

STATE OF SOUTH CAROLINA)	BEFORE THE CHIEF PROCUREMENT
COUNTY OF RICHLAND)	OFFICER FOR CONSTRUCTION
)	
)	
IN THE MATTER OF: CONTROVERSY)	DECISION
NEW LIBRARY CONSTRUCTION)	
STATE PROJECT H15-9555-PG)	
)	POSTING DATE: February 16, 2006
HITT CONTRACTING, INC.)	
vs.)	
COLLEGE OF CHARLESTON)	
vs.)	
ENWRIGHT ASSOCIATES)	
_____)	

This matter is before the Chief Procurement Officer for Construction (CPOC) pursuant to a request from Hitt Contracting, Inc. (“Hitt”) under the provisions of §11-35-4230 of the South Carolina Consolidated Procurement Code (“the Code”), for an administrative review on the New Library Construction project (“the Project”) for the College of Charleston (“the College”), and a request from the College under the provisions of §11-35-4230 of the Code for an administrative review. Pursuant to §11-35-4210(3) of the Code, the CPOC evaluated the issues for potential resolution and determined that, because the two disputes were congruent in the identities of the parties and also in the underlying facts, that a resolution by mediation and mutual agreement was appropriate. Based on a review of facts and issues surrounding this controversy, the CPOC finds that the parties engaged in good faith, free and full discussions leading to a mutually agreeable settlement. It is the finding of the CPOC that the jointly executed settlement agreement as submitted by the three parties is an appropriate resolution of the disputes and its acceptance is in the best interests of the State.

DECISION

The settlement document is hereby attached to and made a part of this decision. Under the authority granted by §11-35-4230(3) of the Code, the CPOC hereby approves the settlement agreement as set forth in the attached agreement. Based on the parties’ mutual good faith commitment to perform as set forth in the settlement agreement, and at the request of the parties, the CPOC hereby dismisses with prejudice the Requests for Resolution filed by Hitt Construction, Inc. and the College of Charleston. This dismissal shall in no event prejudice the

rights of either party to pursue claims against the other for failure to perform in accordance with the terms of this agreement.

IT IS SO ORDERED

Michael M. Thomas

Michael M. Thomas
Chief Procurement Officer
for Construction

February 16, 2006
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 under subsection (4) of this section shall be final and conclusive, unless fraudulent, or unless any person adversely affected requests a further administrative review by the Procurement Review Panel under 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 shall be directed to the appropriate chief procurement officer who shall forward the request to the panel or to the Procurement Review Panel and shall be in writing setting forth the reasons why the person disagrees with the decision of the appropriate chief procurement officer. The person may also request a hearing before the Procurement Review Panel.

Additional information regarding the protest process is available on the internet at the following web site: www.procurementlaw.sc.gov

FILING FEE: Pursuant to Proviso 66.1 of the 2005 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." 2005 S.C. Act No. 115, Part IB, § 66.1. 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). Copies of the Panel's decisions are available at www.state.sc.us/mmo/legal/paneldec.htm

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)
)
IN THE MATTER OF: CONTROVERSY)
NEW LIBRARY CONSTRUCTION)
STATE PROJECT H15-9555-PG-B)
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HITT CONTRACTING, INC.)
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 vs.)
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COLLEGE OF CHARLESTON)
)
 vs.)
)
ENWRIGHT ASSOCIATES, INC.)
_____)

BEFORE THE CHIEF PROCUREMENT
OFFICER FOR CONSTRUCTION

SETTLEMENT AGREEMENT

WHEREAS, on September 18, 2003 HITT Contracting, Inc. (“HITT”) filed a Request for an Administrative Review (“Matter 1”) on the above-captioned New Library Construction Project for the College of Charleston (the “Project”). On January 24, 2005, HITT filed a Request for Further Administrative Review by the Procurement Review Panel relating to the Project (“Matter 2”); and on May 13, 2005, the College of Charleston filed a separate Request for Resolution against Enwright Associates, Inc. in connection with the Project (hereinafter, “Matter 3”). Matters 1, 2, and 3 all relate to the Project, and each of these three matters are hereby resolved by the following terms and agreement among the undersigned parties.

WHEREAS, in these above-described matters, the College of Charleston asserted certain claims against HITT and against Enwright Associates, Inc.

WHEREAS, the parties have negotiated and agreed upon a resolution of a substantial number of claims for additional compensation between HITT and the College of Charleston.

WHEREAS, this Settlement Agreement and Release of Claims (hereinafter the

“Agreement”) is entered by and on behalf of the above-captioned parties in order to memorialize their agreement and resolve all issues in contention in these matters;

WHEREAS, by separate agreement, HITT has compromised and settled certain listed claims by and between its Subcontractor CGI Mechanical, Inc. (“CGI”) and HITT and St Paul Fire and Marine Insurance Company, including all claims by CGI which might be asserted against CofC; and

WHEREAS, by separate agreement, HITT has compromised and settled certain listed claims by and between HITT and Enwright; and

WHEREAS, Enwright desires to settle and release all claims which it may have against CofC according to the following terms; and

WHEREAS, the CofC desires to settle and release all claims which it may have against Enwright and HITT according to the following terms;

WHEREAS, the specific agreement on these terms are set forth below:

1. Enwright has agreed to pay the aggregate sum of NINE HUNDRED THOUSAND AND 00/100 DOLLARS (\$900,000.00) in order to settle and mutually release any and all claims between Enwright, CofC, HITT, and the subcontractors of HITT, as more fully set forth in the separate agreement between CGI, HITT, and Enwright, including the dismissal with prejudice of all such claims, counterclaims and cross-claims which were or which could have been asserted by CGI and HITT against Enwright in this Project.
2. The undersigned agree that the aforementioned NINE HUNDRED THOUSAND AND 00/100 DOLLARS (\$900,000.00), be paid by Enwright as follows: FOUR

HUNDRED FIFTY THOUSAND AND 00/100 DOLLARS (\$450,000.00) to CofC and FOUR HUNDRED FIFTY THOUSAND AND 00/100 DOLLARS (\$450,000.00) to HITT in exchange for the mutual release and exchange of promises as set forth herein.

3. The parties further agree that the settlement of claims set forth herein in no way operates as a release or waiver of claims by these parties against any other parties except those signing this agreement, and the parties anticipate that HITT will be asserting claims against third parties in an effort to resolve the issues remaining in this Project

Now, therefore, know all persons by these presents that it is hereby

UNDERSTOOD AND AGREED that for and in consideration of each undersigned party's compliance with the terms of this Agreement, reached by and between the Parties, the adequacy of which is hereby acknowledged, each undersigned Party does hereby release, acquit, absolve, and forever discharge every other Party and its successors, assigns, officers, directors, shareholders, agents, employees, and insurers, to the extent set forth herein, from those rights, actions, claims, suits, and demands of every nature and kind specifically set forth in this Agreement which were or which could have been asserted in the Lawsuit or in the proceedings before the Office of State Engineer; and that this Agreement operates as a full and final release as to each and every claim specifically set forth above and outlined in the terms of this Agreement; it is further

UNDERSTOOD AND AGREED that in further consideration for the above payments, HITT agrees that part of this consideration will be used to satisfy the claims of other

subcontractors, sub subcontractors and lower tiered subcontractors, materialmen and suppliers which have asserted or might assert claims against HITT or Enwright with respect to the Project. HITT agrees to indemnify and hold harmless Enwright with respect to any and all claims by such parties which have been asserted or which may be asserted in the future. It is further

UNDERSTOOD AND AGREED that by virtue of executing this Agreement, each undersigned Party hereby consents to the Dismissal With Prejudice by the State Engineer of all claims, counterclaims, and/or cross-claims in connection with Matters 1, 2 and 3 as noted above in this Agreement; it is further

UNDERSTOOD AND AGREED that the individuals signing this Agreement represent and warrant that each has the right and authority to execute this Agreement on behalf of the party for whom each signs; that this Agreement shall be effective to the extent set forth above as a full and final accord and satisfaction and mutual release of each undersigned Party to the extent specifically set forth above in this Agreement; and that each undersigned Party expressly agrees that this Agreement is contractual in nature and not a mere recital; it is further

UNDERSTOOD AND AGREED that this Agreement affects the settlement of claims which are denied and contested, and nothing contained in this document shall be construed as an admission by any undersigned Party of any liability of any kind to any person or entity; it is further

UNDERSTOOD AND AGREED as to the Governing Law: This Agreement and any dispute, claim, or controversy relating to the Agreement shall, in all respects, be interpreted, construed, enforced and governed by and under the laws of the State of South Carolina. All

disputes, claims, or controversies relating to the Agreement shall be resolved exclusively by the appropriate Chief Procurement Officer in accordance with Title 11, Chapter 35, Article 17 of the South Carolina Code of Laws, or in the absence of jurisdiction, only in the Court of Common Pleas for, or a federal court located in, Richland County, State of South Carolina. Contractor agrees that any act by the Government regarding the Agreement is not a waiver of either the Government's sovereign immunity or the Government's immunity under the Eleventh Amendment of the United States Constitution.

IN WITNESS WHEREOF, each undersigned Party has executed the foregoing Agreement as of the day and year indicated next to the signature of its authorized representative.

HITT CONTRACTING, INC.:

By: 

Its: Atty

Date: 1/27/06

ENWRIGHT ASSOCIATES, INC.:

By: _____

Its: _____

Date: _____

COLLEGE OF CHARLESTON:

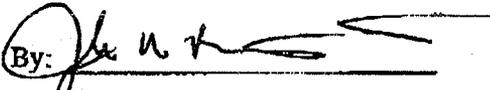
By: _____

Its: _____

Date: _____

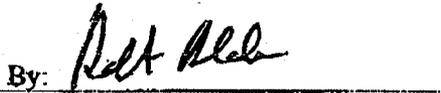
Agreement as of the day and year indicated next to the signature of its authorized representative.

HITT CONTRACTING, INC.:

By: 
Its: Exec VP

Date: 2/27/05

ENWRIGHT ASSOCIATES, INC.:

By: 
Its: President

Date: 12/6/2005

COLLEGE OF CHARLESTON:

By: _____
Its: _____

Date: _____

**ACKNOWLEDGMENT, CONSENT, AND APPROVAL BY THE
SOUTH CAROLINA STATE ENGINEER:**

By: _____
Its: _____

Date: _____

Its: _____

Date: _____

ENWRIGHT ASSOCIATES, INC.:

By: _____

Its: _____

Date: _____

COLLEGE OF CHARLESTON:

By: Frederick W. Daniels

Its: _____

Date: October 31, 2005