



DEPARTMENT OF HEALTH AND HUMAN SERVICES  
DIVISION OF PROPERTY AND CONSTRUCTION

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DIRECTOR

April 20, 2017

**CERTIFIED MAIL/RETURN RECEIPT REQUESTED,  
FEDEX AND EMAIL (if address available)**

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Project: New Broughton Psychiatric Hospital, Morganton, NC (SCO Project #: 01-05592-01A)  
Budget Code #: 40666 Item #: 4K01  
Owner: North Carolina Department of Health and Human Services ("DHHS")  
Contractor: Archer Western Contractors, LLC ("AWC")  
Contract: DHHS-AWC \$129,865,700 Construction Contract dated Jan. 30, 2012  
Surety: Travelers Casualty & Surety Co. of America ("Travelers")  
Performance Bond: No. 105691430 (Penal Sum-\$129,865,700)

Subject: Declaration of Default Termination of Contract and Demand for Surety Takeover of Completion of Project

To the Parties Addressed:

Please be advised that pursuant to DHHS's Notice of Intent to Annul AWC's Contract dated February 22, 2017 (the "Notice"), and considering all matters presented by AWC in both its written response to DHHS dated March 8, 2017 (AWC Response) and AWC's live presentation to DHHS on April 3, 2017 (AWC Live Presentation), AWC has failed to proceed in accordance with the Notice, namely it has failed to resolve or cure six of the seven grounds for annulment set

forth in the Notice. Therefore, as of the date hereof, DHHS hereby declares AWC's Contract annulled and terminated for default. Accordingly, DHHS demands that Travelers promptly takes over and completes all of AWC's remaining work under the Contract as soon as practicable pursuant to Paragraph 2 of the Contract, Article 29, of the Contract's General Conditions, and the Performance Bond. DHHS and its design team, scheduling consultant, and attorneys are willing and stand ready to meet with Travelers as soon as possible, but in no event, not more than fifteen (15) days after its receipt of this letter to expeditiously:

- (1) Assist Travelers in the carrying out and expediting of any investigation it reasonably sees as necessary under all the circumstances, in objective good faith, and in conformity with its duties under the Performance Bond and the Contract into AWC's performance under the bonded Contract and DHHS's grounds for annulment and DHHS's above Performance Bond demand;
- (2) Negotiate a takeover/completion agreement between DHHS and Travelers;
- (3) Discuss AWC's continued work (including management of the subcontractors and payment to AWC and the subcontractors for prosecuting base contract work during this period) on the Project for the next fifteen (15) days or until Travelers makes a decision on DHHS's performance bond claim before the expiration of this 15-day period;
- (4) Discuss a cooperative continuation of certain subcontractor work to further completion of the Project (in particular above-ceiling work and inspections, electrical, mechanical, plumbing, HVAC, fire alarm, security systems, building systems controls (Siemens), testing and balancing (Palmetto), doors and door hardware, painting, flooring (VCT, sheet flooring, carpets, terrazzo, ceramic tile), temporary conditioning of the building (e.g., temporary chillers, temporary power, etc.), and such other work necessary to protect the work in place during the transition to a completion contractor including use of the contract balance for those purposes; and
- (5) Discuss any other related topic pertaining to the completion of the Project and resolution of DHHS's Performance Bond demand.

While DHHS does not foreclose any reasonable takeover proposal by Travelers, because of the matters discussed below, DHHS will be disinclined to agree for AWC to be employed by Travelers as its completion contractor in the absence of positive and separately enforceable assurances in a takeover agreement that this long-delayed Project will be expeditiously completed by Travelers as required by the Performance Bond. AWC has wholly lost the trust of DHHS and only upon reasonable assurances by Travelers can DHHS consider AWC's presence on the project and still fulfill its legal duties to the people of North Carolina.

In arriving at its decision for default termination, DHHS considered that:

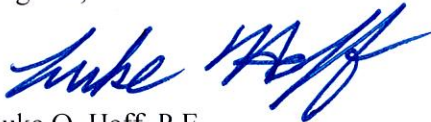
- Neither the AWC Response, though running to over 900 pages, nor the matters and things covered and submitted as part of the Live Presentation, nor the two together, offered or demonstrated a commitment to take all actions necessary to resolve or otherwise cure the remaining six of the seven grounds for annulment.
- AWC has not yet executed pending and agreed to change orders (including a deductive change order) provided for in the December 2013 Memorandum of Understanding ("MOU") it previously entered into to avoid an earlier default on this Project, nor has it provided proof of timely payments to its subcontractors under the MOU. Those simple matters, to which AWC long ago agreed to but has yet to perform, could have quickly resolved two of the remaining six grounds for annulment.

- AWC has not offered any type of compensation or other consideration to DHHS to resolve the remaining six of seven grounds for annulment that AWC failed to cure through corrective action such as AWC's failure to complete the Project by the original completion date of September 19, 2014 or its failure to complete the Project by a revised completion date of September 30, 2015 under the MOU (conditioned upon AWC fully complying with the terms of the MOU, which it has not yet done).
- Instead of trying to resolve the remaining six of seven grounds for annulment resulting in this declaration of default, AWC has essentially put forward the same excuses that have been rejected by DHHS and the Project Architect on prior occasions, sought to demand acts by DHHS and other State Project participants to which it has no right under the Contract, and to resurrect stale (and non-meritorious) contract claims, with respect to which AWC has not complied with mandatory contract requirements.

Finally, AWC's proposed revised completion plan in its Response (including any modifications thereto in AWC's Presentation) did not resolve or cure any of the remaining six of seven grounds for annulment, because the proposed plan was and still is illusory and unachievable without all of AWC's subcontractors with remaining work on the Project being committed to executing their work pursuant to AWC's revised completion plan and their commitments to provide and sustain all necessary increases in labor, better quality control, better productivity, and better efficiency. The materials presented by AWC do not evidence even part of the needed commitment on its part or on the part of its subcontractors. Therefore, DHHS cannot and does not accept the revised completion plan as a cure or resolution for any of the remaining six of seven grounds for annulment.

Surety representatives are encouraged to call me to set up a meeting to discuss the foregoing at your earliest possible convenience.

Regards,



Luke O. Hoff, P.E.  
Director DHHS Division of Property & Construction

cc: See Distribution List

DISTRIBUTION LIST

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