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| STATE OF SOUTH CAROLINA |) | BEFORE THE CHIEF PROCUREMENT |
| COUNTY OF RICHLAND |) | OFFICER FOR CONSTRUCTION |
| |) | |
| |) | |
| IN THE MATTER OF: |) | DETERMINATION |
| |) | |
| SOUTH CAROLINA BUDGET & |) | |
| CONTROL BOARD, DIVISION OF |) | CASE NO. 2011-010 |
| GENERAL SERVICES |) | |
| |) | |
| WADE HAMPTON BUILDING |) | |
| ROOF REPLACEMENT |) | POSTING DATE: |
| STATE PROJECT F03-9849-LC |) | DECEMBER 7, 2010 |
| |) | |

This matter is before the Chief Procurement Officer for Construction (CPOC) pursuant to a request from the South Carolina Budget & Control Board (Board), Division of General Services (General Services) to cancel award of a contract to Heritage Roofing Company, Inc., for replacement of the roof on the Wade Hampton Building (the Project). [A copy of General Services' request is attached as Ex. A].

CPOC FINDINGS

On May 28, 2010, General Services posted a notice of intent to awarded a contract to Heritage Roofing to replace the roof on the Wade Hampton Building. On June 3, 2010, the General Assembly sent Governor Mark Sanford Bill H.4657, the Annual Appropriations Bill for fiscal year 2011 (July 1, 2010 through June 30, 1011). The Governor returned the Bill on June 9, 2010, with 107 separate vetoes. Of significance to the General Services' request to cancel this award, one of these vetoes, veto 52 vetoed all general fund amounts (a total of \$25,234,009) appropriated to the Board. The General Assembly subsequently sustained this veto. This action by the Governor and General Assembly significantly impacted all divisions of the Board, including General Services, and the Board issued a directive that, among other things "No capital or GS projects are to be initiated." In order to conserve money, General Services started re-evaluating all its projects to determine if they met a critical need. After evaluating the Wade Hampton roof, General Services determined the roof was not in critical condition and General Services did not need to replace the roof at any time in the near future.

DETERMINATION

CANCELLATION OF AWARD PRIOR TO PERFORMANCE

The S.C.Code Ann. § 11-35-1520(7) authorizes the cancellation of awards or contracts after award but before performance in accordance with regulations promulgated by the Board. Regulation 19-445.2085(C) allows the cancellation of an award prior to performance only upon written determination of the chief procurement officer that cancellation is warranted in accordance with the provisions set forth therein. Relevant provisions of Regulation 19-445.2085(C) provide as follows:

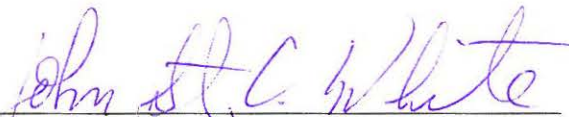
After an award or notification of intent to award, whichever is earlier, has been issued but before performance has begun, the award or contract may be canceled ... if the Chief Procurement Officer determines in writing that:

- (3) The supplies, ... or construction being procured are no longer required;

- (8) For other reasons, cancellation is clearly in the best interest of the State.

While the authority to cancel awards and solicitations should be exercised carefully and sparingly, cancellation is warranted where, as here, circumstances have substantially changed prior to the start of performance. In this case, General Services budgetary circumstance significantly changed for the worse within days of posting the Notice of Intent to Award forcing General Services to review its priorities. Moreover, a review of the technical data for the Wade Hampton roof revealed that a replacement of the roof was not critical to the long term sustainability of the building and, therefore, the construction was no longer required.

For the foregoing reasons General Services' Notice of Intent to Award to Heritage Roofing Company, Inc., is hereby cancelled.



John St. C. White
Chief Procurement Officer for Construction

7 Dec 2010

Date

Columbia, South Carolina

MARK SANFORD, CHAIRMAN
GOVERNOR

CONVERSE A. CHELLIS, III, CPA
STATE TREASURER

RICHARD ECKSTROM, CPA
COMPTROLLER GENERAL



SC BUDGET AND CONTROL BOARD

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COMMITTEE

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CHAIRMAN, HOUSE WAYS AND MEANS
COMMITTEE

FRANK W. FUSCO
EXECUTIVE DIRECTOR

EXH. A

October 7, 2010

John St. C. White, PE
State Engineer
MMO / Office of State Engineer
1201 Main St. , Suite 600
Columbia, SC 29201

Ref: Wade Hampton Building (100300) - Roof Replacement
F03-9849-LC / CP-3145

Dear Mr. White:

This letter is to formally request cancellation of the SE-370 Notice of Intent to Award for the referenced project. (Copy attached). Significant changes in our agency's budget forecast have forced a reevaluation of all existing projects – including the planned roof replacement at Wade Hampton. That project must now be moved down the priority list in order to reserve funds for more critical building needs.

Please let me know if there is anything else you will need from us on this.
As always, thank you for your help.


Sterling L. "Pete" Morrison
Assistant Director

Cc Lyth B. Clark, Jr., PE
William B. McCallum, RA

Enclosures