STATE OF SOUTH CAROLINA **COUNTY OF RICHLAND**	)	**BEFORE THE CHIEF PROCUREMENT OFFICER FOR CONSTRUCTION**
IN THE MATTER OF: CONTROVERSY	)	**ORDER APPROVING SETTLEMENT**
STILES HEATING & AIR	)	**CASE NO. 2011-006**
v.	)	
CLEMSON UNIVERSITY	)	**POSTING DATE:** **OCTOBER 26, 2010**
KINARD LABORATORY – HVAC RENOVATION **PROJECT H12-9850-NA**	)	

This matter came before the Chief Procurement Officer for Construction (CPOC) pursuant to a request by Stiles Heating and Cooling (Stiles), under the provisions of section 11-35-4230 of the South Carolina Consolidated Procurement Code, for an administrative review of a contract controversy regarding the Kinard Laboratory HVAC Renovation ("the Project"), for Clemson University (Clemson). The request for resolution of a contract controversy is attached as Exhibit A.

DECISION

On October 26, 2010, the parties submitted to the CPOC a settlement agreement. This Settlement Agreement is attached as Exhibit B. The CPOC hereby determines the settlement of this matter by the parties is appropriate and approves the settlement agreement as set forth in Exhibit B. Based on the parties' mutual good faith commitment to perform as set forth in the settlement agreement, the CPOC dismisses the request for resolution of a contract controversy.

John St. C. White
Chief Procurement Officer for Construction

26 Oct 10
Date

STATEMENT OF RIGHT TO FURTHER ADMINISTRATIVE REVIEW

The South Carolina Procurement Code, in Section 11-35-4230, subsection 6, states:

> (6) Finality of Decision. A decision pursuant to subsection (4) is final and conclusive, unless fraudulent or unless a person adversely affected requests a further administrative review by the Procurement Review Panel pursuant to Section 11-35-4410(1) within ten days of the posting of the decision in accordance with Section 11-35-4230(5). The request for review must be directed to the appropriate chief procurement officer, who shall forward the request to the panel, or to the Procurement Review Panel, and must be in writing setting forth the reasons why the person disagrees with the decision of the appropriate chief procurement officer. The person also may request a hearing before the Procurement Review Panel. The appropriate chief procurement officer and any affected governmental body shall have the opportunity to participate fully in a later review or appeal, administrative or legal.

Copies of the Panel's decisions and other additional information regarding the protest process is available on the internet at the following web site: www.procurementlaw.sc.gov

FILE BY CLOSE OF BUSINESS: Appeals must be filed by 5:00 PM, the close of business. *Protest of Palmetto Unilect, LLC*, Case No. 2004-6 (dismissing as untimely an appeal emailed prior to 5:00 PM but not received until after 5:00 PM); *Appeal of Pee Dee Regional Transportation Services, et al.*, Case No. 2007-1 (dismissing as untimely an appeal faxed to the CPO at 6:59 PM).

FILING FEE: Pursuant to Proviso 83.1 of the 2008 General Appropriations Act, "[r]equests for administrative review before the South Carolina Procurement Review Panel shall be accompanied by a filing fee of two hundred and fifty dollars ($250.00), payable to the SC Procurement Review Panel. The panel is authorized to charge the party requesting an administrative review under the South Carolina Code Sections 11-35-4210(6), 11-35-4220(5), 11-35-4230(6) and/or 11-35-4410(4). . . . . Withdrawal of an appeal will result in the filing fee being forfeited to the panel. If a party desiring to file an appeal is unable to pay the filing fee because of hardship, the party shall submit a notarized affidavit to such effect. If after reviewing the affidavit the panel determines that such hardship exists, the filing fee shall be waived." 2008 S.C. Act No. 310, Part IB, § 83.1. PLEASE MAKE YOUR CHECK PAYABLE TO THE "SC PROCUREMENT REVIEW PANEL."

LEGAL REPRESENTATION: In order to prosecute an appeal before the Panel, a business must retain a lawyer. Failure to obtain counsel will result in dismissal of your appeal. *Protest of Lighting Services*, Case No. 2002-10 (Proc. Rev. Panel Nov. 6, 2002) and *Protest of The Kardon Corporation*, Case No. 2002-13 (Proc. Rev. Panel Jan. 31, 2003).

EXH. A

STILES
HEATING AND COOLING
1310 GEORGE ALBERT LAKE ROAD
ANDERSON, SOUTH CAROLINA 29624
PHONE: (864) 226-6256 • FAX: (864) 224-3623

RECEIVED
SEP 13 2010
OFFICE OF STATE ENGINEER

Office of the State Engineer
1201 Main Street, Suite 600
Columbia, SC 29201

September 9, 2010

RE: Kinard Lab
Clemson University
H-12-9850-NR

Dear Sirs:

Please accept this letter as Stiles Heating & Cooling's request for a resolution between Stiles and Clemson University. This controversy revolves around two issues:

1. Liquidated Damages
2. Our final change-order request

Stiles has made several attempts to work out some type of solution and offered to negotiate a resolution that both parties could live with. However, the Owner's project manager hasn't brought anything to the table in an attempt to settle these issues.

It is for this reason that we are requesting your assistance in reaching a fair and equitable resolution.

Please see the attached page, which was copied from the specifications. Under Occupied and Existing Building 1.4, paragraph C, page 011000-6.

I am including some pictures as evidence showing the Owner did not remove items called for in the specifications. As with any construction renovation project, this created extra work due to having to work over and around furniture, computers, desk, etc. This extra time and expense wasn't included in our original bid (As it shouldn't have been based on the specifications – submitted above). I am also including the estimating guide, which we used to determine a value of the change-order.

This is the reason for the requested Change Order, which is being disputed by the Owner. I believe once this Change Order is resolved, then the matter of the Liquidated Damages will be answered also. If the Change Order were accepted, then the requested extra days (45) would take away the liquidated damages.

We do not plan on just letting this situation fade away, however we are still open for discussing and other reasonable and fair options.

Sincerely,

STILES HEATING & COOLING

Bob Humphreys

Robert L. Humphreys
Construction Manager

EXH. B

SETTLEMENT AGREEMENT

In the Matter of: Contract Controversy between Stiles Heating and Cooling and Clemson University
Initiated by a letter dated September 15th, 2010, to John White, State Engineer
Regarding State Project No. H12-9850-NA
Kinard Laboratory – HVAC Renovation

The undersigned parties do hereby agree that the dispute involved in the above matter is and shall be settled by the following agreement such constituting the full resolution of all issues raised in this controversy:

1. Clemson University will release to Stiles Heating and Cooling (Stiles) liquidated damages in the amount of $14,500.
2. Stiles agrees to drop any change order requests for additional days or for additional compensation for the project.

It is agreed that any dispute regarding this agreement shall be governed and resolved pursuant to Section 4.5 of the Standard Supplementary Conditions 00811-OSE as amended, edition 2008

It is agreed that this Settlement Agreement will be submitted to the State Engineer, acting as the Chief Procurement Officer for final approval and will become effective upon his signature.

WE SO MOVE AND AGREE

Stiles Heating and Air

By: Robert L. Humphrey

Title: Const. Mgr.

Date: October 26th, 2010

Clemson University

By: John McKee

Title: DIRECTOR OF CAPITAL PROJECTS

Date: October 26th, 2010

I APPROVE

John St. C. White

John St. C. White, P.E.
South Carolina State Engineer
Chief Procurement Officer
October 26th, 2010