



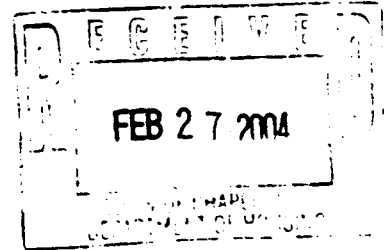
U. S. Department of Housing and Urban Development

Office of Public Housing
1500 Pinewood Road, Suite 401
Greensboro, NC 27407-3707
www.hud.gov/local/gre

(14)

ATTACHMENT 6

FEB 23 2004



Ms. Tina Vaughn
Executive Director, Housing Authority
Of the Town of Chapel Hill
317 Caldwell Street Ext.
Chapel Hill, NC 27516-2048

Dear Ms. Vaughn:

We are in receipt of a bid protest filed by Hairston Enterprise Contractors citing violation of Federal Regulations and standards.

In accordance with Title 24 Code of Federal Regulations (CFR) §85.36(b)(12), "Grantees and sub-grantees will have protest procedures to handle and resolve disputes relating to their procurements and shall in all instances disclose information regarding the protest to the awarding agency. A protestor must exhaust all administrative remedies with the grantee and sub-grantee before pursuing a protest with the Federal agency. Reviews of protests by the Federal agency will be limited to:

- (i) Violations of Federal law or regulations and the standards of this section (violations of State or local law will be under the jurisdiction of State or local authorities) and
- (ii) Violations of the grantee's or sub-grantee's protest procedures for failure to review a complaint or protest. Protests received by the Federal agency other than those specified above will be referred to the grantee or sub-grantee."

Information cited in the Letter Of Protest gives the appearance the Housing Authority Of the Town of Chapel Hill (CHHA) may have violated Federal Regulations. There is an appearance that the CHHA is circumventing procurement procedures in order to select a favored contractor known by the agency, with the intention of negotiating the remaining alternates outlined in the solicitation. With this predetermined negotiation the total of the contract with Carl Garis & Son's, Inc. would exceed the overall low bid submitted by Hairston Enterprise by \$55,667.00.

In the event CHHA negotiated additional work with Carl Garis & Son's it would constitute a noncompetitive proposal and is a violation of 24 CFR §85.36(d)(4)(i); i.e., "Procurement by noncompetitive proposals may be used only when the award of a contract is infeasible under small purchase procedures, sealed bids or competitive proposals and one of the following circumstances applies:

- (A) The item is available only from a single source;
- (B) The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation;

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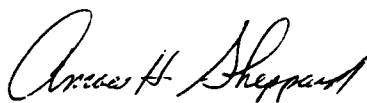
- (C) The awarding agency authorizes noncompetitive proposals; or
- (D) After solicitation of a number of sources, competition is determined inadequate.
- (ii) Cost analysis, i.e., verifying the proposed cost data, the projections of the data, and the evaluation of the specific elements of costs and profits, is required.
- (iii) Grantees and sub-grantees may be required to submit the proposed procurement to the awarding agency for pre-award review in accordance with paragraph (g) of this section."

Based on the limited information we have, including a memorandum dated January 26, 2004, to the Town Mayor from W. Calvin Horton, Town Manager, it appears the CHHA does not have valid justification for the negotiation. Moreover, Handbook 7460.8 Paragraph 6-10 C. states that there are limitations on the use of change orders. The Changes clause such as that on the Forms HUD-5370 (for construction) or HUD-5370-A (for non-construction) prescribes the specific circumstances in which a change order may be issued. **Changes such as increasing the number of items being purchased or other types of new work are not considered within the scope of the contract or within the authority of the Changes clause.**

In order for this Office to evaluate the protest we are in need of information from you. As authorized by 24 CFR 85.36 (b)(12), (d)(4)(iii), (g) and Section 15 of the Consolidated Annual contributions Contract Between Housing authority and the United States of America (ACC) we are requesting you to submit copies of all documents/records pertaining to the proposed procurement for the Comprehensive Rehabilitation of Airport Gardens Apartments Project (2004-01-26/R-5), including your response to Hairston Enterprise Contractors.

Any time you have a question or feel a need for technical assistance, please contact Sandra James, Public Housing Revitalization Specialist, at 336-547-4000, ext. 2103.

Sincerely,



Amoes H. Sheppard

Director

Asset Management Division