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ATTACHMENT 15

April 23, 2004

(29)

Mayor of Chapel Hill
Chapel Hill Town Council
Town Hall
Chapel Hill, NC

Re: PETITION FOR RECONSIDERATION OF COUNCIL ACTION ON AIRPORT
GARDENS REHABILITATION PROJECT

Dear Mayor and Members of the Chapel Hill Town Council:

On behalf of Hairston Enterprise, the low bidder on the referenced project, we are Petitioning for the opportunity to be heard and respond to the reply received by the Town of Chapel Hill in response to the protest letter filed by Hairston in the referenced matter. While we are in agreement with HUD's finding that the bid process was flawed because of the manner in which alternates were selected which gave the appearance of favoring a preferred contractor, it was clearly not necessary to rebid the project. Instead, the Town Council could have decided to award the entire contract to the original low bidder.

Hairston received HUD's response on April 15, and was preparing to recommend that it be awarded the entire contract since it was the low bidder and since there is no question that funds are available. We learned that the Council had already adopted a course of action calling for the rebid of the contract at its April 14 meeting. Contrary to the advance notice given Carl Garris, Inc., the contractor improperly awarded the contract, Hairston received no notice of the contemplated action of the Council, or of the proposed Resolution. For this reason, Hairston is Petitioning the Council for an opportunity to be heard at the April 26 meeting. Also note that the item was added to the April 14th meeting on April 12. It appears contrary to logic that the Town would act on the Protest without giving the protesting party an opportunity to be heard, or any advance notice of its intentions.

Thank you for your consideration.

Sincerely yours,



Walter E. Ricks, III
Attorney for Hairston Enterprise

MEMORANDUM

(30)

DATE: April 26, 2004

**TO: Mayor of Chapel Hill
Chapel Hill Town Council**

FROM: Hairston Enterprise

**Re: MEMORANDUM IN SUPPORT OF PETITION FOR RECONSIDERATION OF
COUNCIL ACTION ON AIRPORT GARDENS REHABILITATION PROJECT**

1. On April 14th, 2004, without prior notice to the protesting party (Hairston Enterprise), the Town Council considered a Consent Agenda item and adopted a resolution calling for the rebid of the Airport Gardens Rehabilitation Project.
2. The resolution was apparently in response to a recommendation from HUD that because of irregularities in the bidding process, the project should be rebid. (In essence, HUD said alternate bids were improperly designated)
3. HUD's response and the action of the Town Council would have been appropriate if that were the only issue.
4. An additional issue is present because it is clear from all documents in this case that there was no need to designate alternate bids because the Town indicated it had the necessary funds for the entire project. While it was clear that the designation of alternates was improper, once documentation appeared that demonstrated funds for the entire project were available, it became incumbent upon the Council to award the contract to the low bidder.
5. In other words, while HUD rejected the arbitrary selection of alternate bids as being unfair, HUD did not address the apparent availability of funds to support an award of the entire project except to note in its letter that HAIRSTON was the low bidder.
6. The original memorandum recommending Council action designated available funds for the project at \$1,015,101, and indicated the anticipated receipt of, "[A]llotments next summer under the 2004 Community Development Block Grant and Capital Fund Programs that could be used for the Airport Gardens renovations." Hairston's low bid was \$1,313,833.
7. "In the future", the memo continues, "[W]e anticipate requesting the Council to consider a resolution to approve a negotiated contract sum for alternates 1, 3 and/or 4 and to authorize an amendment to the construction contract."

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8. The result of a rebid has essentially the same effect as the arbitrary selection of alternates, i.e., the low bidder has been denied the award of the contract. It is also detrimental to the Town since bids were on the table, and the Town could easily determine its cost for the project.

THE REMEDY

1. Since we were not notified that the add-on agenda item was to be considered, Hairston was not at the April 14 meeting.

2. The Council should make a serious inquiry of its staff as to whether or not funds are available or reasonably expected to be available for the entire project.

3. The contract should then be awarded to Hairston, the low bidder, as was suggested and supported in our earlier correspondence.