

1976 S.C. Op. Atty. Gen. 216 (S.C.A.G.), 1976 S.C. Op. Atty. Gen. No. 4378, 1976 WL 22997

Office of the Attorney General

State of South Carolina

Opinion No. 4378

June 22, 1976

\*1 The SCHD must select its inspection engineer pursuant to §§ 1-453, et seq., CODE OF LAWS OF SOUTH CAROLINA (1962) (as amended) prior to awarding of a contract for services consisting mostly of shop inspection of structural and miscellaneous steel, special welding inspecting, treated timber inspection, and large sign-structures, machinery and miscellaneous item inspection.

TO: The Honorable P. C. Smith  
State Auditor

QUESTION INVOLVED:

May the SCHD modify, by increasing the inspection price, its present contract with Froehling & Robertson, Inc., without going through the process of selecting engineers pursuant to §§ 1-453, et seq., CODE OF LAWS OF SOUTH CAROLINA (1962) (as amended)?

AUTHORITIES INVOLVED:

L. P. Simpson, Law of Contracts, §§ 92-93 (2d ed. 1965); §§ 1-453, et seq., CODE OF LAWS OF SOUTH CAROLINA (1962) (as amended).

DISCUSSION:

In November 1973 the Department negotiated an inspection agreement with Froehling & Robertson, Inc. of Richmond, Virginia, to furnish certain inspection services consisting mainly of shop inspection of structural and miscellaneous steel, special welding inspection, treated timber inspection and sign-structures, machinery and miscellaneous item inspection. Froehling & Robertson, Inc. has requested that the SCHD increase their inspection price rate over that which was agreed upon in the 1973 contract. The question is whether such a modification can be made to the existing contract without going through the engineer selection process pursuant to §§ 1-453, et seq., CODE OF LAWS OF SOUTH CAROLINA (1962) (as amended).

To amend the existing contract, the two parties would have to enter into a mutual agreement as to the new terms. However, since a modification of a contract is nothing more than a one contract substituted for another contract, any modification of the 1973 contract is tantamount to the two parties entering into a new contract. L. P. Simpson, Law of Contracts, §§ 92-93 at 186-187 (2d ed. 1965). The contract, a copy of which is attached hereto, between Froehling & Robertson, Inc. and the SCHD, demonstrates the contractual services which the Department seek are clearly engineering services.

The selection of engineering firms by a State agency is governed by §§ 1-453, et seq., CODE OF LAWS OF SOUTH CAROLINA (1962). Section 1-453 provides: 'All State agencies and departments shall follow the procedure in this article described when selecting an architectural or engineering firm to provide services to the agency or department.' In that the Department is not exempted from this selection process, it must comply therewith.

CONCLUSION:

The SCHED may not amend its 1973 Inspection Agreement with Froehling & Robertson, Inc. unless it acts pursuant to the engineering selection procedure set forth at §§ 1-453, et seq., CODE OF LAWS OF SOUTH CAROLINA (1962) (as amended).

\*2 M. Elizabeth Crum  
Assistant Attorney General

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