

STATE OF SOUTH CAROLINA) BEFORE THE SOUTH CAROLINA
) PROCURMENT REVIEW PANEL
COUNTY OF RICHLAND) CASE NO. 2000-6
)
)

In re: Protest of Kahn Construction) **ORDER**
Company, Inc., & Gleaton Floor)
Covering, Inc.; Appeal by Kahn)
Construction Company, Gleaton Floor)
Covering & The University of South)
Carolina)
)
)

This case was received by the South Carolina Procurement Review Panel (Panel) on February 16, 2000 on appeal by Kahn Construction Company, Inc. (Kahn), Gleaton Floor Covering, Inc. (Gleaton) and the University of South Carolina (USC) of a decision by the Chief Procurement Officer (CPO) in the matter of a contract controversy. Shortly thereafter, all parties requested that a hearing in the matter not be set pending settlement negotiations. Kahn is represented by Robert T. Strickland, Esq., Gleaton is represented by Thomas B. Jackson, III, Esquire and USC is represented by George W. Lampl, III, Esquire. On August 15, 2000 the parties executed a Settlement Agreement and entered into a Consent Order and Joint Stipulation regarding the decision of the CPO dated February 3, 2000. The Settlement Agreement, Consent Order and Joint Stipulation are incorporated herein as part of this order.

STATE OF SOUTH CAROLINA)
) BEFORE THE PROCUREMENT PANEL
COUNTY OF RICHLAND)

In the Matter of:)

Controversy:)

GRADUATE SCIENCE RESEARCH)
CENTER)

State Project H27-9751-AC)

M. B. KAHN CONSTRUCTION)
COMPANY, INC.,)

vs.)

UNIVERSITY OF SOUTH CAROLINA.)
_____)

**CONSENT ORDER AND JOINT
STIPULATION REGARDING DECISION
OF THE CHIEF PROCUREMENT
OFFICER DATED FEBRUARY 3, 2000**

This matter came before the Chief Procurement Officer for Construction (CPOC) pursuant to a request from M. B. Kahn Construction Company, Inc. (Kahn) on behalf of its subcontractor, Gleaton Floor Covering, Inc. (Gleaton). Kahn, on behalf of Gleaton, requested an administrative review under S. C. Code Ann. §11-35-4230 (1976) on the Graduate Science Research Center Project (Project) for the University of South Carolina (USC). The CPOC posted his decision ("Decision") on February 3, 2000. All parties appealed from the decision to the Procurement Review Panel and subsequently reached a compromised settlement of the claim. This joint stipulation and consent order is one of the terms of the settlement agreement. The settlement agreement also releases all claims of Gleaton Flooring of any kind whatsoever except requests for time extensions relating to its work.

The Decision contained several findings, statements and conclusions concerning scheduling on the Project. However, prior to the hearing, the parties agreed to reserve any issues relating to delays or scheduling for later potential resolution. Specifically, the parties executed a formal mediation agreement.

Section 2 of the Mediation Agreement provides:

2. The 45 days of time extensions to complete the work:

The time period will be reviewed with other issues of time extension as the project progresses. The time line of critical path items, completion of other time issues and the time to complete the work will be reviewed at a later date. The agreement by all parties is to keep this issue open for discussion and review with other time line issues. M. B. Kahn agrees to provide a schedule of critical path completion issues along with the floor covering time in the schedule to give an overview of how the floor covering impacts the time on the overall project completion time. Agreement is reached that each individual disputed time issue is not a collective summary of each other creating a time line that is cumulative since work by multiple subcontractors is occurring concurrently. M. B. Kahn will review the whole issue of time as the project progresses.

The parties agree at the time of substantial completion of the project to conduct good faith negotiations and to mediate the time extension issue if necessary prior to having a hearing with the State Engineer.

Since the parties agreed that the issue of whether Gleaton's work was on the critical path was specifically reserved for resolution at a later time, no party submitted evidence on this point. Given the parties' clear agreement to defer a decision on time issues until a later date, the parties agree the Decision should not have addressed the time extension issue. The parties therefore stipulate that any findings, inferences or conclusions from the decision of the Chief Procurement

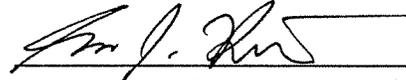
officer concerning scheduling, delays, disruptions or work sequences and the time effect of any scheduling issues addressed in the order of the CPOC are reserved for later determination.

Gleaton and Kahn further stipulated at the beginning of the hearing that all of Gleaton's claims were "pass through" claims against the Owner, USC. Since Gleaton stipulated it did not seek any recovery from Kahn beyond what Kahn was entitled to pursue and recover from the Owner on Gleaton's behalf, the parties further agree the Decision should not contain any rulings or findings on potential claims Gleaton may have had against Kahn. All claims Gleaton may have against the Owner and Kahn, including any claims for additional compensation, delay or disruption damages, are specifically released and dismissed with prejudice subject to the payment obligation in the settlement agreement; provided, however, this release of claims shall not prejudice Gleaton/Kahn's right to seek time extensions on the Project. The parties agree that nothing in this Order and Joint Stipulation and the parties' settlement agreement shall prejudice Kahn's right to seek time extensions and additional compensation on the Project, including but not limited to time extensions related to Gleaton's work. Kahn also specifically reserves all rights and remedies it may have against Gleaton concerning the Project. Gleaton reserves any defenses pertaining to same.

Now, therefore, based on the consents shown below,

IT IS ORDERED that all references and findings in the Decision concerning the time extension issue and any claim Gleaton may have had against Kahn are struck, including but not necessarily limited to those outlined above.

IT IS SO ORDERED.


Gus J. Roberts, Chairman,
The Procurement Review Panel

August
~~July~~ 24, 2000
4/10
Columbia, South Carolina

WE CONSENT:

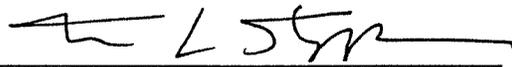
M. B. KAHN CONSTRUCTION CO., INC.

By: 

GLEATON FLOOR COVERINGS, INC.

By: 

UNIVERSITY OF SOUTH CAROLINA

By: 

SETTLEMENT AGREEMENT

This Settlement Agreement (hereinafter "Agreement"), is entered into to be effective as of the 15th day of August 2000 by and between M.B. Kahn Construction Company, Inc. (hereinafter "Kahn"), Gleaton Flooring Covering, Inc. (hereinafter "Gleaton"), and the University of South Carolina (hereinafter "USC").

WITNESSETH:

WHEREAS, the undersigned parties have all previously requested an administrative review pursuant to S.C. Code Ann. § 11-35-4230 (1976 as amended) in regard to the decision of Michael M. Thomas as Chief Procurement Officer for Construction (hereinafter "CPOC"), dated February 3, 2000 (the "Decision") which resulted from a hearing held on January 12, 2000 before the CPOC regarding a project known as Graduate Science Research Center, University of South Carolina, State Project No. H27-9751-AC, (hereinafter sometimes referred to as the "Project"); and

WHEREAS, the undersigned parties desire to enter into this settlement agreement pertaining to the matters set forth hereinbelow.

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

1. Upon execution of this Agreement by all parties, USC shall pay the sum of Forty Thousand and No/100 (\$40,000.00) Dollars directly to Gleaton, such payment to be accepted by Gleaton as a release of and in full satisfaction of its claims for additional compensation which were the subject matter of the hearing held on January 12, 2000 before the CPOC which resulted in the Decision and any claims which Gleaton had or has against Kahn and/or Southern Management Group, Inc. and/or Hellmuth, Obata and Kassabaum, Inc. for additional compensation relating thereto.

2. USC hereby releases Kahn and Gleaton, such release to include any subcontractors, suppliers or sureties of Kahn and Gleaton, from any claims arising or relating to color variations in the vinyl composition floor tile installed by Gleaton on behalf of Kahn in the corridor on the fourth floor of the Graduate Science Research Center Building located at the Project. All other warranties relating to the vinyl composition floor tile shall remain in full force and effect.

3. Kahn, as general contractor on the Project, hereby waives any claims under its contract with USC or otherwise for a "markup" on the amount being directly paid by USC to Gleaton as part of this Agreement.

4. The parties further agree that the amount to be paid directly to Gleaton by USC as referenced in paragraph 1 above is being paid in full satisfaction of the amount awarded by the Decision to be paid by USC to Kahn on behalf of Gleaton.

5. Upon execution of this Agreement by all parties hereto, the parties do hereby agree that their requests for administrative review to the South Carolina Procurement Review Panel, as referenced above in regard to this matter, will be and are hereby withdrawn upon execution of the

attached Consent Order and Joint Stipulation on behalf of the South Carolina Procurement Review Panel.

6. Kahn reserves all other claims relating to the Project, including but not limited to, the right to receive time extensions (due to the work of Gleaton or otherwise) and equitable compensation. USC reserves all of its defenses to such claims.

7. Kahn reserves all claims it may have against Gleaton relating to the Project including, but not limited to, any claims for delays that Gleaton may have caused on the Project. Gleaton reserves all of its defenses to such claims.

8. This Agreement is, and shall be binding upon, the parties hereto and their respective successors and/or assigns.

Executed to be effective as of the date and year first above written.

Witnesses as to M.B. Kahn Construction Company

Carl L. Garrison
Witness

Michael A. Robinson
Witness

Witnesses as to Gleaton Floor Covering, Inc.

Thomas L. Isaacs III
Witness

Imma T. Oddy
Witness

Witnesses as to the University of South Carolina

Walter H. Paul
Witness

James C. Murphy
Witness

M.B. KAHN CONSTRUCTION COMPANY

By: Michael J. Satchel
Its: Vice President

GLEATON FLOOR COVERING, INC.

By: Robert F. Marye
Its: President

UNIVERSITY OF SOUTH CAROLINA

By: L. Strickland
Its: Secretary, Board of Trustees

CONCLUSION

The Panel adopts the Settlement Agreement and the Consent Order and Joint Stipulation, which has been duly executed, as a withdrawal of all parties' request for formal hearing before the Panel. The parties are directed to adhere to the terms of the Settlement Agreement and the Consent Order and Joint Stipulation. Therefore, this matter is hereby concluded before the Panel with prejudice.

IT IS SO ORDERED.

SOUTH CAROLINA PROCUREMENT
REVIEW PANEL

BY: 

Gus J. Roberts, Chairman

Columbia, SC

Aug. 25, 2000