entered into and shall be construed in accordance with the laws of the State of Utah.

IN WITNESS WHEREOF, the parties have entered into this Agreement as of the date first above written.

VISUAL TECHNOLOGY, INC., a Utah corporation

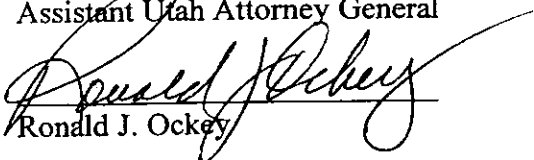
By: 
Bruce A. Jackson, President

Approved as to form:
PARSONS, BEHLE & LATIMER
Attorneys for Visual Technology, Inc.

By: 
David Bennion, Esq.

THE STATE OF UTAH

JAN GRAHAM
Utah Attorney General
RONALD J. OCKEY
Assistant Utah Attorney General


Ronald J. Ockey