

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)
)
)
IN THE MATTER OF: CANCELLATION)
OF AWARD)
DANIEL LIBRARY IMPROVEMENTS –)
STATE PROJECT H09-9584-PG)
)
LIOLLIO ARCHITECTURE)
vs.)
THE CITADEL)
)

BEFORE THE CHIEF PROCUREMENT
OFFICER FOR CONSTRUCTION

DECISION AND
SETTLEMENT AGREEMENT

POSTING DATE: March 27, 2003

This matter is before the Chief Procurement Officer for Construction (CPOC) pursuant to a protest submitted by Liollo Architecture under §11-35-4210 of the South Carolina Consolidated Procurement Code (Code), arising out of the solicitation for and proposed award of a contract for the design of the Daniel Library Improvements Project (Project) for The Citadel. A hearing was initiated on March 13, 2003. Pursuant to §11-35-4210(3) of the Code, the CPOC evaluated the issues for potential resolution by mutual agreement and determined that mediation was not appropriate and a hearing was held on March 13, 2003. During testimony certain facts came to light that resulted in an opportunity for settlement of the protest by mutual agreement of the parties. The hearing was adjourned to permit discussion amongst the parties to the dispute.

BACKGROUND

The facts which led to the Settlement Agreement included two routine practices of the agency. First, a single member of the Agency Selection Committee established the list of firms to be interviewed. Second, the members of the Selection Committee did not, as a matter of routine, review the written submissions of all the proposers. Rather, the Agency Selection Committee only reviewed the written submissions of the short-listed firms at the time of the final interviews. While the CPOC believes the agency acted with the best of intentions, those actions nevertheless violate the letter and spirit of the Code's requirements for the qualifications-based selection process defined in §11-25-3220 of the Code.

The Code invests an Agency Selection Committee with considerable discretion in conducting the selection process for a design professional. But that discretion can be exercised only in conjunction with the Committee's compliance with a statutorily mandated process. Section §11-35-3220 of the Code states in relevant part:

§ 11-35-3220. Procurement Procedures.

...(2) Advertisement of Project Description. The agency selection committee shall be responsible for (a) developing a description of the proposed project, (b) enumerating all required professional services for that project, and (c) preparing a formal invitation to firms for submission of information.

...

(4) Interviews with Interested Firms. Following receipt of information from all interested persons and firms, the agency selection committee shall hold interviews with at least five persons or firms who have responded to the committee's advertisement and who are deemed most qualified on the basis of information available prior to the interviews... The agency selection committee's determination as to which will be interviewed shall be in writing and shall be based upon its review and evaluation of all submitted materials. The written report of the committee shall specifically list the names of all persons and firms that responded to the advertisement and enumerate the reasons of the committee for selecting those to be interviewed. The purpose of the interviews shall be to provide such further information as may be required by the agency selection committee to fully acquaint itself with the relative qualifications of the several interested firms.

(5) Selection and Ranking of the Five Most Qualified. The agency selection committee shall evaluate each of the persons or firms interviewed

...

Based upon these evaluations, the agency selection committee shall select the five persons or firms which, in its judgment, are the best qualified, ranking the five in priority order. The agency selection committee's report ranking the five chosen persons or firms shall be in writing and shall include data substantiating its determinations. [emphasis added]

These provisions make it clear that an agency's Selection Committee, as a body, must perform several critical functions in a collective manner. It was clear to the CPOC that this collective function was not performed in this instance and therefore the "several interested firms" were not afforded a fair and open opportunity for evaluation and selection by a committee which "reviewed and evaluated all submitted materials" to identify the "best qualified."

The CPOC notes that the qualifications-based selection process for design professional services as mandated in the Code is singular in its reliance on the trust of all involved. In particular, members of the design community must have confidence that they will be afforded a full, fair and open opportunity to present their qualifications for evaluation by a committee actively involved and engaged in the entire selection process, as required by the Code.

The CPOC cautions agencies engaged in the selection of design professionals that they should be diligent in conducting the selection process in full accord with the requirements of the Code. Anything less is corrosive to the public's trust in the integrity of public procurement processes.

DECISION

On March 25, 2003 the parties submitted the attached Settlement Agreement, contingent upon the approval of the CPOC. Having considered the facts and circumstances that gave rise to this protest, and the requirements of the Code, I find that approval of the proposed Settlement Agreement is in the best interests of the State and that said Settlement Agreement is hereby approved and incorporated into this Decision.

The issues raised by Liollo having been resolved by the Settlement Agreement, the protest of Liollo is hereby dismissed as moot.

IT IS SO ORDERED



Michael M. Thomas
Chief Procurement Officer
for Construction

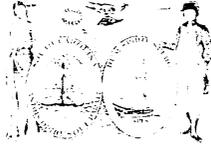
March 27, 2003
Date

STATE OF SOUTH CAROLINA
State Budget and Control Board
PROCUREMENT SERVICES DIVISION

MARK SANFORD, CHAIRMAN
GOVERNOR

GRADY L. PATTERSON, JR.
STATE TREASURER

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CHAIRMAN, SENATE FINANCE COMMITTEE

ROBERT W. HARRELL, JR.
CHAIRMAN, WAYS AND MEANS COMMITTEE

FRANK W. FUSCO
EXECUTIVE DIRECTOR

March 27, 2003

Col. Donald M. Tomasik
Vice President of Facilities & Engineering
The Citadel
171 Moultrie Street
Charleston, SC 29409

Re: **ORDER**
IN THE MATTER OF: Protest
Daniel Library Improvements
The Citadel
State Project No. H09-9584-PG

Dear Col. Tomasik:

Please find enclosed the Order of the Chief Procurement Officer for Construction relative to the referenced matter.

If I can be of assistance to you in this matter, please let me know. Also, please note that a copy of this Decision has been posted today on the sixth floor of the Materials Management Office, 1201 Main Street, Columbia, South Carolina.

Sincerely,

A handwritten signature in cursive script that reads "Michael M. Thomas".

Michael M. Thomas, PE, CBO
State Engineer and Chief Procurement Officer
for Construction

cc: C.Dinos Liollo, AIA Liollo Architecture
R. Michael Ethridge, Carlock, Copeland, Semler & Stair
Mark Brandenburg, Barnwell, Whaley, Patterson & Helms
Ed Zeigler, Craig, Gaulden & Davis
M. Elizabeth Crum, McNair Law Firm
Voight Shealy, Materials Management Officer
Keith C. McCook, Assistant General Counsel, Budget & Control Board
Phil Gerald, Project Manager, State Engineer's Office

SETTLEMENT AGREEMENT

The Parties hereto agree to settle the protest under the following terms and conditions:

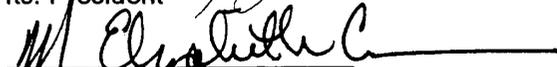
1. The intent to award issued to Craig, Gaulden & Davis, Inc. is cancelled.
2. The description of project identified in the Invitation for Professional Services may be revised. The initial phase of the project may not include a structural evaluation of the existing building. The Citadel may engage a structural engineer independently.
3. A representative of the State Engineer's Office shall contact each of the ten firms submitting proposals in response to the Invitation for Professional Services for Project No. HO9-T001-PG to determine whether each still desires to participate in the solicitation and have their respective proposals, which were submitted on or about December 10, 2002 to the Citadel, reviewed by a newly constituted agency selection committee in accordance with the requirements of Section 11-35-3220.
4. In conducting its evaluations, the agency selection committee may not take into consideration whether the structural engineer identified as its consultant in a firm's response to the invitation has been retained by the Citadel to perform work regarding the Daniel Library.
5. The Citadel shall appoint a new agency selection committee in accordance with the South Carolina Consolidated Procurement Code and applicable regulations. Section 11-35-3220. No member who served on the original section committee shall be eligible to serve on the newly appointed agency selection committee.
6. This settlement is contingent upon approval by the Chief Procurement Office pursuant to Section 11-35-4210(3).

CRAIG, GAULDEN & DAVIS, INC.



By: Edward T. Zeigler, Jr.

Its: President



By: M. Elizabeth Crum

Its: Attorney

LIOLLIO ASSOCIATES INC.



By: Dinos Liollio

Its:



By: Michael Ethridge

Its: Attorney

THE CITADEL, THE MILITARY COLLEGE OF S.C.



By: Donald M. Tomasik, Sr.

Its: Vice-President of Facilities and Engineering



By: Mark C. Brandenburg

Its: Attorney