

STATE OF SOUTH CAROLINA)	BEFORE THE CHIEF PROCUREMENT
COUNTY OF RICHLAND)	OFFICER FOR CONSTRUCTION
)	
)	
IN THE MATTER OF: CANCELLATION)	WRITTEN DETERMINATION
OF AWARD)	
NORTH CONCOURSE AND)	
WEST END ZONE RENOVATIONS)	
STATE PROJECT H12-9694-GW-A3)	POSTING DATE: June 12, 2002
CLEMSON UNIVERSITY)	
_____)	

This matter is before the Chief Procurement Officer for Construction (CPOC) pursuant to a request from Clemson University (Clemson) under the provisions of §11-35-1520(7) of the South Carolina Consolidated Procurement Code (Code), for a determination of appropriateness regarding Clemson’s intent to cancel a contract for construction with the Batson-Cook Company (Batson).

BASIS FOR THE REQUEST

Clemson received bids for the project on August 23, 2001 and posted a Notice of Intent to Award to Batson [Exh. 1] on August 28, 2001. On September 12, 2001 the protest period for the award expired. While a contract was contemplated, it was never executed and Clemson did not issue a Notice to Proceed to Batson. On September 25, 2001, Clemson determined that funding for the Project was sufficiently uncertain to warrant abandonment of the Project. [Exh. 6] On September 26, 2001 the Clemson Project Manager informed Batson of Clemson’s determination to proceed with cancellation of the Project. [Exh. 2] There ensued several discussions between Clemson and Batson and, on October 24, 2001, Batson submitted a written claim to Clemson for bid preparation costs. [Exh. 3] On March 26, 2002 Clemson notified the CPOC of the parties’ desire and intent to negotiate a mutually agreeable resolution of Batson’s claim. [Exh. 4] This request was endorsed by the CPOC. On May 15, 2002 the parties submitted an executed copy of a settlement agreement [Exh. 5] which is before me for consideration.

DETERMINATION

Based on the facts as stated above, the CPOC determines that the construction work comprising the Project is no longer required, and under the authority granted by SC Code Regulation 19-445.2085(C), the CPOC hereby cancels, prior to performance and in its entirety, the Notice of

Intent to Award to the Batson-Cook Company. Clemson University may proceed to formally notify the Batson-Cook Company of the cancellation of this award.

The CPOC has reviewed the proposed settlement agreement and the circumstances which gave rise to the claim. In consideration of all of these circumstances and the evident good faith conduct of both parties in the face of unusual and unanticipated events, the CPOC further determines, in accordance with the provisions of Chapter 11, Title 35 that it is in the best interests of the State to approve the attached settlement agreement negotiated between Clemson University and the Batson-Cook Company. Clemson University is directed to proceed in accordance with the terms of the agreement

IT IS SO ORDERED



Michael M. Thomas
Chief Procurement Officer for Construction

June 12, 2002

Date

STATEMENT OF THE RIGHT TO APPEAL

By canceling the intent to award prior to performance, this Decision also serves as a written determination under Section 11-35-1520(7) and Regulation 19-445.2085(C). The South Carolina Procurement Code, under Section 11-35-4410, subsection (1)(b), states:

(1) Creation. There is hereby created The South Carolina Procurement Review Panel which shall be charged with the responsibility to review and determine *de novo*:

...

(b) requests for review of other written determinations, decisions, policies, and procedures as arise from or concern the procurement of supplies, services, or construction procured in accordance with the provisions of this code and the ensuing regulations; provided that any matter which could have been brought before the chief procurement officers in a timely and appropriate manner under Sections 11-35-4210, 11-35-4220, or 11-35-4230, but was not, shall not be the subject of review under this paragraph. Requests for review under this paragraph shall be submitted to the Procurement Review Panel in writing, setting forth the grounds, within fifteen days of the date of such written determination, decisions, policies, and procedures.

Additional information regarding the administrative review process is available on the internet at the following Web site: <http://www.state.sc.us/mmo/legal/lawmenu.htm>

STATE OF SOUTH CAROLINA)
PICKENS COUNTY)
In the Matter of Bid Protest)
State Project #H12 - 9694 – CC – A3)
Athletic Facilities Construction/Renovation,)
Memorial Stadium Phase 3,)
North Concourse/West End Zone Renovations))
Batson - Cook Company)
vs.)
Clemson University)

BEFORE THE STATE ENGINEER

SETTLEMENT AGREEMENT

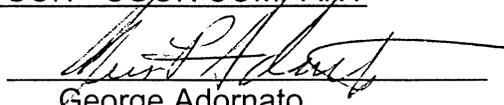
EXH. 5

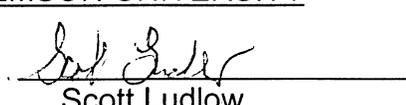
Whereas Batson – Cook Company brought a bid protest in the above captioned matter;

Whereas the parties have resolved their differences without the need for the Office of the State Engineer to render a decision by agreeing to the following:

- (1) Batson – Cook Company recognizes Clemson University cancelled the project due to financial exigencies after posting of the Notice of Intent to Award.
- (2) Batson – Cook Company agrees to formally and unconditionally withdraw its bid on the Project referenced above.
- (3) Clemson University recognizes the Batson – Cook Company expended considerable resources in preparation of the bid and agrees to compensate Batson – Cook Company the sum of forty-five thousand eighty-six dollars and fifty-eight cents (\$45,086.58), such sum being the cost of bid preparation as presented and attached herein.
- (4) Clemson University wished to convey that said bid cancellation should in no way be interpreted that the Batson – Cook Company is not a responsive and responsible contractor.

THIS MATTER IS HEREBY SETTLED.

BATSON - COOK COMPANY
By: 
George Adornato
Its: General Manager
Date: 4.30.2002

CLEMSON UNIVERSITY
By: 
Scott Ludlow
Its: Chief Business Officer
Date: 5/7/02