

**PETITION FOR A WRIT OF CERTIORARI TO THE
COURT OF APPEALS**

RECEIVED

SEP 27 2013

THE STATE OF SOUTH CAROLINA
In The Supreme Court

S.C. Supreme Court

APPEAL FROM HORRY COUNTY
Court of Common Pleas

William H. Seals, Jr., Circuit Court Judge

Unpublished Opinion No. 2013-UP-247 (S.C. Ct. App. filed June 12, 2013)

Joseph N. Grate,

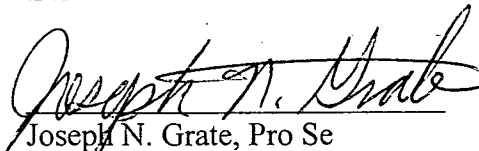
Petitioner.

v.

Waccamaw E. O. C. Inc,

Respondent,

APPENDIX



Joseph N. Grate, Pro Se
Post Office Box 1294
Pawley's Island, South Carolina 29585
(843) 742-0696

Other Counsel of Record:
Ralph J. Wilson, Sr.
Post Office Box 1827
Conway, South Carolina 29526
Attorney for Respondent
(843) 381-0765

RECORD ON APPEAL

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

William H. Seals, Jr., Circuit Court Judge

Case Tracking No. 2012209227

Joseph N. Grate,

Appellant,

v.

Waccamaw EOC, Inc.,

Respondent.

RECORD ON APPEAL

Joseph N. Grate, Pro Se
Post Office Box 1294
Pawley's Island, S.C. 29585
(843) 742 - 0696

Attorney for Respondent:
Ralph J. Wilson, Sr.

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FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF HORRY
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2010-CP-26-11754

Joseph N Grate

Waccamaw EOC Inc

MELANIE HODGINS WARD
CLERK OF COURT

PLAINTIFF(S)

DEFENDANT(S)

CHECK ONE:

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues Have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED** (CHECK REASON): ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other
- ☐ **ACTION STRICKEN** (CHECK REASON): ☐ Rule 40(j), SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify Arbitration award; ☐ other:
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (CHECK APPLICABLE BOX): ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED:

- ☐ See Attached order. (Formal order to follow)
☒ Statement of Judgment by the Court:

Plaintiff's Motion to Compel is Denied. Plaintiff's Motion for Summary Judgment is Denied.

Dated at Conway, South Carolina, this 8th day of June, 2011.

Margaret H. Culbertson
PRESIDING JUDGE

This judgment was entered on the _____ day of _____, 20____, and a copy mailed first class this _____ Day of _____, 20____ to attorneys of record or to parties (when appearing pro se) as follows:

Joseph N Grate

Ralph J. Wilson

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

STATE OF SOUTH CAROLINA
COUNTY OF HORRY
IN THE COURT OF COMMON PLEAS

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2010 CP-26-11754

Joseph N Grate

Waccamaw EOC Inc

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for : ☐ Plaintiff ☐ Defendant
or
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

Additional Information for the Clerk :

Defendant's (Waccamaw EOC Inc) Motion to compel is granted, Deposition is to be held at Atty: Ralph Wilson office on Thursday November 3rd, 2011 at 10:00am.

INFORMATION FOR THE PUBLIC INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate N/A in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		\$
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge

SCRPC Form 4C (10/2011)

Judge Code

Date

Page 1 of 2

STATE OF SOUTH CAROLINA
COUNTY OF HORRY
IN THE COURT OF COMMON PLEAS

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2010 CP-26-11754

JOSEPH N GRATE

WACCAMAW EOC INC

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for : ☐ Plaintiff ☐ Defendant
or
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☒ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41a, SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

Additional Information for the Clerk : WE THE JURY FIND FOR THE DEFENDANT IN THE AMOUNT OF

\$2,090.00 ACTUAL DAMAGES

INFORMATION FOR THE PUBLIC INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		\$ 2,090 ⁰⁰
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge

Judge Code

Date

For Clerk of Court Office Use Only

This judgment was entered on the 17th day of Jan, 20 12 and a copy mailed first class or placed in the appropriate attorney's box on this 17th day of Jan, 20 12 to attorneys of record or to parties (when appearing pro se) as follows:

PRO SE

RALPH WILSON

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Melanie Huggins-Ward

Court Reporter:

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT

Joseph N. Grate

Plaintiff,

vs.

Waccamaw EOC, Inc.,

Defendant.

C/A NO. 2010-CP-26-11754

Verdict

FILED
HORRY COUNTY
12 JAN 11 PM 3:10
MELANIE J. JONES-WARD
CLERK OF COURT

1. With regard to the PLAINTIFF's breach of contract claim against the Defendant, we find:

☒ For the Defendant.
☐ For the Plaintiff. (If you find for the Plaintiff here, go to Question 3.)

2. With regard to the DEFENDANT's breach of contract counterclaim against the Plaintiff, we find:

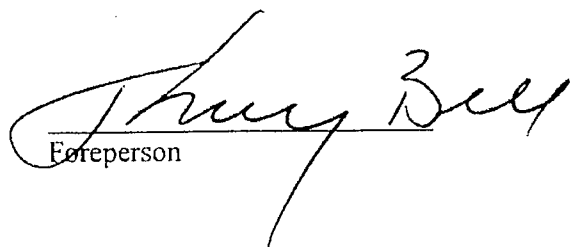
☐ For the Plaintiff.
☒ For the Defendant. (If you find for the Defendant here, go to Question 4.)

3. We award the Plaintiff _____ in actual damages.

4. We award the Defendant \$2,090.00 in actual damages.

8

I certify that this decision is the unanimous decision of the jury.


Foreperson

January 11, 2012

State of South Carolina
County of Horry

) In the Court of Common Pleas
) for the 15th Judicial Circuit
) Case Number : 2010-CP-26-11754
)

Joseph N. Grate, Plaintiff

) **COMPLAINT**
)

v.

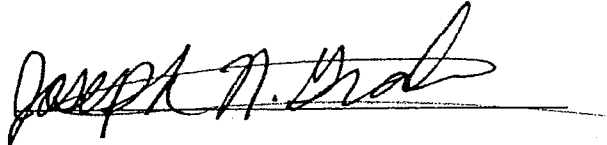
Waccamaw EOC, Inc., Defendant

Plaintiff, for his complaint herein, alleges:

1. Plaintiff is a Registered Architect and a General Contractor in South Carolina.
2. Defendant Waccamaw Economic Opportunity, Inc (WEOC) is registered with the State of South Carolina as a Nonprofit Cooperation, with its Main Office located at, 1261 Highway 501, East, Conway, South Carolina, 29526
3. On April 31, 2010, Plaintiff was contracted by WEOC to provide Project Management Services for the Design and Construction of a Facility to be located in the Choppee Community of Georgetown County, South Carolina (Choppee Head Start Center).
4. To date, Plaintiff has been committed to and available for the performance of the contract.
5. Defendant procrastinated for more than four month without having done anything nor communicated with Plaintiff towards performance of the contract.
6. After an exorbitant amount of time has passed, Defendant has proceeded with the project but has excluded Plaintiff from participation there with.
7. Defendant is in serious breached of the contract entered into on April 31, 2010.

WHEREFORE, Plaintiff prays for judgment against Defendant in the amount of Sixty Eight Thousand Dollars (\$68,000.00), all cost associated herewith, with interest to the fullest extent allowed by law, and any such other relief as the Court may deem just or equitable.

December 20, 2010

A handwritten signature in black ink, appearing to read "Joseph N. Grate", written over a horizontal line.

Joseph N. Grate, Pro Se
P.O. Box 1294
Pawley's Island, S.C. 29585
(843) 626-7976

State of South Carolina
County of Horry

Joseph N. Grate, Plaintiff

v.

Waccamaw EOC, Inc., Defendant

) In the Court of Common Pleas
) for the 15th Judicial Circuit
) Case Number : **2010-CP-26-11754**
)

PRODUCTION OF DOCUMENTS

2011 JAN - 6 PM 12:10
MELANIE HUGGINS-WARD
CLERK OF COURT

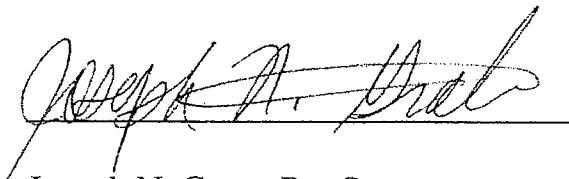
TO: Defendant herein,

PLEASE TAKE NOTICE that Plaintiff demands, pursuant to Rule 34 of the South Carolina Rules of Civil Procedure, that Defendant provide, within the time indicated under said rule or such time as the court shall order after service hereof, the following:

1. Provide a copy of all correspondence between Waccamaw EOC (WEOC), Inc and Head Start Administration, for the period between June 2009 and the present date.
2. Provide a copy of all Mileage Invoices for WEOC Employees and Board Members for the period between June 2009 and the present date.
3. For the period from May 2009 to present, provide a copy of all Invoices to and all disbursement from WEOC.
4. Provide a copy of the Minutes / Transcript of the February 2009, WEOC Board Retreat.
5. Provide a copy of all correspondence between John Bowman, Associates and WEOC.
6. Provide a copy of all correspondence between The Earthworks Group and WEOC.
7. Provide a copy of all correspondence between WEOC and all consultants associated with the Choppee Head Start Facility.

8. Provide a copy of all procurement advertisement associated with the Choppee Head Start Facility and identify the author of each.
9. Provide a copy of all Contracts associated with the Choppee Head Start Facility.
10. Provide a copy of the Grant Application / Proposal for the Choppee Head Start Facility.
11. Provide a copy of the Minutes / Transcript of all Board Meetings for the period between May 2009 and the present date.
12. Provide a copy of the Minutes / Transcript for all Interviews associated with the Choppee Head Start Facility.
13. Provide a copy of all Reports or Documents associated with the Design and Construction of the Choppee Head Start Facility.
14. Provide a copy of all Pre Design and all Pre Construction submittals associated with the Choppee Head Start Facility.
15. Provide a copy of response to Pre Design and Pre Construction Submittals, by or for WEOC.

December 31, 2010



Joseph N. Grate, Pro Se
P.O. Box 1294
Pawley's Island, S.C. 29585
(843) 742-0696
(843) 626-7976

State of South Carolina
County of Horry

) In the Court of Common Pleas
) for the 15th Judicial Circuit
) Case Number : **2010-CP-26-11754**
)

Joseph N. Grate, Plaintiff

v.

PROOF OF SERVICE

Waccamaw EOC, Inc., Defendant

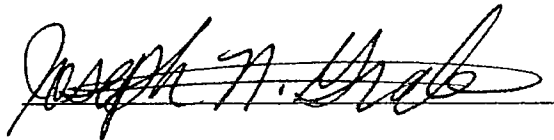
Plaintiff here in, certifies that he delivered a copy of the attached:
AMENDED PAGE 1 of the Complaint; correcting the indicated Contract
Execution Date, from the indicated date of April 31, 2010 to April 30, 2010,
to Defendant via: U.S. Certified Mail, this date, at the address indicated
below:

Waccamaw EOC, Inc.
1261 Highway 501, East
Conway, South Carolina, 29526

#7010 0290 0002 7304 4449

FILED
Horry County
2011 JAN 11 PM 12:45
MELANIE HUGGINS-WARD
CLERK OF COURT

January 11, 2011



Joseph N. Grate, Pro Se
P.O. Box 1294
Pawley's Island, S.C. 29585
(843) 742-0696
(843) 626-7976

State of South Carolina
County of Horry

) In the Court of Common Pleas
) for the 15th Judicial Circuit
) Case Number: 2010-CP-26-11754
)

Joseph N. Grate, Plaintiff

v.

**COMPLAINT
(AMENDED)**

Waccamaw EOC, Inc., Defendant

2011 JAN 11 PM 12:45
CLERK OF COURT
MELANIE HUGGINS-WARD

Plaintiff, for his complaint herein, alleges:

1. Plaintiff is a Registered Architect and a General Contractor in South Carolina
2. Defendant Waccamaw Economic Opportunity, Inc (WEOC) is registered with the State of South Carolina as a Nonprofit Cooperation, with its Main Office located at, 1261 Highway 501, East; Conway, South Carolina, 29526
3. On **April 30, 2010**, Plaintiff was contracted by WEOC to provide Project Management Services for the Design and Construction of a Facility to be located in the Choppee Community of Georgetown County, South Carolina (Choppee Head Start Center).
4. To date, Plaintiff has been committed to and available for the performance of the contract.
5. Defendant procrastinated for more than four month without having done anything nor communicated with Plaintiff towards performance of the contract.
6. After an exorbitant amount of time has passed, Defendant has proceeded with the project but has excluded Plaintiff from participation there with.
7. Defendant is in serious breached of the contract entered into on **April 30, 2010**.

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS
FOR THE FIFTEENTH JUDICIAL CIRCUIT
Civil Action No.: 2010-CP-26-11754

Joseph N. Grate,
Plaintiff,

vs.

Waccamaw EOC, Inc.
Defendant.

**DEFENDANT'S ANSWER AND
COUNTERCLAIM TO PLAINTIFF'S COMPLAINT**

HORRY COUNTY
11 JAN 19 AM 9:53
CLERK OF COURT

The Defendant, Waccamaw EOC, Inc., by and through the undersigned attorney, answers the Complaint of the Plaintiff and would respectfully show unto this Court as follows:

FOR A FIRST DEFENSE

1. Each and every allegation of the Plaintiff's Complaint not expressly admitted, qualified or explained herein is denied and strict proof thereof is demanded;
2. In relation to Paragraph (1) of the Complaint, Defendant does not have information sufficient to form a belief as to the truth of the allegations and therefore denies the same and demands strict proof thereof.
3. The Defendant admits the allegations contained in Paragraph Two (2) of the Complaint;
4. In relation to Paragraph Three (3) of the Complaint, Defendant does not have information sufficient to form a belief as to the truth of the allegations and therefore denies the same and demands strict proof thereof.
5. The Defendant denies the allegations contained in Paragraph Four (4) of the Complaint and strict proof thereof is demanded.

6. The Defendant denies the allegations contained in Paragraph Five (5) of the Complaint and strict proof thereof is demanded.
7. The Defendant denies the allegations contained in Paragraph Six (6) of the Complaint and strict proof thereof is demanded.
8. The Defendant denies the allegations contained in Paragraph Seven (7) of the Complaint and strict proof thereof is demanded.

FOR A SECOND DEFENSE
(Failure to State Facts Sufficient to Constitute a Cause of Action)

9. Each and every paragraph previously stated hereto is reiterated as if fully set out herein.
10. That Plaintiff failed to state facts sufficient to constitute a cause of action in his Complaint pursuant to Rule 12(b)(6), SCRCF;

FOR A THIRD DEFENSE
(Insufficiency of Service of Process)

11. Defendant re-alleges and incorporates all of the allegations of the above paragraphs as fully as if set forth verbatim.
12. Plaintiff failed to properly serve Defendant with the Complaint pursuant to Rule 12(b)(5) of SCRCF;

FOR A FOURTH DEFENSE
(Doctrine of Estoppel)

13. Defendant re-alleges and incorporates all of the allegations of the above paragraphs as fully as if set forth verbatim.
14. The Plaintiffs' Complaint is barred by the doctrine of estoppel.

FOR A FIFTH DEFENSE
(Doctrine of Waiver)

15. Defendant re-alleges and incorporates all of the allegations of the above paragraphs as fully as if set forth verbatim.
16. The Plaintiffs' Complaint is barred by the doctrine of waiver.

FOR A SIXTH DEFENSE
(Doctrine of Unclean Hands)

17. Defendant re-alleges and incorporates all of the allegations of the above paragraphs as fully as if set forth verbatim.
18. The Plaintiffs' Complaint is barred by the doctrine of unclean hands.

FOR A SEVENTH DEFENSE
(Doctrine of laches)

19. Defendant re-alleges and incorporates all of the allegations of the above paragraphs as fully as if set forth verbatim.
20. The Plaintiffs' Complaint is barred by the doctrine of laches.

FOR AN EIGHTH DEFENSE AND BY WAY OF COUNTERCLAIM
(Legal Impossibility)

21. Defendant re-alleges and incorporates all of the allegations of the above paragraphs as fully as if set forth verbatim.
22. The contract is a legal impossibility pursuant to §74.44(c) of the Code of Federal Regulations.
23. Pursuant to §74.44(c) of the Code of Federal Regulations, the "cost-plus-a-percentage-of-cost" or "percentage of construction cost" methods of contracting shall not be used.
24. Pursuant to Exhibit B Compensation of the contract, "Contractor shall be compensated at a fee not to exceed 9% of the total building cost (excluding design, engineering and permitting fees), payable as set forth in 3-1 of the contract. Waccamaw EOC will pay contractor an advance payment (against future billing) of \$10,000.00 as soon as funds are available to Waccamaw EOC, Inc. Invoices must be submitted prior to payment. Final payment will not be made until entire project is complete."
25. The contractor fee as stated in Exhibit B of the contract, 9% of the total building cost, is a "cost-plus-a-percentage-of-cost" or "percentage of construction cost" method of contracting in violation of §74.44(c) of the Code of Federal Regulations.
26. The contract is a legal impossibility and renders the contract *void ab initio*.

FOR A NINTH DEFENSE AND BY WAY OF COUNTERCLAIM
(Mutual Mistake)

27. Defendant re-alleges and incorporates all of the allegations of the above paragraphs as fully as if set forth verbatim.
28. Both the Plaintiff and Defendant were mistaken as to a material fact of the contract, the price term.
29. Neither the Plaintiff nor the Defendant were aware the agreed upon price term of the contract violated §74.44(c) of the Code of Federal Regulations at the time the contract was executed.
30. Plaintiff and Defendant had a meeting of the minds but both parties were mistaken as to a material fact, the price term of the contract, rendering the contract voidable.
31. Upon Defendant's knowledge of §74.44(c) of the Code of Federal Regulations, Defendant and its' attorney met with Plaintiff to cure the mistake in the contract but Plaintiff refused to resolve the price-term issue.
32. Due to the mutual mistake, the contract is voidable.
33. Defendant requests the contract be rescinded or reformed.

FOR A TENTH DEFENSE AND BY WAY OF COUNTERCLAIM

(Breach of Contract)

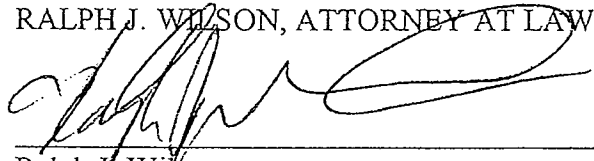
34. To the extent they are not inconsistent, the paragraphs of the previous defenses are incorporated herein by reference.
35. Plaintiff and Defendant entered into a contract on April 30, 2010.
36. Plaintiff breached the contract or unjustifiably failed to perform the contract.
37. Defendant suffered damages in the amount of Fifteen Thousand (\$15,000.00) Dollars as a direct and proximate result of the breach.

WHEREFORE, having fully answered the Complaint and having asserted a Counterclaim herein, Defendant would respectfully request the Court issue an order:

1. Dismissing the Complaint with prejudice as to Defendant;
2. Finding the contract *void ab initio*;
3. Rescinding or reforming the contract;
4. Awarding Defendant damages in the amount of Fifteen Thousand (\$15,000.00) Dollars;

5. Awarding Defendant setoff and recoupment where appropriate;
6. Awarding Defendant attorney fees and costs of this action; and
7. For such other and further relief as may be just and proper.

RALPH J. WILSON, ATTORNEY AT LAW, P.A.



Ralph J. Wilson
1411 First Avenue
Post Office Box 1827
Conway, South Carolina 29528
Phone: (843) 381-0765
Fax: (843) 381-0767
Attorney for Defendant

January 18, 2011
Conway, South Carolina

the request seeks documents or other tangible things prepared in anticipation of litigation or trial by Defendant or its counsel.

- Defendant objects to responding to Requests for Production of Documents to the extent the request seeks information covered by the attorney-client privilege and any and all other privileges provided by South Carolina law.
- Defendant objects to responding to Requests for Production of Documents to the extent the request seeks disclosure of mental impressions, conclusion, opinions and legal theories of counsel for Defendant or other representatives of Defendant concerning this litigation.

REQUESTS FOR PRODUCTION OF DOCUMENTS

1. Provide a copy of Audio Recording of all meetings that were held at WEOC Office on March 2nd, 4th and 5th, 2010.

Response:

Defendant is not in possession of any audio recordings of the WEOC meetings held on March 2, 2010, March 4, 2010 and March 5, 2010.

2. Provide a copy of all Mileage Invoices from WEOC's Board Chairman for the period between June 2009 and March 2011.

Response:

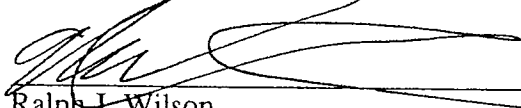
Defendant objects to responding to this request as it is irrelevant to the allegations in Plaintiff's Amended Complaint and exceeds the scope and limit of discovery set forth in the South Carolina Rules of Civil Procedure.

3. For the period from June 2009 to March 2011, provide a copy of all Invoices to and all disbursements from WEOC for Legal Services; specifically but not limited to: Ralph Wilson; The Sasser Law Firm.

Response:

Defendant objects to responding to this request as it is irrelevant to the allegations in Plaintiff's Amended Complaint and exceeds the scope and limit of discovery set forth in the South Carolina Rules of Civil Procedure.

RALPH J. WILSON, ATTORNEY AT LAW, P.A.



Ralph J. Wilson
1411 First Avenue
Post Office Box 1827
Conway, South Carolina 29528
Telephone: (843) 381-0675
Fax: (843) 381-0767
Attorney for Defendant

May 6, 2011
Conway, South Carolina

In the Court of Common Pleas
for the 15Th Judicial Circuit

State of South Carolina, County of Horry

BRIEF of PLAINTIFF

Case Number: 2010-CP-26-11754

Joseph N. Grate, Plaintiff

v.

Waccamaw EOC, Inc., Defendant

Council for Defendant:
Ralph J. Wilson, Sr., Esq.
1411 First Avenue
Conway, South Carolina, 29528

June 8, 2011



Joseph N. Grate, Pro Se
P.O. Box 1294
Pawley's Island, S.C. 29585
(843) 742-0696

I. FACTS OF THE CASE:

1. Defendant advertised in the June 15, 2009 issue of the South Carolina Business Opportunity publication for Statements of Qualifications from Qualified Architectural firms Re: the Choppee Head Start Center.
2. The Firm John Bowman Architects (JBA), of which Plaintiff here-in was a team member, submitted its credentials before the June 25, 2009 deadline.
3. This firm, JBA, was shortlisted among 4 others, comprising a total of 5 teams shortlisted to make presentations for the Project. The presentation was made on July 18, 2009 at Defendant's Conway Office.
4. After the first presentations, out of the five Firms, two Firms were shortlisted. JBA was one of the two Firms.
5. The second presentation occurred on, July 28, 2009 in Kingstree, S.C.
6. Steven Strickland and Grace Brock presented for The Earthworks Group and The JBA team made its presentation.
7. Eventually, The Earthworks Group was chosen for the Project.
8. Plaintiff is a Registered Architect in South Carolina and several other States and is a General Contractor in South Carolina.
9. Plaintiff first interviewed for Project Management (P. M.) position, November 17, 2009. At that time he was told that they wanted him on board by December 1, 2009. Plaintiff accepted and made himself available by that date, as he promised them that he would.
10. The Position was subsequently advertised and Plaintiff applied for the Position, before the February 8, 2010 deadline.
11. Plaintiff received the notice to hire around February 24, 2010.
12. Plaintiff first signed the contract for P. M. position, March 31, 2010, then was left waiting.
13. On April 30, 2010, Plaintiff entered into a contract with Waccamaw Economic Opportunity Council, Inc. (WEOC) to provide Project Management Services for the Design and Construction of a Facility to be located in the Choppee Community of Georgetown County, South Carolina (Choppee Head Start Center).

14. Plaintiff was under exclusive contract with defendant, as P.M. for the period from April 30, 2010, up to the termination of the contract by Defendant, on February 7, 2011.
15. Plaintiff repeatedly tried to advise defendant regarding proper procedure pertaining to all phases of the project as well as initiated and presented the Programming Documentation for the Project and attended several meetings pertaining thereto.
16. Defendant has proceeded with the Project but has excluded Plaintiff from participation there with; including Pre-Construction and Construction.
17. Defendant commenced construction on the Facility sometime after December 1, 2010.
18. The Government terminated construction within 90 days after commencement thereof.
19. Defendant procurement guidelines are Defendant's responsibility, not Plaintiff's.
20. Defendant is also indebted to plaintiff for some additional services performed with reference to the contract at issue, for the minimal amount of \$2, 774.75.

II. FACTS IN CONTROVERSY:

Given that Plaintiff has addressed all of Defendant's allegations and that Defendant has not been able to provide any substantive rebuttal there-to, nor to plaintiff's claims, there are no controversial matters in this case. Defendant is wasting time by attempting to muddy the issue.

III. LEGAL ISSUES INVOLVED:

1. All evidence, to date presented, substantiates Plaintiff's Breach of Contract Claim.
2. Defendant had an implied duty to cooperate with Plaintiff towards contract performance.

It is however, an implied provision of every contract, whether it be one between individuals or individuals and the Government, that neither party to the contract will do anything to prevent performance thereof by the other party or the will hinder or delay him in his performance.

George A. Fuller Co. v. United States, 69 F. Supp., 409 (Ct. Cl. 1947)

Borough of Ridley, 506 A 2nd 862 (Pa. 1986)

3. Defendant should not have hindered Plaintiff in the performance of the contract.
The owner can breach its duty to cooperate either by taking action that has the effect of hindering or delaying the contract or by failing to act when action by the owner is necessary to avoid hindrance or delay.

CEMS v. United States, 59 Fed Cl. 168 (2003)

IV. EXHIBITS:

1. Exhibit A of Motion for Summary Judgment, previously submitted;

V. WITNESSES

Ulysses Dewitt 8358 Highway 90 Longs, S. C. 29568	David Eagleton P.O. Box 1134 Conway, S.C. 29528	James Frasier 725 Bucksport Road Conway, S.C. 29528
Sandra Faison Gowans 2000 Fifth Avenue Conway, S.C. 29526	Kennedy Johnson 8225 Browns Ferry Rd. Georgetown, S.C. 29440	Lillie Jean Johnson 906 N. Merriman Rd. Georgetown, S.C. 29440
James M. Smith 4164 Hunting Bow Trail Myrtle Beach, S.C. 29579	Richard Smith P.O. Box 418 Georgetown, S.C. 29440	Robert Cooper 37 Nate Drive Georgetown, S.C. 29440
Norman McGill 699 Eastlong Ave. Kingstree, S. C. 29556	Zacharias Grate 163 Annie Village Rd. Georgetown, S.C. 29440	Andy D. McKnight, Sr. 316 McCullough Loop Kingstree, S.C. 29556
Dr. Isabella McKnight 232 Baxley Road Hemingway, S.C. 29554	Vivian Miller 8130 Hickman Drive Conway, S.C. 29527	Ruby Rogers 9180 Hwy 707 Myrtle Beach, S.C. 29588
John W. Battiste P.O. Box 766 Kingstree, S.C. 29556	Elizabeth Fryar 1496 Brook Green Drive Myrtle Beach, S.C. 29577	Susan Sejda 2800 Ivy Glen Drive Conway, S.C. 29526
Whilamina Whitfield Waccamaw E. O. C. Inc. 1261 Highway 501, E Conway, S. C. 29526	Steven Strickland The Earthworks Group, Inc. 11655 Highway 707 Murrells Inlet, S.C. 29576	Ralph J. Wilson, Sr. 1411 First Avenue Conway, S. C. 29528
Willie Sparkman 1165 Indigo Avenue Apt 19 Georgetown, S.C. 29440	Eddie Woods, Jr. 10668 Hwy 521 Greeleyville, S.C. 29056	Wade Sessions Hwy 905 Conway, S.C. 29526
Dan Stacey	Lynda Davis Abdulla Mustafa P. Gregory	

VI. UNUSUAL PROBLEMS RELATING TO EVIDENCE TO BE INTRODUCED:

Defendant is refusing to release invoices and payment distribution information for Board Members or specifically for Zacharias Grate and for the Sasser Law firm and for Ralph Wilson, Sr.

Maybe they have not paid any invoice; or maybe they have paid all invoices, except those submitted by Plaintiff... There is a problem in determining what the situation is here, without having access to the requested information. Also, it is not known if it is such an

unusual situation or problem within the South Carolina Bar Association but for sure, Ralph Wilson, Sr., has shown himself to be Liar and at best, his authenticity is highly suspect.

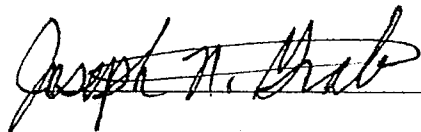
**UNUSUAL QUESTIONS OR MATTER WHICH SHOULD BE
BROUGHT TO THE ATTENTION OF THE COURT:**

Plaintiff has been involved with / entangled with Defendant on the matter of the subject project for more than two years and Defendant has had Plaintiff on lockdown / locked into a contract issue for more than a year, with virtually no infusion of funds; consequently, that has had a devastating and severe effect on his financial situation and has negatively impacted virtually every aspect of his life. He is in need an expeditious resolution of this matter in order to relieve this devastating financial chokehold situation. Additionally, Defendant will most assuredly be sued by Contractor(s) regarding the Choppee Head Start Center, stemming from Defendant's lack of due diligence and prematurely signing a construction contract. Given that Plaintiff tried to prevent Defendant from getting onto the slippery slope on which it will soon to find itself, any further delay in the matter at issue would amount to nothing less than further punishment for his well intended effort.

**VIII. A STATEMENT THAT SETTLEMENT NEGOTIATIONS
WERE ATTEMPTED BEFORE THE DATE OF THE PRERTRIAL
AND THE STATUS OF THE NEGOTIATIONS:**

A settlement negotiation offer was presented to Defendant prior to the pretrial date. Defendant has refused to accept the offer.

June 8, 2011



Joseph N. Grate, Pro Se
P.O. Box 1294
Pawley's Island, S.C. 29585
(843) 742-0696

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF HORRY	)	Civil Action No.: 2010-CP-26-11754
	)	
Joseph N. Grate,	)	
	)	
Plaintiff,	)	
	)	<u>DEFENDANT'S ANSWERS TO PLAINTIFF'S</u>
vs.	)	<u>FIRST SET OF INTERROGATORIES</u>
	)	<u>TO DEFENDANT</u>
Waccamaw EOC, Inc.	)	
	)	
Defendant.	)	
_____	)	

TO: PLAINTIFF, JOSEPH N. GRATE

The Defendant, Waccamaw EOC, Inc., by and through the undersigned attorney, responds to Plaintiff's First Set Of Interrogatories To Defendant as follows and specifically reserves the right to supplement these responses at a later date.

OBJECTIONS

- Defendant objects to responding to Interrogatories that seek information not reasonably calculated to lead to the discovery of admissible evidence or to the production of relevant information as required by the South Carolina Rules of Civil Procedure.
- Defendant objects to responding to Interrogatories that are overly broad, unduly burdensome, cumulative or duplicative under the South Carolina Rules of Civil Procedure.
- Defendant objects to responding to Interrogatories that exceed the scope and limit of discovery set forth in the South Carolina Rules of Civil Procedure.
- Defendant objects to responding to Interrogatories to the extent the request seeks documents or other tangible things prepared in anticipation of litigation or trial by Defendant or its counsel.
- Defendant objects to responding to Interrogatories to the extent the request seeks information covered by the attorney-client privilege and any and all other privileges provided by South Carolina law.
- Defendant objects to responding to Interrogatories to the extent the request seeks disclosure of mental impressions, conclusion, opinions and legal theories of counsel for

Defendant or other representatives of Defendant concerning this litigation.

INTERROGATORIES

1. List the names and addresses of all persons who served as Board Members from November 2009 to the present date and indicate the assigned position of each.

Response:

- Please refer to the attached document listing the 2009 Board of Directors, their assigned position and contact information.
- John W. Battiste, 2nd Vice Chair; P.O. Box 766, Kingstree, SC 29556
- Robert Cooper; 37 Nate Drive, Georgetown, SC 29440
- David Eagleton, 1st Vice Chair; P.O. Box 1134, Conway, SC 29528
- Zacharius Grate, Board Chairman; 163 Annie Village Rd., Georgetown, SC 29440
- Jerry Harper, Member At Large; 91 Black Duck Rd., Pawleys Island, SC 29585
- Kennedy Johnson, Treasurer; 8225 Browns Ferry Rd., Georgetown, SC 29440.
- Dr. Isabella McKnight, Secretary; 232 Baxley Rd., Hemingway, SC 29554
- Tommy Mitchum; 811 Gee Street, Kingstree, SC 29556
- James Scott; 133 Bluefordtown Rd., Nesmith, SC 29580
- Susan Seida; 2800 Ivy Glen Drive, Conway, SC 29526
- Wade Sessions, Member At Large; 2907 Hwy 905, Conway, SC 29526
- Willie Sparkman; 1165 Indigo Ave., Apt. 19, Georgetown, SC 29440
- Eddie Woods, Jr.; 10668 Hwy 521, Greeleyville, SC 29056
- Defendant reserves the right, pursuant to the South Carolina Rules of Civil Procedure, to supplement his responses.

2. Provide contact information for former Executive Director.

Response:

- Elizabeth Fryar; 1496 Brooke Green Drive, Myrtle Beach, SC 29577.
- Please take notice Ms. Fryar is currently represented by Henrietta Golding, Esquire, of McNair Law Firm; 2411 Oak Street, Suite 201, P.O. Box 336, Myrtle Beach, SC 29578; (843) 444-1107

3. Provide name and contact information for individual responsible for the preparation of response to Pre Design and Pre Construction Submittals, by or for WEOC.

Response:

- Executive Director and the Board of Directors of the WEOC; 1261 Hwy 501 East, Suite B, P.O. Box 1467, Conway, SC 29528; (843) 234-4100
- Defendant reserves the right, pursuant to the South Carolina Rules of Civil Procedure, to supplement his responses.

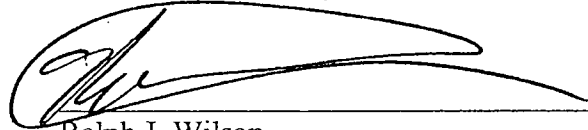
4. Provide identity and contact information for WEOC Procurement Personnel(s) for the

period May 2009 to the present date.

Response:

- **Former Executive Director, Elizabeth Fryar, 2009-2010; 1496 Brooke Green Drive, Myrtle Beach, SC 29577. Please take notice Ms. Fryar is currently represented by Henrietta Golding, Esquire, of McNair Law Firm; 2411 Oak Street, Suite 201, P.O. Box 336, Myrtle Beach, SC 29578; (843) 444-1107**
- **Acting Executive Director, Wilhelmina Whitfield; 1261 Hwy 501 East, Suite B, P.O. Box 1467, Conway, SC 29528; (843) 234-4100**
- **Defendant reserves the right, pursuant to the South Carolina Rules of Civil Procedure, to supplement his responses.**

RALPH J. WILSON, ATTORNEY AT LAW, P.A.



Ralph J. Wilson
1411 First Avenue
Post Office Box 1827
Conway, South Carolina 29528
Telephone: (843) 381-0675
Fax: (843) 381-0767
Attorney for Defendant

January 28, 2011
Conway, South Carolina

State of South Carolina
County of Horry

In the Court of Common Pleas
for the 15th Judicial Circuit
Case Number :2010-CP-26-11754

Joseph N. Grate, Plaintiff

v.

Waccamaw EOC, Inc., Defendant

ANSWER TO COUNTERCLAIMS

HORRY COUNTY
11 FEB 11 AM 10:10
MELANIE HUGGINS-WARD
CLERK OF COURT

Plaintiff, for his answer to Defendant's counterclaims, alleges:

I

Plaintiff denies each and every allegation in Defendants counterclaim and puts Defendant to strict proof thereof.

II

As for Defendant's counterclaims at item 22, 23, 24,25,26,30,31,32,33 & 36, Plaintiff submits that the contract at issue is totally valid and legal, in every respect under South Carolina Law.

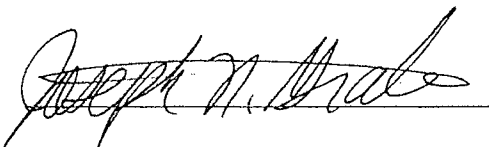
III

As for Defendant's counterclaim at item 37, Plaintiff contends that any damage suffered by Defendant, was self inflicted and in no way attributable to Plaintiff. Alternately, Plaintiff submits that he steadfastly and unceasingly sought to protect Defendant from getting into any situation that would be harmful or damaging; as well as provided assistance to alleviate some harmful self created damaging situations.

WHEREFORE, Plaintiff prays for judgment against Defendant as follows:

1. All amounts as specified in the complaint;
2. Punitive damages.

February 7, 2011



Joseph N. Grate, Pro Se
P.O. Box 1294
Pawley's Island, S.C. 29585
(843) 742-0696

In the Court of Common Pleas
for the 15th Judicial Circuit
Case Number 2010-CP-26-11754

**NOTICE OF MOTION AND
MOTION SEEKING ORDER
TO COMPEL DISCOVERY**

v.

Waccamaw EOC, Inc., Defendant

TO: Waccamaw E.O.C., INC.

PLEASE TAKE NOTICE the undersigned will bring a motion to compel discovery per rules 33 and 34, before this Court, ten days from this date or as soon thereafter as this matter can be heard.

2011 FEB 14 AM 11:00
 MELANIE HUGGINS-WARD
 CLERK OF COURT

February 14, 2011

Joseph A. Gal

Joseph N. Grate, Pro Se
P.O. Box 1294
Pawley's Island, S.C. 29585
(843) 742-0696

State of South Carolina
County of Horry

) In the Court of Common Pleas
) for the 15th Judicial Circuit
) **Case Number: 2010-CP-26-11754**
)

Joseph N. Grate, Plaintiff

v.

) **AFFIDAVIT OF**
) **JOSEPH N. GRATE**
) **IN SUPPORT**
) **MOTION TO COMPEL DISCOVERY**
)

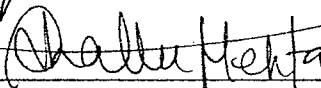
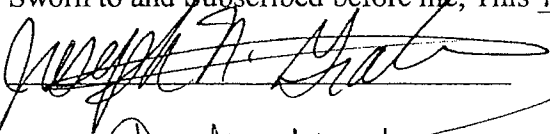
Waccamaw EOC, Inc., Defendant

Joseph N. Grate, being duly sworn, deposes and states:

That your affiant is the Plaintiff in the above-captioned matter; that on December 31, 2010, Defendant was served, via Certified Mail, with a copy of request for production of documents and a first set of interrogatories, concerning matters germane to this case; that the Certified Mail was received by Defendant on January 3, 2011; that Defendant did not respond to the discovery request therefore, a follow-up letter was served on February 7, 2011 and received on February 8, 2011; that Defendant responded by submitting the attached: **Notice of Termination of Contract**; that, Where-as that document is very beneficial towards the successful resolution of plaintiff's case, it does not satisfy the discovery request, per the Rules; that your affiant believes that the discovery requests are in accordance with the Rules and his request should be granted.

FURTHER YOUR AFFIANT SAYETH NAUGHT

Sworn to and Subscribed before me, This 14 day of February 2011.

 - Oct 9, 2019

Notary Public for South Carolina
My Commission expires:

HORRY COUNTY
2011 FEB 14 AM 11:08
MELANIE HUGGINS-WARD
CLERK OF COURT

State of South Carolina
County of Horry

) In the Court of Common Pleas
) for the 15th Judicial Circuit
) Case Number : 2010-CP-26-11754
)

Joseph N. Grate, Plaintiff

) **SECOND REQUEST FOR**
) **PRODUCTION OF DOCUMENTS**
)

v.

Waccamaw EOC, Inc., Defendant

)
)
)
)
)

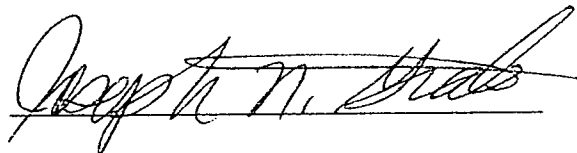
TO: Defendant herein,

PLEASE TAKE NOTICE that Plaintiff demands, pursuant to Rule 34 of the South Carolina Rules of Civil Procedure, that Defendant provide, within the time indicated under said rule or such time as the court shall order after service hereof, the following

2011 APR 15 AM 9:03
MELANIE HUGHES-WARD
CLERK OF COURT

1. Provide a copy of Audio Recording of all meetings that were held at WEOC Office on March 2nd, 4th and 15th, 2010.
2. Provide a copy of all Mileage Invoices from WEOC's Board Chairman for the period between June 2009 and March 2011.
3. For the period from June 2009 to March 2011, provide a copy of all Invoices to and all disbursement from WEOC's, for Legal Services; specifically but not limited to: Ralph Wilson; The Sasser Law Firm.

April 13, 2011



Joseph N. Grate, Pro Se
P.O. Box 1294
Pawley's Island, S.C. 29585
(843) 742-0696

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)
)
Civil Action No.: 2010-CP-26-11754

Joseph N. Grate,

Plaintiff,

vs.

Waccamaw EOC, Inc.

Defendant.

**NOTICE OF MOTION AND MOTION TO
COMPEL DISCOVERY RESPONSES**

FILED
11 AUG 29 AM 10:13
CLERK OF COURT

TO: JOSEPH N. GRATE, PRO SE PLAINTIFF

PLEASE TAKE NOTICE that Defendant, by and through the undersigned counsel, will move before the Presiding Judge of the Fifteenth Judicial Circuit at the Horry County Government and Justice Center in Conway, South Carolina, on the tenth (10th) day after service hereof or as soon thereafter as the parties might be heard for an Order requiring Plaintiff to appear for his deposition. Plaintiff was properly served with a subpoena commanding his appearance for the taking of his deposition scheduled on August 17, 2011. Plaintiff was given proper notice of the taking of his deposition and he failed to appear on August 17, 2011 without adequate excuse.

Pursuant to Rule 37(d), if a party fails to appear before the officer who is to take his deposition, after being served with proper notice, the court in which the action is pending on motion may make such orders in regard to the failure as are just, and among others it may take any action authorized under paragraphs (A), (B), and (C) of Rule 37 SCRPC. In lieu of any order or in addition thereto, the court shall require the party failing to act to pay the reasonable

expenses, including attorney's fees, caused by the failure, unless the court finds that the failure was substantially justified or that other circumstances make an award of expenses unjust. Rule 37(d) SCRPC.

On July 1, 2011, Defendant sent Plaintiff a letter requesting dates of availability for Plaintiff's deposition.(Exhibit A). Plaintiff replied by a letter dated July 6, 2011 stating he was available to meet at a FedEx Office or at Chapin Memorial Library on December 16, 2011 at 2:00 p.m.(Exhibit B). Pursuant to the Mandatory Scheduling Order, all discovery in this action is to be completed by December 15, 2011 and depositions are to be completed by August 17, 2011. Thus, Defendant responded to Plaintiff by way of a letter dated July 19, 2011. (Exhibit C). In this letter, Defendant provided dates of availability to take Plaintiff's deposition. Additionally, Defendant informed Plaintiff the locations Plaintiff provided may not be suitable for a deposition as the locations may not have private rooms with the necessary equipment required for a court reporter to facilitate the deposition and Defendant did not want third parties exposed to privileged information.

Since Defendant did not receive a timely response from Plaintiff, on July 27, 2011, Defendant sent a subpoena by certified mail, return receipt, restricted delivery to Plaintiff commanding his attendance at his deposition scheduled on August 17, 2011 in order to comply with the Mandatory Scheduling Order. (Exhibit D). Plaintiff signed for the subpoena on August 2, 2011, giving him fifteen (15) days notice of the deposition in compliance with the South Carolina Rules of Civil Procedure. (Exhibit E). Additionally, on August 3, 2011, Defendant sent Plaintiff a letter along with a Notice of Taking Deposition and scheduled a court reporter. (Exhibit F). Thereafter, Defendant received a letter from Plaintiff dated August 8, 2011 stating he

is available to meet for his deposition at a FedEx Office or at Chapin Memorial Library on August 16, 2011 at 2:00 p.m.(Exhibit G). However, commanding Plaintiff to attend his deposition at the law office of Defendant's attorney is reasonable as it is in the county which Plaintiff resides and the county in which Plaintiff filed the pending civil action. Moreover, if Defendant agreed to change the date, time and location of the deposition, Plaintiff would not have had ten (10) days notice and may not be required to appear.

Plaintiff further alleged in his letter dated August 8, 2011, Defendant's attorney intent is to drag this matter out as far beyond two years as possible. However, Defendant is trying expedite this matter in accordance with the Mandatory Scheduling Order. Plaintiff also made many defamatory remarks in the letter as to Defendant and Defendant's attorney. In violation of the SCRCF, Plaintiff sent a copy of this letter directly to Defendant. Defendant replied to this letter by a letter dated August 11, 2011. (Exhibit H). Defendant reminded Plaintiff he was under a subpoena to appear for his deposition and advised Plaintiff if he failed to appear without adequate excuse, Defendant would request the Court to issue a sanction for contempt. Additionally, Defendant advised Plaintiff he was prohibited to have direct contact with Defendant since Defendant is represented by counsel. Following this letter, Plaintiff sent a letter dated August 12, 2011 to Defendant, in which Defendant received on August 16, 2011. (Exhibit I). Plaintiff stated he would not be at our office for the deposition as we commanded because he is not obligated and to seek whatever we wanted from the Court. Moreover, Plaintiff stated Defendant is a public entity and he will address that entity whenever he desires.

On August 17, 2011, Defendant proceeded with the deposition scheduled at 10:00 a.m. Defendant did not begin the deposition until approximately 10:20 a.m. in case Plaintiff decided

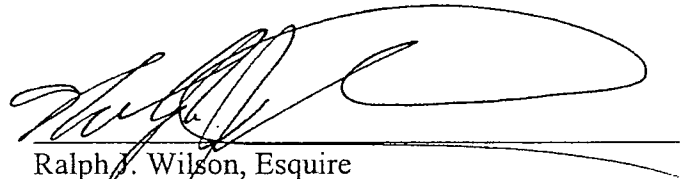
to attend. However, Plaintiff did not attend his scheduled deposition.

WHEREFORE, the Defendant requests this Court to sanction Plaintiff for his intentional failure to comply with a subpoena to appear for his deposition, to order Plaintiff to attend his deposition, to pay the expenses associated with the deposition on August 17, 2011, including but not limited to, the Court Reporter fees and Defendant's attorney's fees, and reimbursement of Defendant's attorney fees and costs necessitated by the filing of this Motion, and for all just and further relief that this Court deems appropriate.

Respectfully submitted,

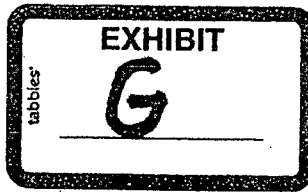
RALPH J. WILSON, ATTORNEY AT LAW, P.A.

By:



Ralph J. Wilson, Esquire
1411 First Avenue
Post Office Box 1827
Conway, SC 29528
Phone: (843) 381-0765
Fax: (843) 381-0767
Attorney for Defendant

August 18, 2011
Conway, South Carolina



Ralph J. Wilson, Sr.
1411 First Avenue
Conway, South Carolina, 29528

August 8, 2011

RE: Deposition; Joseph N. Grate v. Waccamaw EOC, Inc; Case Number 2010-CP-26-11754

ATTN: Ralph J. Wilson,

You have taken advantage of WEOC because prior to this letter, they were not sufficiently astute to question you about this situation and surely you would not properly inform them; knowing you, under the guise that you were not asked.

It has long since been obvious that your intent was to drag this matter out as far beyond two years as possible. You punctuated the obvious when you told the Judge that you have until December to take depositions and that you will probably have to conduct follow up depositions. Your angle was perfectly clear to me. Of course, the longer this goes on, the better for your bank account. Purely from the perspective of GREED, in a money grabbing system, your position is on point but from an ethical perspective, your client deserves to know what the real situation is.

I will not reiterate any aspect of the case, as it is thus far presented because it speaks for itself but I will touch upon the associated matter of damages. They, WEOC, should be appraised of the fact that damages are ongoing and accumulating on a daily bases and has thus far amounted to a substantial amount and like your billing, is steadily growing. Now, at this point, if they have sufficient information to at least question you about this, it would then be upon you to ask a lawyer about this so that you can inform them / confirm to them the accuracy of my statements herein. (I call your attention to your previously repeated and emphatic statements that you asked some lawyers about the CFR situation pertaining to your client's processes; so, here is an opportunity, indeed some advice, for you to ask some other lawyers for their needed advice). Indeed, W.E.O.C., Inc. would be well advised to do likewise because you surely do not represent them; instead, your only concern is about your bottom line and to that end, you would drag it out for ten years, if you could. Succinctly put, you are a crook and I have so advised the South Carolina Bar Association! You were brought into this situation by a couple of other crooks and this was a perfect setting for you. If W.E.O.C., Inc. were wise, it would send you to join them.

As I told the Judge at our hearing: you are a liar. At that time you laid out an entirely different timeline concerning discovery pertaining to this case. Either you lied then, you are lying now, or both. Let me also remind you that this case was filed over seven month ago. All of that notwithstanding, I can meet with you at FedEx Office, 1170 Seaboard Street or at Chapin Memorial Library, 400 14th Avenue North, at 2: P.M. on August 16, 2011.

Here, I reiterate: "All are located at Myrtle Beach and have space suitable for the purpose. I consider this sufficient notice of the space's suitability for the purpose"; however, you are responsible to inform yourself of its suitability. My function / status / purpose is not that of a babysitter or a hand holder.

Finally, I know you do not care about a third party being exposed to any of my private / privileged information; truly that is not an issue so forget the smoke screen. In the end, you will know and I already know any transcript resulting from the deposition will never see the light of day, simply because you will not permit it; just as you have blocked the invoices from coming to the light. Well, at least you will try. The bottom line is: you truly do not want to depose me...

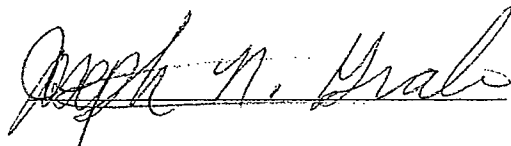
So / but, anyway you want to bring it, come on; I will be waiting for you. In the meantime, if I can further assist you, please advise.

WEOC, you need help with the Choppee debacles and you need help with WEOC, in general. Right now, both are on lockdown and there is where they will remain until you receive the necessary help. The sooner you seek this help, the better. You will have to have it, in order to go forward.

The needed assistance is readily available. I can provide you with the assistance you so desperately need. My offer of will expire on August 22, 2011. If I do not hear from you by that date, any other correspondence with you / regarding or concerning you, will be via Public Notice / Open Letter.

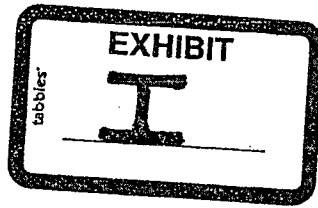
I hereby request that you forward a copy hereof to your Board of Directors.

Sincerely



Joseph N. Grate
P.O. Box 1294
Pawley's Island, S.C. 29585
(843) 742-0696

cc: James L. Pasley, Jr., Executive Director of WEOC, Inc.
cf: / ct: W.E.O.C., Inc. Board, via your Executive Director.



Ralph J. Wilson, Sr.
1411 First Avenue
Conway, South Carolina, 29528

August 12, 2011

RE: Deposition; Joseph N. Grate v. Waccamaw EOC, Inc; Case Number 2010-CP-26-11754

ATTN: Ralph J. Wilson,

I am informed that you are in receipt of my letter regarding this matter. Please be advised that I can only write it to you. I will not read it to you, now. **I hereby, once again, reiterate the contents of my past letters, regarding this matter.** I will make it very plain to you: **I will not be at your office**, as you have commanded because among other reasons, I am not so obligated. You have my blessing to seek whatever you want, from the court.

Regarding your client, a public entity, I a private citizen, will address that entity however and whenever I desire, as is my legal right. To that end, I am planning to address that entity in the public forum; probably, vicariously / by proxy because the public needs to know what questions to ask, at future board meetings. You might or might not want to be there, I don't know; your choice. However, your client should demand your presence and **your participation.**

Had I not allowed you to dissuade me from such in the past, perhaps we would not be entangled as we are; for sure WEOC would not be all screwed up with the Choppee situation, as they are. Unlike in the past, one thing you no longer have to be concerned about: Louise Cooper is no longer involved. That was a weak position, anyway.

So, anyway you want to bring it, come on; I will be waiting for you. In the meantime, if I can further assist you, please advise.

I request distribution hereof to your Board of Directors.

Sincerely,

Joseph N. Grate
P.O. Box 1294
Pawley's Island, S.C. 29585
(843) 742-0696

cc: James L. Pasley, Jr., Executive Director of WEOC, Inc.
cf: / ct: W.E.O.C., Inc. Board, via your Executive Director.

State of South Carolina
County of Horry

In the Court of Common Pleas
for the 15th Judicial Circuit
Case Number: 2010-CP-26-11754

Joseph N. Grate, Plaintiff

v.

Waccamaw EOC, Inc., Defendant

**AFFIDAVIT OF
JOSEPH N. GRATE
IN OPPOSITION TO DEFENDANT'S
MOTION TO COMPEL DISCOVERY
RESPONSE**

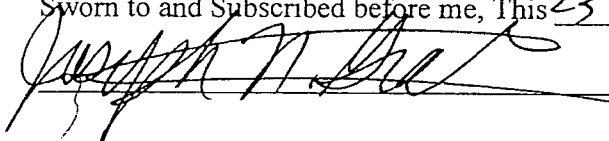
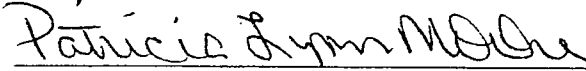
Joseph N. Grate, Plaintiff in the above-captioned matter, being duly sworn, deposes and states the following:

1. Defendant's position is totally devoid of legal standing.
2. Defendant is either of a diminished legal capacity or is deliberately attempting to hijack this Court and to squander the Court's time.
3. Plaintiff submits that there are no bases for the awards being sought by Defendant.

RECEIVED
16 SEP 23 AM 10:02
CLERK OF COURT
WARD

FURTHER, YOUR AFFIANT SAYETH NAUGHT.

Sworn to and Subscribed before me, This 23 day of SEPT 2011.

Notary Public for South Carolina

My Commission expires: 11-18-13

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF HORRY	)	Civil Action No.: 2010-CP-26-11754
	)	
Joseph N. Grate,	)	
	)	
Plaintiff,	)	
	)	DEFENDANT'S SUPPLEMENTAL RESPONSE
vs.	)	TO PLAINTIFF'S FIRST REQUEST FOR
	)	PRODUCTION OF DOCUMENTS TO DEFENDANT
Waccamaw EOC, Inc.	)	
	)	
Defendant.	)	
_____	)	

TO: PLAINTIFF, JOSEPH N. GRATE

The Defendant, Waccamaw EOC, Inc., by and through the undersigned attorney, supplements its' responses to Plaintiff's First Request For Production Of Documents To Defendant as follows and specifically reserves his right to supplement these responses at a later date.

OBJECTIONS

- Defendant objects to responding to Requests for Production of Documents that seek information not reasonably calculated to lead to the discovery of admissible evidence or to the production of relevant information as required by the South Carolina Rules of Civil Procedure.
- Defendant objects to responding to Requests for Production of Documents that are overly broad, unduly burdensome, cumulative or duplicative under the South Carolina Rules of Civil Procedure.
- Defendant objects to responding to Requests for Production of Documents that exceed the scope and limit of discovery set forth in the South Carolina Rules of Civil Procedure.
- Defendant objects to responding to Requests for Production of Documents to the extent the request seeks documents or other tangible things prepared in anticipation of litigation or trial by Defendant or its counsel.
- Defendant objects to responding to Requests for Production of Documents to the extent

the request seeks information covered by the attorney-client privilege and any and all other privileges provided by South Carolina law.

- Defendant objects to responding to Requests for Production of Documents to the extent the request seeks disclosure of mental impressions, conclusion, opinions and legal theories of counsel for Defendant or other representatives of Defendant concerning this litigation.

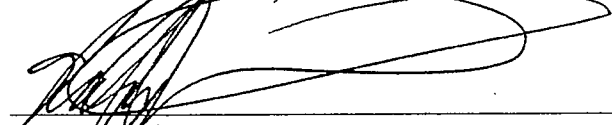
REQUESTS FOR PRODUCTION OF DOCUMENTS

9. Provide a copy of all contracts associated with the Choppee Head Start Facility.

Response:

- Enclosed please find a copy of the Contract For Services between WEOC, Inc. and Joseph N. Grate along with a check copy of check number 89746 in the amount of Ten Thousand (\$10,000.00) Dollars, purchase order number 33839, Hachi No Su, Inc. Invoice Number 01, the W-9 for Joseph N. Grate and the 30 Day Notice of Termination of Contract Letter.

RALPH J. WILSON, ATTORNEY AT LAW, P.A.



Ralph J. Wilson
1411 First Avenue
Post Office Box 1827
Conway, South Carolina 29528
Telephone: (843) 381-0675
Fax: (843) 381-0767
Attorney for Defendant

January 3, 2012
Conway, South Carolina

In the Court of Common Pleas
for the 15th Judicial Circuit

State of South Carolina, County of Horry

BRIEF of PLAINTIFF

Case Number: 2010-CP-26-11754

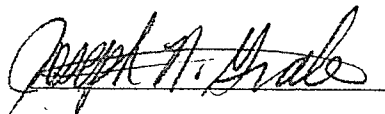
Joseph N. Grate, Plaintiff

v.

Waccamaw EOC, Inc., Defendant

Council for Defendant:
Ralph J. Wilson, Sr., Esq.
1411 First Avenue
Conway, South Carolina, 29528

January 9, 2012



Joseph N. Grate, Pro Se
P.O. Box 1294
Pawley's Island, S.C. 29585
(843) 742-0696

I. FACTS OF THE CASE:

1. Defendant advertised in the June 15, 2009 issue of the South Carolina Business Opportunity publication for Statements of Qualifications from Qualified Architectural firms Re: the Choppee Head Start Center.
2. The Firm John Bowman Architects (JBA), of which Plaintiff here-in was a team member, submitted its credentials before the June 25, 2009 deadline.
3. This firm, JBA, was shortlisted among 4 others, comprising a total of 5 teams shortlisted to make presentations for the Project. The presentation was made on July 18, 2009 at Defendant's Conway Office.
4. After the first presentations, out of the five Firms, two Firms were shortlisted. JBA was one of the two Firms.
5. The second presentation occurred on, July 28, 2009 in Kingstree, S.C.
6. Steven Strickland and Grace Brock presented for The Earthworks Group and The JBA team made its presentation.
7. Eventually, The Earthworks Group was chosen for the Project.
8. Plaintiff is a Registered Architect in South Carolina and several other States and is a General Contractor in South Carolina.
9. Plaintiff first interviewed for Project Management (P. M.) position, November 17, 2009. At that time he was told that they wanted him on board by December 1, 2009. Plaintiff accepted and made himself available by that date, as he promised them that he would.
10. The Position was subsequently advertised and Plaintiff applied for the Position, before the February 8, 2010 deadline.
11. Plaintiff received the notice to hire around February 24, 2010.
12. Plaintiff first signed the contract for P. M. position, March 31, 2010, and then was left waiting.
13. On April 30, 2010, Plaintiff entered into a contract with Waccamaw Economic Opportunity Council, Inc. (WEOC) to provide Project Management Services for the Design and Construction of a Facility to be located in the Choppee Community of Georgetown County, South Carolina (Choppee Head Start Center).

14. Plaintiff was under exclusive contract with defendant, as P.M. for the period from April 30, 2010, up to the termination of the contract by Defendant, on February 7, 2011.
15. Plaintiff repeatedly tried to advise defendant regarding proper procedure pertaining to all phases of the project as well as initiated and presented the Programming Documentation for the Project and attended several meetings pertaining thereto.
16. Defendant has proceeded with the Project but has excluded Plaintiff from participation there with; including Pre-Construction and Construction.
17. Defendant commenced construction on the Facility sometime after December 1, 2010.
18. The Government terminated construction within 90 days after commencement there-of.
19. Defendant procurement guidelines are Defendant's responsibility, not Plaintiff's.
20. Defendant is also indebted to plaintiff for some additional services performed with reference to the contract at issue, for the minimal amount of \$2, 774.75.

II. FACTS IN CONTROVERSY:

Given that Plaintiff has addressed all of Defendant's allegations and that Defendant has not been able to provide any substantive rebuttal there-to, nor to plaintiff's claims, there are no controversial matters in this case. Defendant is wasting time by attempting to muddy the issue.

III. LEGAL ISSUES INVOLVED:

1. All evidence, to date presented, substantiates Plaintiff's Breach of Contract Claim.
2. Defendant had an implied duty to cooperate with Plaintiff towards contract performance.

It is however, an implied provision of every contract, whether it be one between individuals or individuals and the Government, that neither party to the contract will do anything to prevent performance there-of by the other party or the will hinder or delay him in his performance.

George A. Fuller Co. v. United States, 69 F. Supp., 409 (Ct. Cl. 1947)

Borough of Ridley, 506 A 2nd 862 (Pa. 1986)

3. Defendant should not have hindered Plaintiff in the performance of the contract.
The owner can breach its duty to cooperate either by taking action that has the effect of hindering or delaying the contract or by failing to act when action buy the owner is necessary to avoid hindrance or delay.

CEMS v. United States, 59 Fed Cl. 168 (2003)

IV. EXHIBITS:

Exhibit A of Motion for Summary Judgment, previously submitted;

V. UNUSUAL PROBLEMS RELATING TO EVIDENCE TO BE INTRODUCED:

Defendant is refusing to release invoices and payment distribution information for Board Members or specifically for Zacharias Grate and for the Sasser Law firm and for Ralph Wilson, Sr.

Maybe they have not paid any invoice; or maybe they have paid all invoices, except those submitted by Plaintiff... There is a problem in determining what the situation is here, without having access to the requested information. Also, it is not known if it is such an unusual situation or problem within the South Carolina Bar Association but for sure, Ralph Wilson, Sr., has shown himself to be Liar and at best, his authenticity is highly suspect.

VI. UNUSUAL QUESTIONS OR MATTER WHICH SHOULD BE BROUGHT TO THE ATTENTION OF THE COURT:

Plaintiff has been involved with / entangled with Defendant on the matter of the subject project for more than two years and Defendant has had Plaintiff on lockdown / locked into a contract issue for more than a year, with virtually no infusion of funds; consequently, that has had a devastating and severe effect on his financial situation and has negatively impacted virtually every aspect of his life. He is in need an expeditious resolution of this matter in order to relieve this devastating financial chokehold situation. Additionally, Defendant will most assuredly be sued by Contractor(s) regarding the Choppee Head Start Center, stemming from Defendant's lack of due diligence and prematurely signing a construction contract. Given that Plaintiff tried to prevent Defendant from getting onto the slippery slope on which it will soon to find itself, any further delay in the matter at issue would amount to nothing less than further punishment for his well intended effort.

Defendant breached the contract.

Plaintiff performed as specified, at Exhibit A of the contract, to the extent allowable under the circumstances.

Defendant did nothing to cooperate with Plaintiff on the contract. Eventually, defendant entered a Contract for the Facility Design and followed by executing another Contract for Construction of the facility.

Facility Design is considered Pre-Construction and is covered in Exhibit A of Plaintiff's contract. Facility design also follows from Pre-Design which also is covered in Plaintiff's contract. Pre-Construction and Construction are incorporated within the first 7 of the 8 steps of the Granting Agency's Facility Design Guidelines. They are also incorporated within the Facility Design Contract and participation therewith was a requirement of Plaintiff's Contract, per Exhibit A. Plaintiff was hindered from participate therewith, thereby he was hindered from performing on the contract.

The provisions of 45 CFR are general in nature whereas Plaintiff's contract is addressed at 48 CFR.

Plaintiff contracted to provide Services in support Design and Construction of the Choppee Head Start Center, per the provisions of Exhibit A of the contract; as drafted by Defendant with the aide of its Attorney, Dan Stacy. Plaintiff, from his initial efforts tried to advise defendant of the particular and critical nature of the tasks associated with the Project. To date, defendant still does not comprehend what is involved nor is there any exhibited understanding of the proper approach.

Due to exhibited complexity of defendant's situation, Plaintiff had requested a Ten Percent (10 %) Fee and the nine percent fee was arrived at during negotiation.

The Contract Fee was fixed, at the inception of the contract, at Nine Percent (9%); and was legal under the applicable law. **(48 CFR 16.306 Cost-plus-fixed-fee contracts)**

The fee is also within the Ten Percent limitation set by law. **(41 USC § 254 (b))**

There were no established reasonably firm performance objectives and schedules but there was a big rush to "do the project" with not the slightest clue as to the reality of what that meant, in terms of approach cost or performance.

Given the circumstances where the level of effort required for its performance was, and still is, unknown, no other form or type of contract was practical. The form or type of contract is therefore legal under the applicable Law. (48 CFR Subpart 16.1—Selecting Contract Types)

The contracted services at issue are applicable under the provisions of 48 CFR 36.101 (b), which takes precedent over all other laws regarding Architectural related services.

VII. A STATEMENT THAT SETTLEMENT NEGOTIATIONS WERE ATTEMPTED BEFORE THE DATE OF THE PRERTRIAL AND THE STATUS OF THE NEGOTIATIONS:

A settlement negotiation offer was presented to Defendant prior to the pretrial date. Defendant has refused to accept the offer.

VIII. FACTS IN CONTROVERSY

The matter of the legality of the contract is the major controversy.

IX. LEGAL ISSUES INVOLVED

Defendant breached the contract then attempted to cure the situation by submitting a letter of termination. To lock the barn after the cow escapes does not seem to be an adequate remedy.

X. EXHIBITS

Exhibit A of Motion for Summary Judgment; E- Mail and Documents associated with Programming for Choppee Head Start Center WEOC Invoices and invoices payment info.

XI. WITNESSES

All W.E.O.C. Board members from November 2009 – February 2011; Janice Wideman; Whilamina Whitfield; Elizabeth Fryar; Lynda Davis; Dan Stacey; Steve Strickland; Ralph J. Wilson, Sr.

XII. UNUSUAL PROBLEMS RELATING TO EVIDENCE TO BE INTRODUCED

There seems to be a cover-up of Invoices for travel and for Legal Services

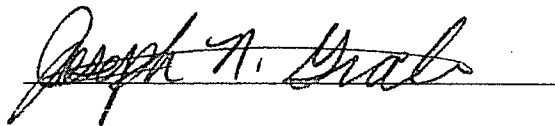
XIII. UNUSUAL QUESTIONS OR MATTER WHICH SHOULD BE BROUGHT TO THE ATTENTION OF THE COURT

Defendant's Attorney is incapable of acting in good faith and is very dishonest.

XIV. A STATEMENT THAT SETTLEMENT NEGOTIATIONS WERE ATTEMPTED BEFORE THE DATE OF THE PRERTRIAL AND THE STATUS OF THE NEGOTIATIONS

A negotiation meeting was pursued prior to pretrial date. To date there has been no advancement beyond plaintiff's initial approach. Also, an impasse was reached very early during mediation.

January 9, 2012



Joseph N. Grate, Pro Se
P.O. Box 1294
Pawley's Island, S.C. 29585
(843) 742-0696

State of South Carolina
County of Horry

Joseph N. Grate, Plaintiff

v.

Waccamaw EOC, Inc., Defendant

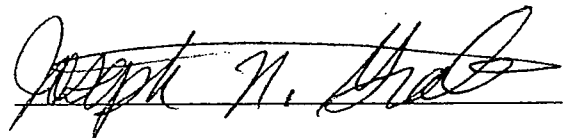
) In the Court of Common Pleas
) for the 15th Judicial Circuit
) Case Number 2010-CP-26-11754
)

) **NOTICE OF MOTION AND**
) **MOTION for SUMMARY JUDGMENT**
)

TO: Waccamaw E.O.C., INC.

PLEASE TAKE NOTICE THAT the undersigned will bring a motion for
Summary Judgment against you; pursuant to South Carolina Circuit Court Rule 56,
before this Court, ten days from this date or as soon thereafter as this matter can be
heard.

April 15, 2011



Joseph N. Grate, Pro Se
P.O. Box 1294
Pawley's Island, S.C. 29585
(843) 742-0696

2011 APR 15 AM 9:02
CLERK OF COURT
MELANIE HUGGINS-WARD
Horry County

State of South Carolina
County of Horry

) In the Court of Common Pleas
) for the 15th Judicial Circuit
) **Case Number: 2010-CP-26-11754**
)

Joseph N. Grate, Plaintiff

) **AFFIDAVIT OF**
) **JOSEPH N. GRATE**
) **IN SUPPORT**

v.

) **MOTION FOR SUMMARY JUDGMENT**
)

Waccamaw EOC, Inc., Defendant

Pursuant to Rule 56 (a), (e), **Joseph N. Grate**, Plaintiff in the above-captioned matter, being duly sworn, deposes and states the following:

1. Plaintiff is a Registered Architect and a General Contractor in South Carolina and Defendant was and is fully aware of that. (Exhibit A, pages 1-43, 104)
2. On April 30, 2010, Plaintiff entered into a contract with Waccamaw Economic Opportunity Council, Inc. (WEOC) to provide Project Management Services for the Design and Construction of a Facility to be located in the Choppee Community of Georgetown County, South Carolina (Choppee Head Start Center). (Exhibit A, pages 87-96)
3. Plaintiff was ^{fully} committed to and available for the performance of the contract. Defendant should have been fully aware of that. (Exhibit A, pages 1-96)
4. Defendant procrastinated for the duration of the contract period without having done anything nor communicated with Plaintiff, towards performance of the contract. (Exhibit A, pages 64-69, 126, 127, 131)
5. After an exorbitant amount of time has passed, Defendant has proceeded with the project but has excluded Plaintiff from participation there with. (Exhibit A, pages 126, 127; 129, 132)

6. Plaintiff was under exclusive contract with defendant, as Project Manager (P.M.) for the period from April 30, 2010, up to the termination of the contract by Defendant, on February 7, 2011. (Exhibit A; Pages 87-89, 132)
7. Upon applying for the P. M. Position, Plaintiff essentially, issued a Warning / Cautionary Note in his application, regarding the Project Status and Approach. He personally hand delivered a report, as promised in his application package, to defendant the day after receiving the letter of decision to hire him for the Position. On the following day, he made an in-person presentation of the report to the W.E.O.C. Board. That report highlighted the many errors Defendant had made and some it was about to make; as well as outlined corrective measures thereto. (Exhibit A, pages 1-43)
8. Initially, the main issue concerning the Facility Development was that Defendant was about to enter into an Illegal Design- Build Contract with a company that was not / is not certified to perform the Architectural Services for the facility nor was the company, which was under consideration at the time, certified to construct the building. As it were and as it turned out, from a field of 25 Entities pursuing the Architectural portion of the project, Defendant chose to award the job to the only entity that was not a Qualified Architectural Firm; contrary to the emphatic recommendations of the Project Manager. The Award was in clear violation of Federal Regulation § 74.44 (b) , (1), (2), (3), (4), (5) and (d), given that the other of the two finalist for the job is a Certified MBE as well as a Certified Architectural Firm. Additionally, the award was in violation of South Carolina laws governing the practice of Architecture and that of acting as a Qualified

General Contractor. Defendant had so chosen prior to Contracting for a Project Manager and no amount of protestation was sufficient to affect Defendant's decision. However, Defendant's decision was largely base upon misrepresentations by the chosen Firm; namely, the owner of the firm had misrepresented himself as being an Architect. (Exhibit A, pages 1-6,10-53)

9. Plaintiff insisted that everything should be done in accordance with South Carolina's Laws and Regulations regarding Procurement for Architectural Services, South Carolina's Laws regarding Architectural Practice and General Contracting, as well as the outlined procedure for the Design of Head Start Facilities. Due to Plaintiff's insistence, he was left out of the loop regarding all of the pertinent activities; except for, per his persistence, a portion of the programming function, input to Drafting of the Contract and the Initial Negotiation for Architectural Services; all of which were Audio Recorded Sessions. (Exhibit A; Pages 17, 69-72)
10. At their request, Plaintiff interfaced with Defendant's attorney on occasions and with Defendant's Board Chairman and Defendant's attorney on occasions, regarding the Project at issue. Therefore, In addition to defaulting on the contract, Defendant is also indebted to plaintiff for some additional services performed with reference to the contract at issue. (Exhibit A; Page 85, 97-100)
11. Plaintiff repeatedly tried to advise defendant regarding proper procedure, in accordance with his position as the Project Manager. Unfortunately, his efforts were to no avail; instead, Defendant has falsely labeled him as having entering into the contract with Unclean Hands and of having defaulted on the contract.

Whereas, at no time did he ever even attempted to secure the P. M. Contract utilizing any but valid credential, how is his hands unclean? At the same time, can Defendant substantiate that it contracted for professional services utilizing only entities licensed by South Carolina, as is required by law? I here by submit that Defendant cannot so certify; for the period covering the last eighteen months, a review of the requested (but not received) invoices and disbursements, will verify this situation. Now, where-as they will never be able to substantiate their claim of unclean hands, **Defendant and its attorney**, as the results of this and possible future documents, will have to expend considerable time and effort in trying, but without success, to sanitize **their** hands. Hopefully the court will not permit any delay in granting the justice sought herein. **Therefore**, it is requested that the Court rule in strict accordance with Rule 56 (c). (Exhibit A; Pages 1-43, 57-64, 85, 97-100)

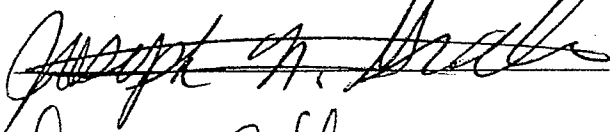
12. Regarding 45 Code of Federal regulations § 74.44 (c), it is incorporated into Defendant's Procurement Guidelines and Defendant should be aware of that... The stated regulation requires that Agencies apply establish written procurement procedures. Defendant's procurement procedures contains the provisions provided by the regulation at issue therefore defendant cannot rely on the excuse of not having known of that Federal Regulation; however, that provision does not apply to the procurement of professional services associated with Facilities development. (Exhibit A; Pages 48-51)
13. However, that regulation does not factor into the matter of the contract at issue, due to the contract being one for providing Professional Services, as opposed to

actual Building Contracting / Building Construction. In addition, that is currently not a matter for consideration by this Court. It is, at best, a distinct and separate matter that should have long ago been addressed by the appropriate Chief Procurement Officer or a Procurement Review Panel, as proscribed by the South Carolina Legislature at: Chapter 35 of the South Carolina Procurement Code and, is further governed by the State Engineer's Office. It addresses the issue of fees as well as contract types and professional services matters. Defendant's suggestion is abhorrent to the entire Concept and Process of Federal Procurement for Professional Services. (Exhibit A, pages 17).

14. Except for the statement that Plaintiff was unaware of the provisions of CFR 45 § 74.44, all of Defendants other allegations are totally bogus.
15. Defendant breached the contract and no after-the-fact shuffling can change that; not unless the denials, the display of ignorance or the countersuit find favor with the court.

FURTHER, YOUR AFFIANT SAYETH NAUGHT.

Sworn to and Subscribed before me, This 17 day of April 2011.





Diane C. Stringer
Notary Public for South Carolina

My Commission expires: March 31, 2021

State of South Carolina
County of Horry

Joseph N. Grate, Plaintiff

v.

Waccamaw EOC, Inc., Defendant

) In the Court of Common Pleas
) for the 15th Judicial Circuit
) **Case Number: 2010-CP-26-11754**
)

) **AFFIDAVIT OF**
) **JOSEPH N. GRATE**
) **IN SUPPORT**

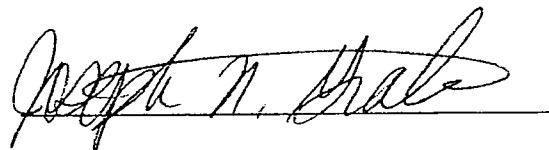
) **MOTION FOR SUMMARY JUDGMENT**
)

2011 APR 15 AM 9:02
CELANIE HUGGINS-WARD
CLERK OF COURT

EXHIBIT A

132 PAGES

April 13, 2011



Joseph N. Grate, Pro Se
P.O. Box 1294
Pawley's Island, S.C. 29585
(843) 742-0696

Project Manager Services

Choppee Head Start Center

RFQ NUMBER: 2010-02

Submitted to:

Waccamaw Economic Opportunity Council, Inc.

1261 Highway 501, East, Suite B

Post Office Box 1467

Conway, South Carolina 29528-1467

Attn: Janice Wideman, Director Of Finance

February 8, 2010

Submitted by:

Joseph N. Grate, AIA

P.O. Box 1294

Pawley's Island, S.C. 29585

843 - 237- 4387

zenchira@yahoo.com

2

EXPERIENCE

(resume)

Joseph N. Grate, CDT, MAI, AIA, NCARB
P. O. Box 1294, Pawley's Island, S. C. 29585
Phone (843) 626-7976 , E-Mail : zenchira@yahoo.com

SUMMARY

Const. Background + Doc. production proficiency: Project efficiency.

WORK HISTORY (Contract Positions, approx. 1991-present)

Pinebluff Associates, Inc. / Key Communities; N. Myrtle Beach S.C.— Multi-Family;
Arch. Desktop

Walsh-Krowka & Assoc., Inc.; Pawley's Island, S.C. Architectural intern;
Residential, Single Family; Architectural Desktop

Turner Associates/Techni-power, Inc., Atlanta, Ga. AutoCAD 14; AutoCAD 2000.
Correctional Institution, Multi-Family Residential, Educational

D.O.E., S. R. S., Bechtel Savannah River Inc./General Physics/ FSK, INC.— Industrial
Projects, AutoCAD - 14

C.R.S. Serrine of N.Y., Inc. /Aide Design Services, Inc. Arch. Engineer: Cad
Manager: Planned / Directed Production of Const. Dwgs., Prepared Arch Specs.

Fluor-Daniel, Delta Div.; Greenville, S.C./ Aide Design Services, Inc. Arch.
Designer: Arch. Specs. Industrial Projects. Board /Microstation.

DIRECT HIRE POSITIONS (8.5 years)

Five years with U.S. Army Corps of Engineers; GS- 808-11 Architect
various D.o.D projects: Japan District, Seattle District.

Timbes Architectural Group; Myrtle Beach, S.C. Arch. Intern: Commercial,
Residential (Single / Multi-Family).AutoCAD -12

Gus Roberts and Associates; Columbia, S.C. Architectural Intern: Job Captain,
Project Manager; Planned / directed the production of Design and C.D. for
various projects: Edu., Religious, Residential, Assisted Living Facilities, etc.

Marrs & Lawson Architects, Myrtle Beach S. C., Architectural Intern:
various projects: Commercial, Residential, etc.

Leroy J.H. Brown and Associates; Washington D.C., Architectural Intern:
various projects: Edu., Religious, Residential, etc.

EDUCATION : B. of Architecture, Construction Management Certificate

- **Bachelor of Architecture - 5 year Program, Howard University**
- **Construction Management Certificate, Howard university**
Emphasis on CPM: The critical path method (CPM) or critical path analysis, is a mathematically based algorithm for scheduling a set of project activities. It is an important tool for effective project management.
- **Construction Project Management Diploma, N. C. State University**
Construction Project Management Diploma courses focus on the Fundamental Principles of Construction Engineering and Management:
 - Fundamentals of Blueprint Reading
 - Fundamentals of Estimating and Bidding
 - Fundamentals of Planning, Scheduling, and Project Control
 - Fundamentals of Cost, Cash Flow and Financial Controls
 - Fundamentals of Construction Contracts and Negotiation
 - Fundamentals of Construction Safety (10-Hour OSHA)
- **The Fundamentals of Construction Contracts: Understanding the Issues, Lorman Education Services, Certificate**

Area of Focus

- Keep risks to a minimum
- Maximize profits, avoid disputes
- Avoid heated arguments during the project by addressing key issues in contracts and subcontracts
- Minimize heavy losses by incorporating key insurance and indemnification provisions in contract
- Avoid losing valuable time in contract drafting battles
- Effective negotiation strategies
- Keep your company out of costly litigation - properly address claims and dispute resolution in your contract
- Maximize efficiency by skillfully maneuvering through the entire process of contract development
- Ability to discuss contract law and dispute resolution.
- Ability to explain drafting and negotiating the contract.
- Ability to describe bonds and insurance.
- Ability to review claimants' remedies.

4

2

- **Construction Estimate Certificate, R.S. Means**

Facilities Construction Estimating provided the tools to maintain financial control over every project by generating reliable estimates at every stage, from initial go/no-go decision to final unit cost estimate.

- **Construction Document Technology (CDT) Certificate, Construction Specifications Institute (CSI)**

The Construction Documents Technology (CDT) Program provides a comprehensive overview for anyone who writes, interprets, enforces, or manages construction documents.

By being able to understand and interpret written construction documents, CDTs perform their jobs more effectively. By understanding the roles and relationships of all participants, CDTs improve communication among all members of the construction team.

CDT candidates must demonstrate their knowledge of CSI's recommended practices in the following subject areas:

- The construction process
 - Construction contract types
 - Modifications and substitution procedures
- Contractual relationships
 - Rights, duties, and responsibilities
 - Contract provisions
 - Relationship and organization of construction documents
- Use of construction documents
 - Organizational formats
 - Interpreting construction documents

- **MasterFormat Accredited Instructor (MAI) Certificate, CSI**

MasterFormat is the resource that aids project delivery by facilitating communication among architects, engineers, specifiers, contractors, suppliers and other consultants, which helps them meet building owners' requirements, timelines and budgets. By fostering fuller and more detailed construction specifications, MasterFormat is designed to reduce costly changes or delays in projects due to incomplete, misplaced or missing information

- **S.C. General Contractor**
- **Contractor- S.C. Safe Home Certification**
- **Inspector – S.C. Safe Home Certification**
- **Architect, N.C.A.R.B. Certificate**

Value of an NCARB Certificate

An NCARB Certificate means you have met the highest professional standards

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established by the registration boards responsible for protecting the health, safety, and welfare of the public.

Certification Overview

NCARB certification facilitates reciprocal registration among all 54 NCARB Member Boards, 11 Canadian jurisdictions, and can be used to support an application for registration in other countries.

- **Architect, S.C., N.C., GA.,...**

REFERENCES

N/A

APPROACH

My approach is always, first thoroughly objectively analyze the situation then uncompromisingly, apply my abilities to the issues in order to derive the ultimate solution to the situation.

INSURANCE

I have no need for insurance, presently. Of course, insurance in the amount necessary can be acquired when necessary.

ADDITIONAL INFORMATION

RFQ Items

Currently, of the indicated criteria in the RFQ, the following are the closest to having any relevance to the current situation; still, it has to be modified to fit within the framework of the project goals and it is imperative that it become the primary focus. All other relevant elements will come into play, as the results of accomplishing this feature. In this case, cost effectiveness will be demonstrated solely by the logic of the plan and not by any indication of dollar amounts. At the onset, it is extremely important that this is understood.

**Develops a cost-effective plan and
Schedule for completion of project
following a logical pattern for utilization
of resources.**

The following aspect of the RFQ is in jeopardy but is salvageable provided the above statement is addressed:

**Tracks and controls construction
schedule and associated costs to
achieve completion of project within
time and budget allocated**

Fully addressing the above elements is a necessity before trying to take the next step; otherwise, the result will be a loss of time and money because of having to attempt to start or of having to restart the process many times. There is no way to circumvent this from occurring.

I am very familiar with the problems applicable to this project and I am capable of providing solutions to the problems. Also, given the urgency of the situation, the addressing of the problems and the application of the solutions need to be immediate and speedy.

I have no past record of performance on contracts with Waccamaw Economic Opportunity Council, Inc.

Presently, I have no work under contract and nothing is projected for the immediate future. Currently, I have time to devote to this project, provided a determination is made, posthaste.

FEES /
(additional information)

I am amenable to meet with the Agency so as to discuss Project Need Determination and Project Focus. Upon establishing these aspects of the project, the foundation will be in place to discuss compensation. Until then, there is no definitive reference point. Some, a few, of the many aspects are as follows:

Pre-Construction Phase : (in concert with the appropriate A.H.J.)

1. **Deliver Current Status Analysis Report**, (urgent / burning)
2. Highlight necessary course correction actions,
(Delivery method, etc.)
3. Establish Project Goal(s),
4. Provide assistance to compile / consolidate Facility Program,
5. Chart the course of activities with the Architect,
(Design through delivery of facility)

Construction Phase:

6. Chart the course of activities with the Contractor,
7. Determine PM requirements in Contract execution.
(largely predicated upon 2 and 5, above)

The entire project is predicated upon the digestion of 1, above.

With respect: Joseph N. Hab

February 8, 2010

Ms. Fryar asked if she was to bring the lease back to the board when it was finalized. Ms. Fryar asked if it was ok to go ahead and start expending funds and Mr. Grate said yes. Mr. Eagleton said he felt like the lawyer should look over the lease. Mr. Grate said the attorney would see it but Mr. Grate said he wanted to see it too. Mr. McKnight said the board was in agreement to start the lease process and he made a motion to let Mr. Grate as Chairman of the Board sign the lease after the attorney looks at it and Mr. Mustafa seconded. Motion carried.

Membership Committee

Ms. Fryar asked if she should update the board on the roof. Mr. Grate said he had that on his agenda and he would do that. Mr. Grate said that the membership committee was ready to make a recommendation for the vacant seat of Williamsburg county to represent the Private Sector. Dr. McKnight said the committee met on February 11th and had three names recommended to the Committee. She said the committee was recommending Mr. John Battiste to fill the vacant seat. She said she felt the membership committee had not made a mistake or misjudged in selecting Mr. Battiste for this position.

Mr. Smith asked if we interviewed all candidates. Dr. McKnight said no one was interviewed that letters were sent to us and she did some background interviews. Mr. Grate said we don't interview, that the board looks at the letters and the chair meets with the committee and they come up with the best person. Mr. Smith asked if that was solely based on the letters and Mr. Grate said yes it is based on the letters. Mr. Smith said so if someone wants to recommend someone to our board, they need to write a smart letter. Mr. Grate said yes. Dr. McKnight made a motion to appoint Mr. John Battiste to the vacant seat for Williamsburg County. Mr. Mustafa seconded. Motion carried.

Mr. Grate asked if Mr. Battiste was in attendance and if so, he could come forward. Mr. Grate asked Ms. Boyd to swear in Mr. Battiste. He was sworn in and signed the pledge, code of ethics, and the board composition form for the state. Mr. Grate welcomed Mr. Battiste to the board of directors and asked him to have a seat with the other board members.

Recommendation on Project Manager for Choppee

Mr. Eagleton said the facilities committee met in Conway and interviewed two candidates for the Project Manager. He said the committee was recommending Mr. Joseph Grate. Mr. Grate asked Ms. Fryar if she had checked references and she said yes, that a couple had been check and they were very good, but he had given about six or seven. Mr. Grate asked though the ones checked were good. Ms. Fryar said yes. Mr. Mustafa asked Ms. Fryar what were she thought about Mr. Grate. She said she was very impressed and he was very thorough. She said one thing he had going for him was that he was a licensed architect which none us are, and he could keep close eyes on the Choppee architect. She said he seemed to be very intelligent. Mr. Eagleton made the



Waccamaw Economic Opportunity Council, Inc.
The Community Action Agency serving Horry, Georgetown and Williamsburg Counties



Zacharius Grate
Board Chair

Elizabeth Fryar
Executive Director

Board Of Directors

Ulysses Dewitt
(Horry)

David A. Eagleton
(Horry)

James Frazier
(Horry)

Sandra Faison Gowan
(Horry)

Zacharius Grate
(Georgetown)

Kennedy Johnson
(Georgetown)

Michael Johnson
(Williamsburg)

Patricia Gregory
(Georgetown)

Andy D. McKnight, Sr.
(Williamsburg)

Jr. Isabelle McKnight
(Williamsburg)

Abdullah Mustafa
(Horry)

Lucy Rodgers
(Horry)

James M. Smith
(Horry)

Richard Smith
(Georgetown)

MEMORANDUM

TO: MR. JOSEPH N. GRATE
FROM: WACCAMAW EOC, INC. BOARD OF DIRECTORS
DATE: FEBRUARY 24, 2010
RE: PROJECT MANAGER POSITION

The Waccamaw EOC, Inc. Board of Directors voted February 23, 2010 to hire you as the Project Manager Consultant for the Choppee Head Start Center. We would like for you to start as soon as possible. The Facilities Committee will contact you to negotiate your fees.

Please contact Mrs. Fryar at 843-234-4100 ext. 223 concerning your contract and any questions you may have.

We look forward to working with you.

Waccamaw Economic Opportunity Council, Inc.
1261 Highway 501, East, Suite B
Post Office Box 1467
Conway, South Carolina 29528-1467

February 25, 2010

Attn: Waccamaw EOC,

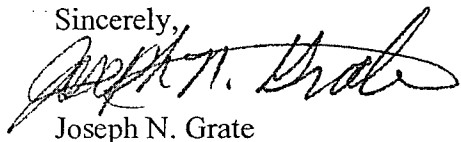
Please find attached my, very objective, report on the Choppee Headstart Project. My suggestion is that you start reading from page 5 and continue to the end or start reading from page 31 "conclusion" then go back to page 5 and continue to the end.

By approaching it this way, the first entry (page 2, introduction) will perhaps be more meaningful to you.

I have reframed from making any recommendations at this point because I felt that the necessary course of action is obvious.

I request that we devise a way for us to become efficient, in order to expedite this whole process. There is so very much to be done; time is fleeting.

Sincerely,



Joseph N. Grate

Report on:

The Choppee Head Start Project

Submitted to:

Waccamaw E.O.C.

February 25, 2010

By: Joseph N. Grate

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Advertised

RSQ

SOUTH CAROLINA BUSINESS OPPORTUNITIES

Published by Materials Management Office – R. Voight Shealy, Director

June 15, 2009 Volume 29, Issue 47

HEAD START CENTER FOR WACCAMAW E.O.C.

Waccamaw EOC, Inc., A 501(c) (3) Non-Profit Corporation whose main office is located at 1261 Highway 501 East, Conway, South Carolina, that receives federal & state funding, is requesting sealed proposals for Statements of Qualifications from qualified architectural firms for a 12,500 sq. ft. Head Start center.

Solicitation For This Service Will End at 2:00pm, Thursday, June 25, 2009. Interested businesses should contact Ms. Janice Wideman, Finance Director, (843) 234-4100, Ext. 227, for specifications & bid paperwork.

The Agency Reserves The Right to reject any or all offers. Waccamaw EOC, Inc. is an equal opportunity employer.

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CHAPTER 4 PROCURING PROFESSIONAL SERVICES

4.1 RELATED STATUTORY AUTHORITY

6. SC Code § 11-35-3245 prohibits architects or engineers who perform design work on a project under a contract awarded pursuant to § 11-35-3220 or § 11-35-3230 from also performing construction work on that project.

4.2 PROFESSIONAL SERVICES

Professional Services are those master planning, planning, environmental, real estate acquisition, pre-construction, and other construction related services associated with the practice of architecture, engineering, land surveying, landscape architecture, interior design, and Construction Management. See SC Code Ann. § 11-35-2910 for a complete definition.

C. INVITATION FOR PROFESSIONAL SERVICES

The committee must prepare the invitation for professional services on OSE Form SE 210. Once the Agency is ready to advertise, it must submit the completed invitation to OSE for review and approval. Upon approval, OSE will submit the invitation to South Carolina Business Opportunities (SCBO) for advertisement. The Agency may advertise elsewhere but must advertise in SCBO.

H. NEGOTIATING THE PROFESSIONAL FEE

After exchanging information and agreeing on changes to the standard contract, the Agency is in a position to consider what would be a fair and reasonable fee for the Professional. The Agency may use the fee guidelines contained in Table 4.1 as an aid in negotiating a fee for full architectural/engineering services.

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2008 Edition 4 of 6 Table 4.1 FEE GUIDELINE FOR ARCHITECT/ENGINEER BASIC SERVICES 1. This guide is only an aid for state agencies in conducting negotiations to achieve an appropriate fee for basic professional services. 2. This guide is intended for normal construction projects using separate design and construction contracts 3. Fees in this guide include all architectural, normal civil, structural, mechanical, fire protection and electrical engineering services required to provide complete design and construction period services. The fee schedule does not include fees for programming services and services related to Green Building design and certification. 4. This guideline expires December 2, 2009.			
Estimated Construction Cost	Projects Below Average Complexity	Projects of Average Complexity	Projects Above Average Complexity
Below \$500,000	negotiated	negotiated	negotiated
\$ 500,000	7.25%	8.25%	9.25%
\$ 750,000	7.00%	7.50%	8.50%
\$ 1,000,000	6.70%	7.20%	8.20%
\$ 1,500,000	6.50%	7.00%	8.00%
\$ 2,000,000	6.30%	6.80%	7.80%
\$ 3,000,000	6.00%	6.65%	7.60%
\$ 4,000,000	5.75%	6.40%	7.30%
\$10,000,000	5.50%	6.10%	7.00%
Over \$10,000,000	negotiated	negotiated	negotiated

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South Carolina Board of Architectural Examiners

Policy on Bidding for Services

The South Carolina State Board of Architectural Examiners received an Opinion from the State

Attorney General's office regarding the applicability of Section 40-3-165 of the South Carolina

Architectural Registration Law. *[Statute changes in 1998 resulted in this section being renumbered*

as Section 40-3-300. Only the number changed.]

Section 40-3-300 provides for the following:

"Architects shall not enter into a contract for professional services on any basis other than direct

negotiation thereby precluding participation in any system requiring a comparison of compensation.

Provided, however, an Architect may state compensation to a prospective client in direct negotiation where architectural services necessary to protect the public health, safety and welfare have been defined."

The Attorney General's Opinions are stated in response to examples or case studies as presented by

the State Board. It is noted by the Attorney General that these Opinions apply expressly to projects not

subject to the S.C. Consolidated Procurement code, Section 11-35-10 et seq., since this code

provides comprehensive selection procedures for projects subject to it.

Based on the Attorney General's Opinion, the Board has established the following guidelines:

GUIDELINES REGARDING DIRECT NEGOTIATION

Direct negotiation is a process, not a single act. A minimum of three elements must be present to

constitute direct negotiation:

1. Dialogue, discussions, and/or direct communications between the architect and the potential

client for the specific purpose of determining the scope of the project;

2. Evidence of a clear and mutual understanding of the scope of the project and the architectural

services that will be necessary to protect public health, safety and welfare; and

3. Documentation of the entire process.

Title 40 - Professions and Occupations

CHAPTER 3. ARCHITECTS

SECTION 40-3-20. Definitions.

(1) "Architect" means an individual who, by reason of the individual's general knowledge of the principles of architecture acquired by professional education and practical experience, is qualified to engage in the practice of architecture as attested by the individual's registration as an architect.

(3) "Firm" means a business entity functioning as a partnership, limited liability partnership, professional association, professional corporation, business corporation, limited liability company, or other firm association which practices or offers to practice architecture.

(4) "Full authority" means that amount of authority granted to a regularly employed individual in unrestricted, unchecked, and unqualified command of the architectural practice of a firm.

(5) "Individual" means a single human being.

(6) "Practice of architecture" means a service or creative work requiring architectural education, training, and experience and the application of the principles of architecture and related technical disciplines to the professional services or creative work as consulting, evaluating, planning, designing, specifying, coordinating of consultants, administration of contracts, and reviewing of construction for the purpose of assuring compliance with the specifications and design, in connection with a building or site development.

(7) "Professional degree" means the successful completion of a National Architectural Accrediting Board accredited degree in architecture.

(8) "Responsible charge" means direct control and personal supervision of the practice of architecture.

SECTION 40-3-30. Licensing, certificate of authorization, and registration requirements.

(A) No individual may engage in the practice of architecture without a license issued in accordance with this chapter. An individual is considered to engage in the practice of or offer to engage in the practice of architecture who in any manner represents himself to be an architect or who performs or holds himself out as able to perform any architectural service or other services recognized by educational authorities as architecture.

(B) Only an individual licensed under this chapter may use the title "architect". An individual assuming the title of architect or engaging in the practice of architecture in this State must be skilled in the principles of design and construction so that the individual may be entrusted with the design and review of construction of buildings without undue risk to the public safety. Before assuming the title "architect" or undertaking the work, the individual shall have a certificate of registration from the board.

(C) A firm offering to engage in the practice of architecture in this State must have a certificate of authorization issued by the board before undertaking architectural work. Each firm must employ one or more architects registered in this State who are designated as being in full authority and responsible charge of the architectural practice. Additionally, all personnel of the firm who act in its behalf as architects in this State must be registered under this chapter and must hold a current registration. **If there is a change in ownership, management, or the architect in responsible charge during the year, the change must be filed with the board within thirty days.**

(D) It is unlawful for an individual or firm to engage in the practice of architecture in this State, to use the title "architect", or to use or display any title, sign, word, card, advertisement, or other device or method to indicate that the individual or firm engages in or offers to engage in the practice of architecture or is an architect, without being registered as an architect or firm.

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CHAPTER 11.

DEPARTMENT OF LABOR, LICENSING AND REGULATION-- STATE BOARD OF ARCHITECTURAL EXAMINERS

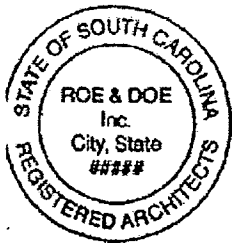
(Statutory Authority: 1976 Code Sections 40-3-60 and 40-1-70)

11-10. Practice of Firms.

A. A firm engaged in the practice of architecture in South Carolina must employ one (1) or more persons registered to practice architecture in South Carolina who are in full authority and responsible charge of the firm's architectural practice. Persons in full authority and responsible charge shall mean regularly employed persons in unrestricted, unchecked, and unqualified command of, and legally accountable for the actions of such architectural practice.

B. An architect registered in South Carolina shall be responsible for complying with these regulations as they may apply to any association or joint venture with another architect or architects.

C. Each office maintained for the preparation of drawings, specifications, reports, and other professional work shall have an architect duly registered with this Board, in full authority and responsible charge, having direct knowledge and supervisory control of such work.



(FIRM)

December 2009

Firm License Required

If you practice architecture in South Carolina through a firm, whether as an owner/shareholder/partner of the firm or as an employee, the firm must be licensed. Firms must designate at least one South Carolina-licensed architect who will be "in responsible charge" of the firm's architecture work in this state. Design documents must be sealed with the individual architect's seal as well as the firm's seal.

Many architects incorrectly believe they can "just use my personal seal" and not put the firm name on the title block for a project for which the firm is contracted for services. This is a violation of South Carolina law. If the project is a firm's project, the firm must be licensed in South Carolina.

You may learn more about firm licensure and download forms and instructions on this Web site.

In this issue:

[Printable Newsletter \(pdf\)](#)

[NCARB's 2009 Survey of Registered Architects](#)

[2010 Proposed Regulations](#)

[Unlicensed Practice](#)

[Architects and Architectural Firms Listed on Web Site!](#)

[Newly Registered Architects](#)

[Disciplinary Actions](#)

[Change of Address](#)

[Board Staff](#)

[Board Meetings](#)

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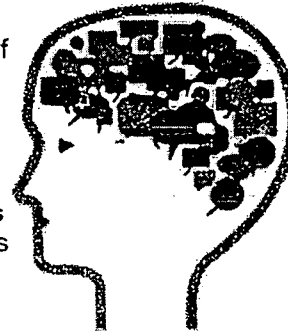
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December 2009

Unlicensed Practice

When unlicensed activity is reported to the Board, the matter is handled by the Board's administrative staff rather than by the Office of Investigations and Enforcement (OIE).

When there is **credible evidence** that an unlicensed individual or a company is providing architecture services, is advertising that they can provide architecture services, or is using the word "architecture" or similar words, the Board's Administrator sends an **Order to Cease and Desist**. (By Department policy, these Orders are not posted on the Board's Web site.) Unlicensed activity encompasses individuals who have never been licensed as an architect and are not eligible to be licensed; individuals who live in South Carolina (or who have a South Carolina address on the Board's records); individuals who have let their license lapse and have not responded to the Board's late renewal notice reminder; and Emeritus architects who practice while in Emeritus status.



Many individuals and companies respond to Orders to Cease and Desist by reporting they were unaware of the law that reserves use of the term "architect" for licensees. Most readily comply with the requirement to stop the activity and to remove all reference to "architecture" from printed materials, advertisements, Web sites, etc. If an individual or firm fails to comply with the Order and the Board receives evidence of continued unlicensed activity, LLR's legal division may file a complaint with the S.C. Administrative Law Court seeking injunction or fines against the individual or firm. Section 40-3-100 states, "In addition to other remedies provided in this chapter or Article, 1, Chapter, 1, the board in accordance with Section 40-1-100 also may issue a cease and desist order or may petition an administrative law judge for a temporary restraining order or other equitable relief to enjoin a violation of this chapter."

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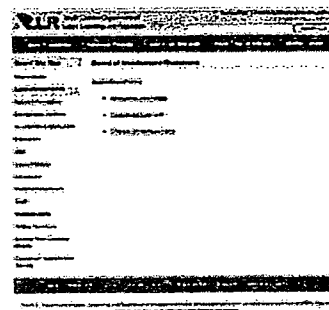
[Board of Architects](#)

December 2009

Architects and Architectural Firms Listed on Web

Architects and architectural firms currently licensed in South Carolina are listed on the Licensee Lookup Web site. **You can use this lookup to make sure your licenses are up-to-date and to determine if others are licensed.** This site is updated daily.

The Web site address is www.llr.state.sc.us/POL/Architects/ click on "Licensee lookup." If you believe a firm or individual was recently licensed but are unable to locate them on this site, e-mail us at Alice.Richardson@llr.state.sc.us or call us at 803-896-4408.



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December 2009 Disciplinary Actions

Final disciplinary actions taken by the Board since publication of the last newsletter may be viewed on the Board's Web site. While the Board staff makes every effort to include all final actions, some may have inadvertently been omitted. Documents on the Web site dated from July 2004 to present are in PDF format and may be downloaded. If you need a copy of an action not posted on the Web site, please contact Melissa Jones or call her at (803) 896-5147.

You will notice that the Board is issuing Orders to Cease and Desist from the practice of architecture (or the offer to practice architecture) to individuals and firms not licensed in South Carolina. Continued practice after receipt of an Order to Cease and Desist is considered a violation of the Order. Such violations are handled by the South Carolina Administrative Law Court, which has authority to levy fines up to \$10,000.

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Board of Architectural Examiners

Frequently Asked Professional Practice Questions

Q. What are the requirements for sealing design documents in South Carolina?

Seals for Individual Architects and Firms

Sealing requirements are set forth in Section 40-3-280 and Regulation 11-11 Section 40-3-280. Seals

- (A) Every architect and firm practicing in this State shall have a seal, the impression of which shall contain the name, the place of business, and the words "Registered Architect, State of South Carolina" with which they shall stamp all drawings, prints, and specifications for use in their profession.
- (B) The seal of the individual architect in responsible charge, as well as the seal of the firm, must appear on each print of the drawings and the index sheet, or sheets, of each set of specifications offered to secure a building permit and one record set for use on the construction site. The required seal identification may be a rubber stamp impression placed on original drawings and specification copy. The architect in responsible charge shall affix his signature over his seal. An electronic seal and signature may be used in lieu of an original seal and signature by applicable policy or regulation.

Q. What are the exemptions to the requirement to have an architect design the plans for a structure? In other words, when is an architect NOT needed?

Section 40-3-290 An architect IS required, however, if the building that is less than 5000 square feet is classified as one of assembly, institutional, educational, or hazardous occupancy by the Standard Building Code. An architect is required for these buildings regardless of their size.

For instances where there may be confusion regarding the language in other parts of this statute, the Board of Architectural Examiners provides the following guidance:

- All buildings of assembly, regardless of size, require the services of an architect.
- All institutional buildings, regardless of size, require the services of an architect. Institutional buildings

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include, but are not limited to, residential board and care facilities, assisted living facilities, halfway houses, group homes, congregate care facilities, social rehabilitation facilities, alcohol and drug centers, hospitals, nursing homes, mental hospitals, jails, adult care facilities, and day care facilities for more than five children younger than 2 1/2 years of age.

- All educational facilities, regardless of size, require the services of an architect. Educational facilities include day care facilities for more than five children older than 2 1/2 years of age.

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Professional Licensing Boards Board Member Lookup

Main Menu **Architect**

Note: All fields are not required for searching.

Last/Firm name: First name:

License number: City:

License Type:

Your search returned: 1 record(s).
CLICK ON THE LICENSE NUMBER BELOW TO DISPLAY VERIFICATION INFORMATION FOR THAT RECORD.

Lic. #	Last	First	Middle	City	State	Type
AR.7640	GRATE	JOSEPH	N	PAWLEYS ISLAND	SC	Individual

Search Tip:
For more results, only type in the first few characters of your search.

South Carolina Department of Labor, Licensing & Regulation

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Professional Licensing Boards | Board Member Lookup

Main Menu

Architect

Note: All fields are not required for searching.

Last/Firm name:

bow man

First name:

john

License number:

City:

License Type:

All

Find

Your search returned: 1 record(s).

CLICK ON THE LICENSE NUMBER BELOW TO DISPLAY VERIFICATION INFORMATION FOR THAT RECORD.

License #	Last	First	Middle	City	State	Type
AR .2815	BOWMAN JR	JOHN	D	COLUMBIA	SC	Individual

Search Tip:

For more results, only type in the first few characters of your search.

Professional Licensing Boards | Board Member Lookup

Engineers and Land Surveyors

Note: All fields are not required for searching.

Last Name: First name:

COA / License #: City:

Company name:

License Type:

Your search returned: 1 record(s).
CLICK ON THE LICENSE NUMBER BELOW TO DISPLAY VERIFICATION INFORMATION FOR THAT RECORD.

Lic #	Last	First	Middle	City	State	Type
13603	STRICKLAND	STEVEN	G			Engineering

South Carolina Department of Labor, Licensing & Regulation

32.

Professional Licensing Boards : Board Member Lookup

Main Menu **Commercial Contractors**

Note: All fields are not required for searching

Last Name: First name:

License number: City:

Company name:

Classification:

Your search returned: 1 record(s).

License	Status	Type	Last	First	Suffix	Business	City	State
14135	Active	GENERAL CONTRACTOR	GRATE	JOSEPH			PAWLEYS ISLAND	SC

Classification: BD3

CURRENT CLASSIFICATION ABBREVIATIONS & FINANCIAL PROJECT LIMITATIONS

GENERAL CONTRACTORS

Building

BD

FINANCIAL GROUP LIMITATION PER PROJECT

GENERAL CONTRACTORS

Group 3 to \$350,000
Group 4 to \$750,000
Group 5 to Unlimited

Professional Licensing Boards - Board Member Lookup

Main Menu :

Commercial Contractors

Note: All fields are not required for searching

Last Name:

First name:

License number:

City:

Company name:

Classification:

Your search returned: 2 record(s).

License	Status	Type	Last	First	Sum	Business	City	State
104026	Active	GENERAL CONTRACTOR				THE EARTHWORKS GROUP INC	MURRELLS INLET	SC
528	Expired	General Construction Manager				THE EARTHWORKS GROUP INC	MURRELLS INLET	SC

Classification: BD4

South Carolina Department of Labor, Licensing & Regulation

THE EARTHWORKS GROUP INC
11661 HIGHWAY 707
MURRELLS INLET, SC 29576
(843)651-7900

License number: 104026
License type: GENERAL CONTRACTOR
Status: ACTIVE
Expiration: 10/31/2010
First Issuance Date: 10/02/2000

Supervises:
STEVEN G STRICKLAND - (COG)

GENERAL CONTRACTORS

Building

BD

FINANCIAL GROUP LIMITATION PER PROJECT

GENERAL CONTRACTORS

Group 3	to \$350,000
Group 4	to \$750,000
Group 5	to Unlimited

Title 40 - Professions and Occupations

CHAPTER 11. CONTRACTORS ARTICLE 1. IN GENERAL

SECTION 40-11-20. Definitions.

For purposes of this chapter:

(2) "Bid" means an offer to furnish labor, equipment, or materials or other services regulated by this chapter.

(4) "Contractor" means a general or mechanical contractor regulated under this chapter.

(7) "Entity" means a sole proprietorship, partnership, limited liability partnership, limited liability company, association, joint venture, cooperative, corporation, or other legal entity authorized by law and approved by the board.

(9) "General contractor" means an entity which performs or supervises or offers to perform or supervise general construction.

(10) "License classification" or "subclassification" means the type of construction for which a contractor may be licensed to do business.

(11) "License group" means the financial limitations for bidding and performing general or mechanical construction.

(12) "Licensee" means an entity which has been issued either a general or mechanical contractor's license by the department.

(13) "Licensed contractor" means an entity that is licensed by the South Carolina Contractor's Licensing Board to engage in general or mechanical contracting within the State.

(16) "Individual" means a natural person.

(19) "Public owner" means the State and any of its political subdivisions.

(23) "Total cost of construction" means the actual cost incurred by the owner, all contractors, subcontractors, and other parties for labor,

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material, equipment, profit, and incidental expenses for the entire project. This does not include the cost of design services unless those services are included in a construction contract.

(24) "Unlicensed contractor" means an entity performing or overseeing general or mechanical construction without a license.

SECTION 40-11-80. Investigation of complaints and violations.

The Department of Labor, Licensing and Regulation shall investigate complaints and violations of this chapter as provided for in Section 40-1-80.

SECTION 40-11-100. Violations; administrative citations; cease and desist orders; administrative penalties; appeals.

(A) The department may refer any reports of violations of this chapter and Article 1, Chapter 1 of this title or any reports of violations of regulations promulgated under this chapter directly to the board or may issue administrative citations and cease and desist orders in person or by certified mail and may assess administrative penalties against any entity or individual, including unlicensed contractors, for violations of this chapter as specified by the board.

(B) Separate citations may be issued and separate administrative penalties may be assessed for each violation, however, no more than two thousand five hundred dollars in administrative penalties may be assessed against an entity or an individual per day.

(C) Administrative penalties authorized under this section are separate from and in addition to all other remedies, either civil or criminal.

SECTION 40-11-110. Disciplinary action; conditions for imposing; civil penalties; reapplication after revocation or cancellation; completion of work in progress; revocation of individual license classification.

(A) The board may impose disciplinary action authorized by this chapter upon a licensee, certificate holder, or other entity or individual if the board finds any of these conditions:

(9) aiding or abetting an unlicensed entity to evade the provisions of this chapter, combining or conspiring with an unlicensed entity, allowing one's license to be used by an

unlicensed entity, or acting as agent, partner, or associate, or an unlicensed entity;

(11) false, misleading, or deceptive advertising whereby a member of the public may be misled and injured;

(21) contracting or offering to contract for construction work exceeding the limitations of a group or outside the classification or subclassification of a license;

(B) Disciplinary action may be taken against an entity or individual who the board determines to be responsible for violations of this chapter regardless of changes in corporate identity or federal employer identification subsequent to the violation. In determining responsibility, the board may consider, but is not limited to, an individual's: (1) participation in management or supervision related to the violation;

(2) position as sole proprietor, partner, officer, or qualifying party.

SECTION 40-11-130. Denial of license or certificate.

(A) The department may refuse to issue a license or certificate to an applicant who:

(3) has engaged in contracting without a valid license as required under this chapter;

(4) has submitted a bid without a valid license when one is required by law;

(6) has submitted false or misleading information;

(7) has engaged in conduct which demonstrates bad faith, dishonesty, untrustworthiness, or incompetence in business or the profession;

(8) has aided or abetted an entity in the violation of a provision of this chapter or a regulation promulgated under this chapter;

SECTION 40-11-170. Costs of investigation and prosecution.

A person found in violation of this chapter or regulations promulgated under this chapter may be required to pay costs associated with the

investigation and prosecution of the case in accordance with Section 40-1-170.

SECTION 40-11-190. Investigations and proceedings confidential; communications privileged.

Investigations and proceedings conducted under this chapter are confidential and all communications are privileged as provided in Section 40-1-190.

SECTION 40-11-200. Unlawful practice; penalty.

(A) A person who practices or offers to practice in this State in violation of this chapter or who knowingly submits false information for the purpose of obtaining a license is guilty of a misdemeanor and, upon conviction, must be imprisoned not more than one year or fined not more than five thousand dollars.

(B) It is a violation of this chapter for an awarding authority, owner, contractor, or an agent of an authority, owner, or contractor to consider a bid, sign a contract, or allow a contractor to begin work unless the bidder or contractor has first obtained the licenses required by this chapter. Bids or contracts submitted by contractors may not be reconsidered or resubmitted to an awarding authority, contractor, or owner if the contractor was not properly licensed at the time the initial bid or contract was submitted.

SECTION 40-11-210. Injunctive relief.

The department, on behalf of the board and in accordance with Section 40-1-120, may petition an administrative law judge, in the name of the State, for injunctive relief against a person violating this chapter.

SECTION 40-11-260. Financial statements; net worth requirements.

(4) Group Four

(a) bids and jobs not to exceed \$750,000.00 per job.

**South Carolina Code of Regulations
(Unannotated)
Current through State Register Volume 32, Issue 9, effective
September 26, 2008.**

CHAPTER 11.

DEPARTMENT OF LABOR, LICENSING AND REGULATION-- STATE
BOARD OF ARCHITECTURAL EXAMINERS

(Statutory Authority: 1976 Code Sections 40-3-60 and 40-1-70)

11-1. Definitions.

Definitions found in Section 40-3-20 apply to this chapter.

(2) "NCARB" means the National Council of Architectural Registration Boards.

11-6. Registration by Examination.

A. Applicants must have first satisfied the education and experience requirements as set forth in Section 40-3-230 to be eligible to take the examination.

(1) Education. An official school transcript shall serve as evidence of attainment of a professional degree in architecture from a program accredited by the National Architectural Accrediting Board (NAAB).

(2) Experience. Only a verified Council Record issued by the National Council of Architectural Registration Boards (NCARB) will be accepted as evidence of completion of all training requirements established for the Intern Development Program (IDP). An NCARB Council Record must be initiated by the applicant in writing at least one (1) year prior to application to take the examination.

(3) Examination. The National Council of Architectural Registration Boards (NCARB) Architect Registration Examination (A.R.E.) will be administered to all qualified candidates for initial architectural registration in a manner and place prescribed by NCARB or the Board. Examinees must pay all applicable examination fees. Candidates must wait six (6) months before retaking failed divisions. Examinees will not have access to the machine graded NCARB examinations, answers, or other related documents for reviewing, copying, or other purpose.

11-10. Practice of Firms.

A. A firm engaged in the practice of architecture in South Carolina must employ one (1) or more persons registered to practice architecture in South Carolina who are in full authority and responsible charge of the firm's architectural practice. Persons in full authority and responsible charge shall mean regularly employed persons in unrestricted, unchecked, and unqualified command of, and legally accountable for the actions of such architectural practice.

B. An architect registered in South Carolina shall be responsible for complying with these regulations as they may apply to any association or joint venture with another architect or architects.

C. Each office maintained for the preparation of drawings, specifications, reports, and other professional work shall have an architect duly registered with this Board, in full authority and responsible charge, having direct knowledge and supervisory control of such work.

11-11. Seals.

A. The personal seal and signature of the architect in responsible charge and the architectural firm's seal shall appear on all architectural documents to be filed for public record and shall be construed to obligate the architect and the firm. A firm seal alone is insufficient; documents shall be signed personally and sealed by the responsible architect. Record documents used for obtaining building permits (not tracings, etc.) shall be so signed. The signing and sealing of the index sheet(s) or the title page of specifications shall be considered adequate.

B. An architect shall not affix, or permit to be affixed, the architect's seal or name to any plans, specifications, drawings, or other related documents which were not prepared by the architect or under the architect's direct responsible charge. Architects shall not use their seal or perform any other service as an architect unless holding at the time a current Certificate of Registration.

11-12. Code of Professional Ethics.

An architect or firm shall not engage in dishonest practice, unprofessional conduct, or incompetent practice.

A. Conflict of Interest.

(1) When conditions of compensation are submitted in a proposal for a study, pre-design, or preliminary design service, where future opportunity for additional work on the project is also available to the offerer, such conditions must be consistent and representative of the real cost of services to be performed.

(2) An architect or firm shall not accept compensation for services from more than one (1) party on a project unless the circumstances are fully disclosed and agreed to (such disclosure and agreement to be in writing) by all interested parties.

(3) If an architect or firm has any business association or direct or indirect financial interest which is substantial enough to influence judgments in connection with the performance of professional services, the architect or firm shall fully disclose in writing to the client or employer the nature of the business association or financial interest, and if the client or employer objects to such association or financial interest, the architect or firm will either terminate such association or interest, or withdraw from the commission or employment.

(5) When acting as the interpreter of building contract documents and the judge of contract performance, the architect or firm shall render decisions impartially, favoring neither party to the contract.

B. Full Disclosure.

(1) An architect or firm making public statements on architectural questions shall disclose when being compensated for making such statements.

(2) An architect or firm shall be accurate in representing to a prospective or existing client or employer the qualifications and the scope of responsibility in connection with work for which credit is claimed.

(3) If in the course of work on a project, the architect or firm becomes aware of a decision taken by the employer or client, against the architect's or firm's advice, which violates applicable state or municipal building laws and regulations and which will materially affect adversely the safety to the public of the finished project, the architect or firm shall:

(a) report the decision to the local building inspector or other public official charged with the enforcement of the applicable state or municipal building laws and regulations; and

(b) refuse to consent to the decision; and

(c) terminate services with reference to the project in circumstances where the architect or firm reasonably believes that other such decisions will be taken notwithstanding the architect's or firm's objections.

(4) On a project where a building permit has been issued and the sealing architect and the firm of record have not been engaged to perform at least minimum construction administration services, as defined in subsection (5) below, the sealing architect and firm must report to the permitting authority and the building owner that he and the firm have not been so engaged.

(5) The minimum construction administration services expected of the sealing architect and firm deemed necessary to protect the health, safety, and welfare of the public shall be periodic site observations of the construction progress and quality, review of contractor submittal data and drawings, and reporting to the building official and owner any violations of codes or substantial deviations from the contract documents which the architect observed.

(6) An architect or firm shall not deliberately make a false statement or fail deliberately to disclose a fact requested by the Board.

(8) An architect or firm possessing knowledge of a violation of these rules by another architect or firm shall report such knowledge to the Board.

(9) An architect or firm shall cooperate fully upon request in matters pertaining to any investigation initiated by the Board.

C. Compliance with Laws.

(1) An architect or firm shall not violate any state or federal criminal or civil law, rule, or regulation.

(2) An architect or firm shall neither offer nor make any payment or gift to a government official (whether elected or appointed) with the

intent of influencing the official's judgement in connection with a prospective or existing project.

(3) An architect or firm shall comply with the registration laws, rules, and regulations governing the practice of architecture in this State and in any other jurisdiction.

(4) An architect or firm shall not assist or aid any unlicensed person or firm in the unauthorized practice of architecture.

D. Professional Conduct.

(1) An architect or firm shall not sign or seal drawings, specifications, reports, or other professional work for which the architect or firm does not have direct professional knowledge and direct supervisory control; provided, however, that in the case of portions of such professional work prepared by the architect's, or firm's consultants, registered under this or another professional registration law of this jurisdiction, the architect or firm may sign or seal that portion of the professional work if the architect or firm has reviewed such portion, has coordinated its preparation, and intends to be responsible for its adequacy.

(2) An architect or firm shall neither offer nor make any gifts, other than gifts of nominal value (including, for example, reasonable entertainment and hospitality), with the intent of influencing the judgement of an existing or prospective client.

(3) An architect or firm shall not engage in conduct involving fraud or wanton disregard of the rights of others.

(4) An architect or firm shall not act in any manner so as to mislead a client or the general public or so as to misrepresent its competence or qualifications.

E. Competence.

(1) An architect or firm shall act with reasonable care and competence and shall apply the technical knowledge and skill which is ordinarily applied by architects and firms in good standing in South Carolina.

(2) An architect or firm shall take into account all applicable state and municipal building laws and regulations. While an architect or firm may rely on the advice of other professionals (e.g., attorneys, engineers,

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and other qualified persons) as to the intent and meaning of such regulations, once having obtained such advice, an architect or firm shall not design a project in violation of such laws and regulations.

(3) An architect or firm, together with those whom the architect or firm may engage as consultants, shall undertake to perform professional services only when qualified by education, training, and experience in the specific technical areas involved.

CONCLUSION

The advertisement was for Qualified Architectural Firms.

The advertisement was for Design Services, not for Design – Build Services.

There is nothing available to indicate that Steve Strickland is a South Carolina Licensed Architect.

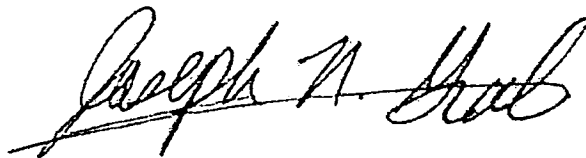
According to LLR, Charles Millonzi is not a practicing Architect at Murrells Inlet, S.C. or with The Earthworks Group.

There is nothing available to indicate that The Earthworks Group is a South Carolina Licensed Unlimited General Contractor, as would be required to bid on or contract for work in excess of \$750,000.00 per contract.

The State Procurement Code has specific requirements in order for a projects to be done using the Design – Build Project Delivery Method. The Agency would have to indicate the need for same and would have to advertiser the project as such.

The State Procurement Code does not permit Architects or Engineers to contract to both Design and Construct the same project.

State law requires the reporting of the suspicion of anyone misrepresenting themselves as Architects or Contractors.



THE END

Zacharius Grate
Board Chair

Elizabeth Grate
Executive Director

MEMORANDUM

To: Zacharius Grate, Board Chairman
Waccamaw EOC, Inc. Board Members

From: Janice Wideman, Finance Director

Date: December 22, 2009

Subject: Amendment to the Procurement Policy

Currently our agency procurement code does not address a method to bid "Design Build". Design-build means a project delivery method in which the agency enters into a single contract for design and construction of an infrastructure facility. This is in reference to the construction of the Chopec Head Start Center.

We recommend that we amend our Procurement Policy to comply with Title 11, Chapter 35 South Carolina Consolidated Procurement Code.

If you have any questions you may contact me at 843-234-4100 ext. 227.

JB

Waccamaw Economic Opportunity Council, Inc.

PROCUREMENT AND PROPERTY MANAGEMENT
GUIDELINES

This document serves as the official agency Procurement and Property guidelines. They were developed in accordance with established federal, state, and/or agency requirements. All agency activities using federal and/or pass-thru federal dollars must conform to requirements that are contained herein. If any board or staff member of this agency becomes aware of a conflict between the contents of these guidelines and established federal or state requirements, please advise the Executive Director immediately. The Fiscal Department will review and update these guidelines as laws and regulations change.

Every board and staff member must follow the guidelines set forth in this manual when engaging in procurement activities using federal and/or pass-thru federal funds. Board and staff members will be held accountable for any purchase that does not conform to the guidelines set forth in this manual. Board and staff compliance will be strictly enforced and reimbursement may be required. Violators may be subject to disciplinary action in accordance with applicable guidelines.

SECTION ONE -- PROCUREMENT

I. Federal Law

Pursuant to the requirements set forth in 45 CFR Part 74, "Whoever being an officer, director, agent or employee of, or connected in any capacity with, any agency receiving financial assistance under this act embezzling, willfully misapplies, steals or obtains by fraud any of the monies, funds, assets, or property which are the subject of grants or contracts of assistance pursuant to this act, shall be fined not more than \$10,000 or imprisoned for not more than two years, or both. However, if the amount so embezzled, misapplied, stolen or obtained by fraud does not exceed \$100, the guilty party shall be fined not more than \$1,000 or imprisoned not more than one year or both."

- C. Proposed procurement actions shall follow a procedure to assure that unnecessary or duplicative items are not purchased. Where appropriate, lease and purchase alternatives will be analyzed for the most practical and/or economical procurement.
- D. Solicitations for goods and services shall be based upon a clear and accurate written description, including any applicable technical specifications, for the material, product or service to be procured.
- E. Affirmative efforts shall be made by the agency to utilize small, minority and women-owned businesses, and labor surplus areas, including the following: (1) inclusion of such businesses on solicitation lists; (2) when feasible, dividing total requirements into smaller quantities/tasks so as to permit maximum small and minority business participation; (3) where permitted, establishing delivery schedules which will encourage small and minority business participation; and (4) using the services of the Small Business Administration, Commerce Department Minority Business Enterprise Office or other entities, as required. If any subcontracts are entered into, the prime contractor will also be required to take affirmative steps.
- F. The types of procurement used shall be appropriate for the particular procurement and for promoting the best interest of the program involved, and may include purchase order, informal bids, formal bids, competitive sealed bids (formal advertising), contract negotiation, competitive proposals, or noncompetitive negotiation (sole source). The "Cost-plus-a-percentage-of-cost or percentage of construction cost" methods of contracting shall not be used.
- G. Contracts shall be made only with responsible contractors who possess the potential ability to perform successfully under the terms and conditions of a proposed procurement.
- H. The agency will review all procurement activities to verify reasonableness of the price and proper procurement guidelines have been followed.
- I. The agency reserves the right to seek appropriate administrative, contractual or legal remedies in instances in which contractors violate or breach contract terms.
- J. Additional provisions shall be included in all contracts as mandated by the funding agency (see attachment A), with such provisions an integral part of these procurement policies.

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orders are computer generated.

Disapproved requisitions will be marked "disapproved" and returned to the originator via computer. Voided purchase orders will be so marked and dated.

An approved purchase order must be issued prior to the placement of any order or authorization of any service, subject to the purchase order requirement. At the discretion of the Executive Director, an emergency requisition number may be assigned to a requisition request prior to preparation of the purchase order. In the event of computer failure, a manual requisition will be used (How to complete section).

C. Receipt of Purchases

The Project Director or requesting staff member will initial the Purchase Order indicating that goods/services have been received, attaching the invoice and/or any packing slips, (verbal verification is allowed with proper information being noted) and forwarding it to the Fiscal Department.

If the purchase is for property that should be captured on the agency's inventory, the Fiscal Department staff shall properly record the asset in the accounting system and keep required documentation.

All pending purchase order files will be reviewed periodically by the Fiscal Department; who, along with Project Directors or the requesting staff member, will follow-up on items or invoices which have not been received.

Employees or contractors may not personally benefit from favorable terms given to the agency (e.g., using an agency credit card for personal purchases, or buying a lawnmower or food items for personal use by using agency discount rates).

D. Procurement of Services

1. Services to be procured (e.g. building repairs, vehicle repairs) should follow standard purchase order guidelines.
2. Short-term professional services (e.g., training seminars) should be substantiated by a letter of retainer or purchase order.
3. Long-term, non-professional services (e.g.,

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janitorial services) should use a purchase order and a contract to indicate continuing nature of service.

4. Long-term or other professional services (e.g., legal counsel, special research, construction) should be documented by contract, specifying all terms.

5. Certain goods/services, such as utilities, telephone, gas, consulting, vouchers, etc, shall not require a purchase order.

6. All contracts/agreements entered into will be in the best interest of Waccamaw EOC. and will conform to the agency's procurement guidelines. A copy will be maintained in the Fiscal Department.

E. Procurement of Space

Space procurement, whether paid or received in-kind, is documented by means of a rental or lease agreement, which sets out the following:

1. Description of space to be leased (square footage)
2. Purpose for which it is to be used
3. Period of lease
4. Option to renew lease
5. Utilities, insurance and other services to be furnished by lessor
6. Rate of rental
7. The method and time of payment
8. Other conditions required of lessor or lessee
9. Signature of authorized officials and witnesses

Property used as in-kind match must be re-valued periodically as required by the funding source.

Competitive Procurement

A. Purchasing Guidelines

For all agency programs that are federally funded or pass-thru federally funded, purchases of an item or service will be in accordance with the funding source requirements. In general, any single item or service over \$1,500 up to \$5,000 excluding tax and

45 CFR 74 Is

the Regulations we have to follow

§ 74.40 Purpose of procurement standards.

Sections 74.41 through 74.48 set forth standards for use by recipients in establishing procedures for the procurement of supplies and other expendable property, equipment, real property and other services with Federal funds. These standards are established to ensure that such materials and services are obtained in an effective manner and in compliance with the provisions of applicable Federal statutes and executive orders. The standards apply where the cost of the procurement is treated as a direct cost of an award.

§ 74.41 Recipient responsibilities.

The standards contained in this section do not relieve the recipients of the contractual responsibilities arising under its contract(s). The recipient is the responsible authority, without recourse to the HHS awarding agency, regarding the settlement and satisfaction of all contractual and administrative issues arising out of procurements entered into in support of an award or other agreement. This includes disputes, claims, protests of award, source evaluation or other matters of a contractual nature. Matters concerning violation of statute are to be referred to such Federal, State or local authority as may have proper jurisdiction.

§ 74.42 Codes of conduct.

The recipient shall maintain written standards of conduct governing the performance of its employees engaged in the award and administration of contracts. No employee, officer, or agent shall participate in the selection, award, or administration of a contract supported by Federal funds if a real or apparent conflict of interest would be involved. Such a conflict would arise when the employee, officer, or agent, or any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in the firm selected for an award. The officers, employees, and agents of the recipient shall neither solicit nor accept gratuities, favors, or anything of monetary value from contractors, or parties to subagreements. However, recipients may set standards for situations in which the financial interest is not substantial or the gift is an unsolicited item of nominal value. The standards of conduct shall provide for disciplinary actions to be applied for violations of such standards by officers, employers, or agents of the recipients.

§ 74.43 Competition.

All procurement transactions shall be conducted in a manner to provide, to the maximum extent practical, open and free competition. The recipient shall be alert to organizational conflicts of interest as well as noncompetitive practices among contractors that may restrict or eliminate competition or otherwise restrain trade. In order to ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft grant applications, or contract specifications, requirements, statements of work, invitations for bids and/or requests for proposals shall be excluded from competing for such procurements. Awards shall be made to the bidder or offeror whose bid or offer is responsive to the solicitation and is most advantageous to the recipient, price, quality and other factors considered. Solicitations shall clearly set forth all requirements that the bidder or offeror shall fulfill in order for the bid or offer to be evaluated by the recipient. Any and all bids or offers may be rejected when it is in the recipient's interest to do so.

§ 74.44 Procurement procedures.

(a) All recipients shall establish written procurement procedures. These procedures shall provide for, at

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a minimum, that:

- (1) Recipients avoid purchasing unnecessary items;
- (2) Where appropriate, an analysis is made of lease and purchase alternatives to determine which would be the most economical and practical procurement for the recipient and the Federal Government; and
- (3) Solicitations for goods and services provide for all of the following:
 - (i) A clear and accurate description of the technical requirements for the material, product or service to be procured. In competitive procurements, such a description shall not contain features which unduly restrict competition.
 - (ii) Requirements which the bidder/offeree must fulfill and all other factors to be used in evaluating bids or proposals.
 - (iii) A description, whenever practicable, of technical requirements in terms of functions to be performed or performance required, including the range of acceptable characteristics or minimum acceptable standards.
 - (iv) The specific features of "brand name or equal" descriptions that bidders are required to meet when such items are included in the solicitation.
 - (v) The acceptance, to the extent practicable and economically feasible, of products and services dimensioned in the metric system of measurement.
 - (vi) Preference, to the extent practicable and economically feasible, for products and services that conserve natural resources and protect the environment and are energy efficient.
- (b) Positive efforts shall be made by recipients to utilize small businesses, minority-owned firms, and women's business enterprises, whenever possible. Recipients of HHS awards shall take all of the following steps to further this goal:
 - (1) Ensure that small businesses, minority-owned firms, and women's business enterprises are used to the fullest extent practicable.
 - (2) Make information on forthcoming opportunities available and arrange time frames for purchases and contracts to encourage and facilitate participation by small businesses, minority-owned firms, and women's business enterprises.
 - (3) Consider in the contract process whether firms competing for larger contracts intend to subcontract with small businesses, minority-owned firms, and women's business enterprises.
 - (4) Encourage contracting with consortiums of small businesses, minority-owned firms and women's business enterprises when a contract is too large for one of these firms to handle individually.
 - (5) Use the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Department of Commerce's Minority Business Development Agency in the solicitation and utilization of small businesses, minority-owned firms and women's business enterprises.
- (c) The type of procuring instruments used (e.g., fixed price contracts, cost reimbursable contracts, purchase orders, and incentive contracts) shall be determined by the recipient but shall be appropriate for the particular procurement and for promoting the best interest of the program or project involved. The "cost-plus-a-percentage-of-cost" or "percentage of construction cost" methods of contracting shall not be used.
- (d) Contracts shall be made only with responsible contractors who possess the potential ability to perform successfully under the terms and conditions of the proposed procurement. Consideration shall be given to such matters as contractor integrity, record of past performance, financial and technical resources or accessibility to other necessary resources. In certain circumstances, contracts with certain parties are restricted by agencies' implementation of E.O.s 12549 and 12689, "Debarment and Suspension." (See 45 CFR part 76.)

5A

Choppee Head Start Project Status Report

March 18, 2010

By

Joseph N. Grate, P.M.

This is a progress report, utilizing the information supplied with my job application; in effect a proposal as it related to the RFQ for the position.

In black is what I said then. The Green and red indicates how I see it now.

The progress from this point will be predicated upon how the red is dealt with.

The following is from page 6 of said application:

FEES /
(additional information)

I am amenable to meet with the Agency so as to discuss Project Need Determination and Project Focus. Upon establishing these aspects of the project, the foundation will be in place to discuss compensation. Until then, there is no definitive reference point. Some, a few, of the many aspects are as follows:

Pre-Construction Phase: (In concert with the appropriate A.H.J.)

1. **Deliver Current Status Analysis Report, (urgent / burning) DONE**
2. Highlight necessary course correction actions, DONE
3. (Delivery method, etc.) DONE
4. Establish Project Goal(s), DONE
5. Provide assistance to compile / consolidate Facility Program
DONE
6. Chart the course of activities with the Architect,
(Design through delivery of facility) ???? VERY DIFFICULT

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Construction Phase:

7. Chart the course of activities with the Contractor, POSSIBLY VERY DIFFICULT, DUE TO 6 ABOVE

8. Determine PM requirements in Contract execution.
(largely predicated upon 2 and 5, above) SO FAR, SO GOOD

The entire project is predicated upon the digestion of 1, above.
ADDRESSED

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From: Beth Fryar <beth.fryar@weoc.org>

To: joseph <zenchira@yahoo.com>

Cc: Zacharius Grate <zachariusgrate@yahoo.com>; Janice Wideman <janice.wideman@weoc.org>;
Wilhelmina Whitfield <wilhelmina.whitfield@weoc.org>; Lynda Davis <lynda.davis@weoc.org>

Sent: Wed, March 10, 2010 1:07:33 PM

Subject: FW: Earthworks Group

Mr. Grate, based on her response, what is your recommendation on how to proceed with Earthworks?

Beth Fryar

Executive Director

Waccamaw Economic Opportunity Council, Inc.

843-234-4100, ext. 223

Beth.Fryar@weoc.org

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Thu, March 11, 2010 11:05:27 AM

Re: Earthworks Group

From: joseph <zenchira@yahoo.com>

[View Contact](#)

To: Beth Fryar <beth.fryar@weoc.org>

Cc: zachariusgrate@yahoo.com

Attn: Miss Fryar,

I have given a lot of consideration to this question. I think we have satisfied the concerns of this firm's status concerning certification.

However, WEOC should make a determination regarding the qualifications of this firm with regard to all of the other firms who submitted their statement of qualifications.

It appears that Earthworks was selected for what they were offering to do, from a design build perspective. We have now determined that they were not qualified to do what they were proposing, also that WEOC did not advertise in that regard.

Now the question is: do they stand out over the other firms, in terms of experience and qualifications? This is a legitimate point on contention and therefore the directions from where possible inquiries could come from.

Not just that but in the eyes and expectations of WEOC, does this firm appear to be the best suited for the project?

Before we lose sight of the true objective of the process, I suggest that WEOC take another look at the submittals and address this issue one final time.

This is the best that I can offer on this matter and having given my best, I hereby surrender it to WEOC and put it to rest.

Thank you,

Joseph

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From: Beth Fryar <beth.fryar@weoc.org>

To: joseph <zenchira@yahoo.com>; Wilhelmina Whitfield <wilhelmina.whitfield@weoc.org>; Lynda Davis <lynda.davis@weoc.org>; Janice Wideman <janice.wideman@weoc.org>

Cc: Zacharius Grate <zachariusgrate@yahoo.com>

Sent: Thu, March 25, 2010 11:43:11 AM

Subject: FW: AIA Contract Completion

I am in the process of reviewing the below information based on our meeting yesterday. I would ask that each of you review it, so we can notify Steve of any additional items that may have been missed.

Elizabeth L. Fryar, CPA

Executive Director

beth.fryar@weoc.org

(843)234-4100, ext. 223

(843)234-4111 (fax)

From: Steve Strickland [mailto:sstrickland@earthworksgroup.com]

Sent: Thursday, March 25, 2010 11:08 AM

To: Beth Fryar; Zacharius Grate

Cc: joseph; Charles Millonzi; Paige Gunn

Subject: AIA Contract Completion

To All:

Based on our meeting on 24 Mar 2010, the following changes will be made to the B101 Agreement:

Section 3.5.3 Negotiated Proposals section will not be applicable and will be crossed out

Section 3.6.1.3 The owner has language that they would like to propose related to the start and termination date for Construction Phase Services. We will need this to complete the contract.

*Section 4.1 – Programming will be taken out (not provided)
-Scope descriptions will be provided for Scopes 4.1.28 – 4.1.34 to describe each task to be completed.*

Section 4.3.4. Time for completion of Construction Phase services will be changed to eighteen (18) months

Section 5.4. Section to be crossed out and Architect will provide surveys

Section 5.5 Section to be crossed out and Architect will furnish geotechnical engineering report

Section 5.6. the portion of tests related to air and water pollution and hazardous materials will not be necessary based on previous site visits.

Section 11.2 – Programming cost of \$1650.00 will be removed from Additional services

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Section 11.7 – A list of personnel that will be working on this project and billing rates will be added to replace Appendix 1

Section 11.8.2 Reimbursable expenses will be paid at "actual expense" instead of Fifteen Percent (15%)

Section 11.10.2 – Payments made after ninety (90) days will be paid with Nine Percent (9%) interest

Section 13.2.2 - AIA Document E 201 will be crossed out and not a part of the contract

Section 13.2.3 – Architectural Program prepared by Waccamaw EOC will be used.

Document B101-2007 Exhibit A

A.1.2 – Square footage of project will be 10,500 SF, include 8 classrooms to serve 160 students, including infants and toddlers at this time.

A.2.4. – Steven G. Strickland will be the only representative for the architect listed.

A.2.5.1.1 – Bobby Moore , PE and Anileya Radivoeva, EIT, LEED AP will be identified under structural engineer with our office address

A.2.5.1.2 and A.2.5.1.3 – Chris Hammel , PE, LEED AP will be identified under Mechanical and Electrical Engineer with our office address

We can have these changes completed as soon as Waccamaw EOC provides the suggested language for our review on Section 3.6.1.3.

Please let me know if there are any additional changes required.

Thank you

STEVEN G. STRICKLAND, PE, LEED AP

The EARTHWORKS Group, Inc.
11655 Highway 707, PO Box 201
Murrells Inlet, SC 29576
843-651-7900 Fax 843-651-7903

sstrickland@earthworksgroup.com

Visit our website at www.earthworksgroup.com

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From: Zacharius Grate <zachariusgrate@yahoo.com>
To: joseph <zenchira@yahoo.com>
Sent: Thu, March 25, 2010 4:28:51 PM
Subject: Re: AIA Contract Completion

what would he recommend, need this answer back quickly.

From: joseph <zenchira@yahoo.com>
To: zachariusgrate@yahoo.com
Sent: Thu, March 25, 2010 12:59:00 PM
Subject: Fw: AIA Contract Completion

----- Forwarded Message -----

From: joseph <zenchira@yahoo.com>
To: Beth Fryar <beth.fryar@weoc.org>
Sent: Thu, March 25, 2010 12:58:00 PM
Subject: Re: AIA Contract Completion

Attn: Miss Fryar,

Does this work for you? Nothing against her; she is probably excellent, in every way but an EIT is an Engineer In Training.

Anileya Radivoeva, EIT, LEED AP will be identified under structural engineer

Additionally, I just talked with ASHLEIGH B WEATHERLY, he is a Structural Engineer with Kyzer Timmerman, Myrtle Beach, Regarding the Structural System for the Headstart Center. I am more convinced that WEOC should not venture down the current path, with Earthworks. I would advise that a different structural system be considered for this facility. In my opinion, a different Design Firm would be an even better decision.

Thank you,

Joseph

(2)

From: Zacharius Grate <zachariusgrate@yahoo.com>
To: joseph <zenchira@yahoo.com>
Sent: Fri, March 26, 2010 9:10:15 AM
Subject: Re: AIA Contract Completion

What is the saving, what is the cost, and does this stop the project from moving forward?

From: joseph <zenchira@yahoo.com>
To: Zacharius Grate <zachariusgrate@yahoo.com>
Sent: Thu, March 25, 2010 6:19:27 PM
Subject: Re: AIA Contract Completion

First of all, he could meet with you, if you desire.

First he spoke about a light metal framing system that could do the job, economically. He said a pre-engineered steel building might also be fairly economical but there are added on features that also add to the cost of the overall system. Also that kind of framing has some effects in other ways that could adversely impact the overall situation.

He is a Structural Engineer so he understands what is involved. He knows what he is talking about.

Joseph

Fri, March 26, 2010 9:52:23 AM
Re: AIA Contract Completion
From: joseph <zenchira@yahoo.com>
View Contact
To: Zacharius Grate <zachariusgrate@yahoo.com>

The only way to determine Cost or Savings is to actually fully investigate different methods but the same question could be put to Earthworks. In other words, they are saying that the method they are using is the most economic but have they shown that. I feel they are doing it that way for their convenience. Now, after that system is used, there will be added features to go along with it and complete the wall system. In addition, there will be stresses that must be dealt with or there will be undesirable effects to the system.

What I was relaying to you is that when looking at the situation as a whole, it appears that the suggested method is not the most appropriate way to go.

With respect to the issue of stopping the project from going forward:

going forward, full steam ahead without the proper direction could in fact be taking us backwards or be heading towards a full and abrupt stop.

Let me make it as clear as I possibly can: the whole idea of dealing with Earthworks on this project, is not a wise one. They are not the best choice for the job; they should have never even been considered for the job; in my opinion they will present major problems down the road, commencing at signing of the contract.

It is not too late to look at other firms and it would not cost anything except about a couple days or a week and that could potentially put us much further ahead of where we currently are.

There are some things you could do.

You could get your own consultants;

You could ask for a tabulation of different structural methods to show the advantages of each;

Etc.,

Actually, we are up against the same type of situation for each discipline area of the job: electrical, civil, mechanical, structural, etc. His approach has too many cooks in the kitchen and I am afraid that they come with a heavy Strickland bias and influence. That does not make for a good situation.

Thank you,

Joseph

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From: Beth Fryar <beth.fryar@weoc.org>
To: Steve Strickland <sstrickland@earthworksgroup.com>
Cc: Zacharius Grate <zachariusgrate@yahoo.com>; joseph <zenchira@yahoo.com>; Lynda Davis <lynda.davis@weoc.org>
Sent: Mon, March 29, 2010 3:41:51 PM
Subject: RE: Choppee Headstart Contract

Our attorney has been sent this to work on the wording of the language. We have not yet received this from him.

Elizabeth L. Fryar, CPA

Executive Director

beth.fryar@weoc.org
(843)234-4100, ext. 223
(843)234-4111 (fax)

From: Steve Strickland [mailto:sstrickland@earthworksgroup.com]
Sent: Monday, March 29, 2010 10:09 AM
To: Beth Fryar; Zacharius Grate; joseph
Cc: Charles Millonzi; Paige Gunn
Subject: Choppee Headstart Contract

To all:

EARTHWORKS has not received any additional language for the proposed AIA Contract, section 3.6.13. We are prepared to send a revised contract based on the changes discussed on 24 March 2010.

Please advise whether we should send the contract without this language or wait for you proposed language.

Thank you

STEVEN G. STRICKLAND, PE, LEED AP

The EARTHWORKS Group, Inc.
11655 Highway 707, PO Box 201
Murrells Inlet, SC 29576
843-651-7900 Fax 843-651-7903

sstrickland@earthworksgroup.com
Visit our website at www.earthworksgroup.com

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Mon, March 29, 2010 4:46:10 PM
Re: Choppee Headstart Contract
From: joseph <zenchira@yahoo.com>
View Contact
To: Beth Fryar <beth.fryar@weoc.org>

Miss Fryar,

You can inform Steve to edit that section of the contract to read:
**...terminate on the date of Owner notification
of termination.**

We do not need attorney's input.

Everything seems to take so long but that will
not work after the contract is signed.

Hopefully Steve was sent the stuff I sent to you
on Friday, re: program items.

Joseph

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Thu, April 15, 2010 2:43:54 PM

Contract

From: joseph <zenchira@yahoo.com>

[View Contact](#)

To: beth.fryar@weoc.org; zachariusgrate@yahoo.com

Attn: WEOC,

I do not understand why the issue of my contract was not placed on the agenda but because it was not, even after I was told that it would be, prior to the last 3 board meetings, my purpose here is to personally request that my contract issue be addressed, as soon as possible; or at the very latest, at the next meeting.

This situation is unsustainable and of serious concern to me, given that I have **committed** to the Project Management Position. It places me in a precarious situation, given the current economic environment.

Joseph

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From: joseph [mailto:zenchira@yahoo.com]
Sent: Friday, April 23, 2010 2:13 PM
To: beth.fryar@weoc.org; zachariusgrate@yahoo.com
Subject: Choppee Head Start Center

Attn: WEOC,

In the process of providing for the Head Start Facility, the issue of timing / scheduling is paramount. Presently, the item at issue is compensation. When other matters were of primary importance, I brought those to the forefront and pushed compensation out of the discussion. Now is the time to act upon the compensation issue.

Going forward, it is crucial that all scheduled activities surrounding the project, be promptly addressed. That is absolutely necessary for the desired goal to be met; the desired goal being an expeditious closeout of the project, free from any glitches during the process.

This can be accomplished by way of simple management function and timely corporation on the part the WEOC Staff, armed with a (make it happen) attitude, emanating from the management.

I think the Atlanta organization is aware that this process is not static but if you have any indication that they might not be so aware, please feel free to pass these comments on to them. Meanwhile, please provide the necessary action, as is the requirement of the dynamic nature of this process.

Thank you,

Joseph N. Grate

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From: Beth Fryar <beth.fryar@weoc.org>
To: joseph <zenchira@yahoo.com>
Cc: Zacharius Grate <zachariusgrate@yahoo.com>; Janice Wideman <janice.wideman@weoc.org>
Sent: Fri, April 23, 2010 3:24:11 PM
Subject: RE: Choppee Head Start Center

Good afternoon Joseph! The Board of Directors approved a down payment to you and a 9% contract fee subject to funding availability at our April 20, 2010 Special Board Meeting. The attorney has been contacted of the Board's actions. Our agency is waiting on approval from Head Start at this time to process this payment from the Choppee grant. Any other source of payment must be approved by our Board of Directors for staff to process the down payment. We do have a Board meeting scheduled next Tuesday, April 27, 2010 and I will ask that this issue be discussed if we have not received approval from Atlanta .

Thank you for your patience in this matter.

Elizabeth L. Fryar, CPA
Executive Director
beth.fryar@weoc.org
(843)234-4100, ext. 223
(843)234-4111 (fax)

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Fri, April 23, 2010 5:57:09 PM

Re: Choppee Head Start Center

From: joseph <zenchira@yahoo.com>

[View Contact](#)

To: Beth Fryar <beth.fryar@weoc.org>

Cc: Zacharius Grate <zachariusgrate@yahoo.com>; Janice Wideman <janice.wideman@weoc.org>

Hello Miss Fryar,

Thanks for your reply.

My message is, to put it another way: the Building Process requires nimble feet. If the WEOC collective family (its Board and Atlanta Organization) S.O.P. is as slothful as is demonstrated so far, there is a serious problem and it is one for which my patience will not provide a solution. My purpose, in addition to the obvious, is to get the organization tuned up for what is to follow. The issue of my compensation is nothing compared to issues the organization could possibly face, unless it becomes more nimble. The other alternative is to either have a whole lot of financial resources or perhaps shy away from the whole idea of Facility Construction. That's my take on the situation but, we will see how it all plays out.

Thanks again,

Joseph

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Project Management Services

Choppee Head Start Center

May Progress Report

Submitted to:

**Waccamaw Economic Opportunity Council, Inc.
1261 Highway 501, East, Suite B
Post Office Box 1467
Conway, South Carolina 29528-1467**

May 26, 2010

Submitted by:

Joseph N. Grate
P.O. Box 1294
Pawley's Island, S.C. 29585
843 - 626 - 7976
zenchira@yahoo.com

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Waccamaw EOC, Inc.
Choppee Head Start Center

Monthly Report
May 2010

INTRODUCTION:

This report is submitted pursuant to: Exhibit A, Scope of Service, 8.

Presently, I am totally confused about your objectives.
Exhibit B of my contract was changed, by WEOC, to read:

EXHIBIT B

COMPENSATION

Contractor shall be compensated at a fee not to exceed 9% of the total building cost

(excluding design, engineering and permitting fees), payable as set forth in 3-1 of the

Contract. Waccamaw EOC will pay contractor an advance payment (against future billing) of \$10,000 as soon as funds are available to Waccamaw EOC, Inc. Invoices must be submitted prior to payment. Final payment will not be made until entire project is complete.

This followed from a telephone conversation wherein I was informed that there would not be any disbursement until the project starts, which means when construction starts.

I interpret this as meaning that Waccamaw EOC Is not interested in my providing any pre-construction services and that it is only interested in my providing services during the building construction phase. It also implies that there is no cost consideration attached to my activities, to date. The ultimate implication is that my activities are restricted to Step 7 of the Head Start Process: **Construction Administration. It excludes all participation in design, engineering and permitting associated activities, when it introduced: (excluding design, engineering and permitting fees) in its introduction of EXHIBIT B of the contract.**

In that this contradicts other elements of the contract, as well as all of the information I have submitted to date on the subject of the process for getting the project completed; and, that it in no way resembles the procedure and guidance provided by the Head Start Program, as outlined by the U.S. Department of Health

and Human Services, I hereby call your attention to the source of my confusion. At this point, I do not understand what your objectives are.

Currently I do not know what the status of the project is however it is evident that there is no intention to follow the established Design Process and indeed it appears that all activity up to step 7 of the Head Start Process, has been disregarded or discarded.

I had previously gone to considerable length to convey that the project consists of the many items that come into play long before the construction process and those elements need to be addressed. The pre-construction elements consist of pre-design and design activities.

Seemingly, WEOC has discontinued all activity with respect to the project or at the very least, have chosen to disregard all of my recommendations regarding Contractual Issues, expediency, procedure or process.

This is some of what I was offering, what I felt you needed. It is the general process of the Design and Construction industry; however, it is presented here as specific to your situation:

(excerpt from initial proposal, per RFP February 8, 2010)

FEES / (additional information)

I am amenable to meet with the Agency so as to discuss Project Need Determination and Project Focus. Upon establishing these aspects of the project, the foundation will be in place to discuss compensation. Until then, there is no definitive reference point. Some, a few, of the many aspects are as follows:

Pre-Construction Phase : (in concert with the appropriate A.H.J.)

1. **Deliver Current Status Analysis Report, (urgent / burning)**
2. Highlight necessary course correction actions,
(Delivery method, etc.)
3. Establish Project Goal(s),
4. Provide assistance to compile / consolidate Facility Program,
5. Chart the course of activities with the Architect,
(Design through delivery of facility)

Construction Phase:

6. Chart the course of activities with the Contractor,

- 16
7. Determine PM requirements in Contract execution.
(largely predicated upon 2 and 5, above)
The entire project is predicated upon the digestion of 1, above.

This is Head Start's process, per: eclkc

Eight Steps in the Design Process

Program design elements, such as group size, classroom size, the indoor-outdoor relationship, and easily accessed diapering and toileting facilities with adjacent hand washing sinks, all have a great impact on the functioning and design of a child care center. Program directors and facilities managers can use this article to further their understanding of all aspects of building design and costs.

Eight Steps in the Design Process

1. Feasibility Study
2. Programming
3. Schematic Design
4. Design Development
5. Construction Documentation
6. Bidding and Negotiation
7. Construction Administration
8. Post-Occupancy Training

1. Feasibility Study

This first step undertakes to examine the issues that will make the project feasible or unfeasible, and in some cases to determine the best strategy for proceeding with the project. By addressing these questions up front, we can avoid costly and frustrating surprises down the road.

2. Programming

One of the most important purposes of the program is to reduce the need for later backtracking and redesign. A thorough programming process is essential for maintaining an orderly and cost-effective design process later in the project. We have found that many problems that people encounter with the design of their centers could have been avoided with a thorough programming process. When working with a construction professional they may go through a detailed list of criteria in looking for program needs that translate into square footage or other design requirements. For example, one of many questions for infant care that we

would ask would be if the school or parents will provide the diapers, and if cloth or disposable diapers would be used. In this simple example, if the design does not accommodate the center's needs, there will be problems with storage space, delivery, and odors in the classrooms.

Programming usually involves a meeting or series of meetings with the center's director, and in many cases the teachers, other staff, and possibly parents. In the programming meetings, the client's specific goals, priorities, and uses for the spaces are discussed in detail. All of the requirements of the project are then put into a clearly-organized written program, which will be a reference throughout the design process.

3. Schematic Design

Based on an approved Program, the Schematic Design synthesizes the program into a defined, feasible design. The design will be shown in the form of Schematic Drawings, and in some cases a study model. The Schematic Design will address all significant areas of design and will be reviewed with the client before proceeding with more detailed drawings. A preliminary cost estimate is also usually provided at this stage.

4. Design Development

Based on an approved Schematic Design, Design Development is the process of refining and fixing the design, and working out all the details, including the selection of materials and the engineering systems. The aim is to finalize all design decisions before proceeding with Construction Documents, the more detailed and expensive documents that the contractor will need to complete the project. A more detailed cost estimate may also be provided at this phase. In smaller projects, Design Development may become part of the Schematic and Construction Document phases, rather than being a distinct phase of its own. The Design Development package will be reviewed with the client before proceeding further with the project.

5. Construction Documentation

Based on approved Design Development documents, construction drawings and written specifications are put together which describe in detail all of the construction work to be done. These are the documents upon which the construction contract will be based, and which the contractor will use to build the project. If a building permit is required, the application is usually made at the end of Construction Documentation.

6. Bidding and Negotiation

The project is put out to bid, a contractor is selected, and a construction contract is drawn up between the contractor and the client.

7. Construction Administration

On-site observation and conscientious administration of paperwork throughout construction is necessary to assure that communication flows smoothly, that high standards are maintained, and that the client gets their construction money's worth.

8. Post-Occupancy Training

After construction is complete, we work with teachers and staff on use and enhancement of developmental design, incorporating age-appropriate activities and experiences, and showing staff how the environment can be altered according to their needs.

On-site training and/or phone consultation with administrative and program staff are available as needed for each center upon completion of the construction project.

CONCLUSION

I will try and work with you in the manner you want but at a very minimum, you might want to take a look at the Head Start information and make the necessary adjustment to our contract. Meanwhile, I will await your decision on this matter.

Project Management Services

Choppee Head Start Center

June Progress Report

Submitted to:

**Waccamaw Economic Opportunity Council, Inc.
1261 Highway 501, East, Suite B
Post Office Box 1467
Conway, South Carolina 29528-1467**

June 21, 2010

Submitted by:

Joseph N. Grate
P.O. Box 1294
Pawley's Island, S.C. 29585
843 - 626 - 7976
zenchira@yahoo.com

Waccamaw EOC, Inc.
Choppee Head Start Center

Monthly Report
June 21, 2010

INTRODUCTION

This report is submitted pursuant to: Exhibit A, Scope of Service, 8;

Submitted subsequent to and incorporates / References May Report

CURRENT STATUS

Again, there is nothing new to report, since the May Report. There has not been any response or comments from the May submission, however, this date makes one year and six days since the Choppee Head Start Center Project was advertised.

SOUTH CAROLINA

BUSINESS OPPORTUNITIES

Published by Materials Management Office – R. Voight Shealy, Director

June 15, 2009 Volume 29, Issue 47

HEAD START CENTER

FOR WACCAMAW E.O.C.

Waccamaw EOC, Inc., A 501(c) (3) Non-Profit Corporation whose main office is located at 1261 Highway 501 East, Conway, South Carolina, that receives federal & state funding, is requesting sealed proposals for Statements of Qualifications from qualified architectural firms for a 12,500 sq. ft. Head Start center.

Solicitation For This Service Will End at 2:00pm, Thursday, June 25, 2009. Interested businesses should contact Ms. Janice Wideman, Finance Director, (843) 234-4100, Ext. 227, for specifications & bid paperwork.

The Agency Reserves The Right to reject any or all offers. Waccamaw EOC, Inc. is an equal opportunity employer.

Waccamaw EOC should be advised that I did not commit to a position of stagnation, with respect to the flow of information as well as the flow of funds. After more than a year of nothing to show for all of the time that has passed, it is extremely difficult to understand your process or how I might be able to assist you or to fit in with your process. Never the

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less, the requisite services is all about time and money and in order to remain solvent and provide for the maintenance of recurring Taxes, Insurance, License fees, etc., which are currently due, my situation and consequently my status with WEOC, will require an infusion of cash before June 30th, in order for me to remain solvent; regardless of your process.

The process, as outlined in the May Report, entails a steady work flow process, towards the design and construction of a facility, in compliance with Head Start Guidelines.

For sure, I cannot subsist in limbo and the current situation is stagnant and does nothing to support my sustainability. This limbo is essentially having my hands tied, with respect to any other work, due to the exclusive commitment to the Choppee Project. There is nothing happening with the project that I can see; therefore, it is incumbent upon WEOC to do something and time is of the essence. I can see no justifiable reason for the stagnation, since I am here to provide you with the necessary guidance. For you to not take advantage of what is available is inconceivable.

CONCLUSION

It has been established that I possess the ability to perform the functions necessary for your needs. That ability, from my perspective, is a translation of time. Therefore, what WEOC is contracting for is in essence, my time. The clock is running and my time must be compensated for. It is up to you to avail yourself of the product of my time and effort within the context of my making my time available to you and it cannot be appropriated without compensation. Consequently, it is incumbent upon WEOC to address the issue(s), immediately.

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RE: Waccamaw EOC, Inc.
Choppee Head Start Center

Follow-up to May and June Monthly Reports

June 23, 2010

Attn: WEOC

It is imperative that you immediately address the issues at hand, as laid out in the above mentioned Monthly Reports.

WEOC's apparent SOP does not work, in the real world; at least as far as I can see. Should an occasion arise wherein you realize that you are in need of assistance, I am willing to try to provide same. Meanwhile, I wish you luck in all of your future activities

**SOUTH CAROLINA
BUSINESS OPPORTUNITIES
Published by Materials Management Office – R. Voight Shealy, Director
June 15, 2009 Volume 29, Issue 47
HEAD START CENTER
FOR WACCAMAW E.O.C.**

Waccamaw EOC, Inc., A 501(c) (3) Non-Profit Corporation whose main office is located at 1261 Highway 501 East, Conway, South Carolina, that receives federal & state funding, is requesting sealed proposals for Statements of Qualifications from qualified architectural firms for a 12,500 sq. ft. Head Start center.

Solicitation For This Service Will End at 2:00pm, Thursday, June 25, 2009. Interested businesses should contact Ms. Janice Wideman, Finance Director, (843) 234-4100, Ext. 227, for specifications & bid paperwork.

The Agency Reserves The Right to reject any or all offers. Waccamaw EOC, Inc. is an equal opportunity employer.

Joseph N. Grate

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Project Management Services

Choppee Head Start Center

July Progress Report

Submitted to:

**Waccamaw Economic Opportunity Council, Inc.
1261 Highway 501, East, Suite B
Post Office Box 1467
Conway, South Carolina 29528-1467**

July 20, 2010

Submitted by:

Joseph N. Grate
P.O. Box 1294
Pawley's Island, S.C. 29585
843 - 626 - 7976
zenchira@yahoo.com

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RE: Waccamaw EOC, Inc.
Choppee Head Start Center

Monthly Report
July 20, 2010

Attn: WEOC,

There is nothing new to report, even after 13 plus month since advertisement of the project; therefore, Pursuant to all documentation (applications, reports, proposals, audio recordings, transcripts, e-mail, contracts, etc) and all meetings and telephone contact, nothing has occurred that precludes the following:

OPTION 1

With regards the Choppee Head start Center, Continue along your present course of inaction but buy out my contract by Paying the sum of \$ 45, 000.00, and we cut all ties. Given the level of consciousness, business plus otherwise, of the organization, pretty much as a whole, this is my preferred option. The preference is to separate myself from you and this craziness and go on with my life.

OPTION 2

Commence on the contract immediately and disburse the sum of \$28,000.00 and continue with Project without delays until the completion of construction. In the event of any delays in the process, pay \$125.00 per hour during any day, Monday through Saturday, up to the amount of \$8500.00 for any contiguous 30 day period. For any period less than 30 days, the stated hourly rate applies. None of the money paid thusly (money payable while work is discontinued for any reason beyond my control) is to count against the contract price for the, to be agreed upon, contract sum or fee for this project. This option is predicated upon an acceptable plan of action and schedule for completing the project.

The options available to you are, therefore 1 and 2 above. Otherwise, I would be forced to behave in manner in which I am sure you would have, had I breached the contract in any fraction of the manner in which you have done.

In the event you do not concur with either option 1 or option 2 immediately upon receipt of this proposal, this should therefore be considered my notice of contract termination, per section 5 of the contract. From that point we will continue this matter in accordance with section. 1.1.4 of the contract and option 3 will come into effect.

(OPTION 3)

The only other option is to resolve this stagnant situation in accordance with Section 1.1.4 of the contract.

Joseph N. Grate _____

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Hachi No Su, Inc.
P.O. Box 1294
Pawley's Island, S.C. 29585
843-626-7976

PROPOSAL FOR ADDITIONAL SERVICES

August 6, 2010

Waccamaw E.O.C., Inc.
P.O. Box 1467
Conway, S.C. 29528 - 1467

Project Number 012010

ATTN: Executive Director

RE: Section 3.2 of the contract for Project Management Services

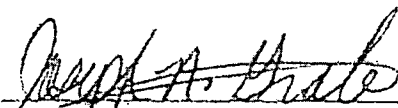
Proposal:

To interface with attorney the morning of August 9, 2010, for the purpose of Contract Analysis and Review associated with Architectural Selection for Design of the Choppee Head Start Center.

Contractor propose to perform said functions for the sum of: **\$1,050.00**
(ONE THOUSAND AND FIFTY DOLLARS and ZERO CENTS)

This signed proposal is hereby presented as an invoice for the services and amount indicated and is due and payable as of the date of signing.

Signatures attached signify consent hereto and Services commences after signing.



Contractor / Project Manager

8/9/2010 / 11/30/10

Date

For Waccamaw E.O.C., Inc.

Date

EXHIBIT B

COMPENSATION

Contractor shall be compensated at a fee not to exceed 9% of the total building cost (excluding design, engineering and permitting fees), payable as set forth in 3-1 of the contract. Waccamaw EOC will pay contractor an advance payment (against future billing) of \$10,000 as soon as funds are available to Waccamaw EOC, Inc. Invoices must be submitted prior to payment. Final payment will not be made until entire project is complete.

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

CONTRACT FOR SERVICES

This contract is by and between Waccamaw Economic Opportunity Council, Inc. ("Waccamaw"), whose administrative office is located at 1261 Hwy 501E, Suite B, Conway, South Carolina 29526; and Joseph Grate of Hachi No Su, Inc., ("Contractor"), a service provider to Waccamaw, whose administrative office is located at PO Box 1294 Pawley's Island, SC.

This Contract for Services ("Contract") is dated this 29 day of April, 2010 and shall have an Effective Date of the 29th day of April 2010 (the "Effective Date")

1. GENERAL TERMS OF CONTRACT:

- 1.1. Headings: Headings to paragraphs in this Contract shall not interpret or alter the meaning of the words in the respective paragraph, nor any other provision of this Contract.
- 1.2. Term and Time of Performance: The timely performance by Contractor of the services described in this Contract is of the essence, and shall commence on the Effective Date. Failure to perform in a timely manner, except for cause occasioned by Act of God, shall permit Waccamaw to declare this Contract voided and of no further effect. This agreement shall be in effect for the completion of the engagement, from the Effective Date to final acceptance of the work projects by Waccamaw. The date of completion is set forth in Exhibit A unless otherwise extended by mutual consent of the parties in writing by exhibit hereto.
- 1.3. Arbitration: This Contract is not subject to arbitration.
- 1.4. Dispute Resolution: If the parties hereto cannot settle any difference arising between them without litigation, any such litigation shall take place in the courts of the Fifteenth Judicial Circuit of the State of South Carolina. Venue shall be in

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Circuit Court in Conway, South Carolina, or appropriate magistrate's court in Horry County, South Carolina.

1.5. **Merger, Amendment, and Waiver:** This Contract contains all the terms of all agreements, oral or written, between the parties, and is the only document containing all such terms. This Contract merges all prior contracts, agreements, and under-standings between Waccamaw and Contractor concerning the scope of work described herein. The Scope of Services described in this Contract, and all other terms of this Contract, shall not be amended or varied except by a written instrument signed by a duly authorized signatory of Waccamaw and Contractor. Forbearance by Waccamaw from enforcing the strict terms of this Contract shall not be a waiver of any other term of this Contract, nor shall such forbearance entitle Contractor to rely upon such forbearance in the event of another similar breach by Contractor of the terms of this Contract. Any variance to the terms of this Contract shall be signed by a duly authorized signatory of each of the parties and attached as an Exhibit hereto, and shall have effect as from the effective date thereof as set forth on such Exhibit.

1.6. **Compliance with Federal, State and Local Laws:** Contractor shall comply with all applicable federal, state and local laws, rules and regulations in providing the services described herein.

1.6.1. **Compliance with Laws Prohibiting Discrimination:** Contractor agrees to comply with all applicable laws prohibiting discrimination in the workplace and in the provision of services hereunder including, but not limited to, Title VII of the Civil Rights Act of 1964; the Age Discrimination in Employment Act of 1967; Title I of the Americans with Disabilities Act of 1990; the Equal Pay Act of 1963; and the South Carolina Human Affairs Law.

- 1.7. By entering into this Contract, Contractor affirmatively warrants that Contractor is currently in compliance with such laws, and further warrants that during the term of this Contract, Contractor shall remain in compliance therewith.

2. SCOPE OF SERVICES: Contractor shall perform those tasks set forth in Exhibit A which is attached hereto and is incorporated herein by reference, within the time limits and pursuant to the schedule, if any, set forth in Exhibit A.

3. PAYMENT FOR SERVICES:

- 3.1. The costs of services are set forth in Exhibit B of this Contract. Contractor will bill Waccamaw upon the acceptance by Waccamaw of the performance thereof. Contractor's invoice to Waccamaw will be on a basis of net 15 days after receipt by Waccamaw of invoice. Invoices in respect of necessary services rendered by Contractor after a notice of termination, as set forth herein, shall be payable by Waccamaw as if this Contract continued in full force and effect.

- 3.2. Payment for services not included in the Scope of Services constitute additional charges to Waccamaw, at rates and intervals to be agreed between Waccamaw and Contractor in a written instrument executed prior to the performance of such services.

- 3.3. Contractor shall communicate regularly with Waccamaw concerning its coordination, management and control of all services provided under this Contract.

4. WARRANTIES OF CONTRACTOR AND WACCAMAW:

- 4.1. Waccamaw warrants that it has the lawful authority required under State law to enter into and perform this Contract.

- 4.2. Contractor warrants that it has:

- 4.2.1. All necessary licenses and consents required for it to enter into and fully perform the Scope of Services set forth on Exhibit A, and is in good standing in the State of South Carolina;

4.2.2. All required insurances, including Worker's Compensation Insurance and General Liability Insurance, to indemnify Waccamaw against any and all claims arising under or as a result of the performance of this Contract; and

4.2.3. No conflict of interest with any other contract with a third party that might cause a claim to arise against Waccamaw, by the entry into or performance of this Contract by Contractor.

4.3. Contractor warrants that it shall throughout the term of this Contract:

4.3.1. Perform all tasks required under the Scope of Services with a degree of skill and care of reputable members of the same profession or occupation in South Carolina;

4.3.2. Maintain all insurances required by law or this Contract, including worker's compensation, premises liability, and general liability in those amounts required by law and/or sufficient to cover Contractor's contractual obligations, including the indemnity clause.

4.3.3. Properly withhold from all wages, commissions, salaries, and fees paid by Contractor to third parties or employees, agents, or sub-contractors of Contractor, all amounts required by State or Federal law to be withheld for or on account of taxes, social security payments, or other withholdings mandated by law or regulation;

5. **EARLY TERMINATION OF CONTRACT:** Waccamaw and Contractor each shall have the right, upon thirty (30) days written notice; to terminate this Contract, and thereafter Waccamaw shall have no obligation to pay for services provided by Contractor except up to the effective date of termination of this Contract. In the event, Contractor exercises its right to terminate this Contract, Contractor will not cease services for a reasonable period of time, said time period to be determined by Waccamaw but not to exceed ninety (90) days, to allow Waccamaw to procure another Contractor.

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6. INDEPENDENT CONTRACTOR STATUS: Contractor shall not, by entering into this Contract, become a servant, agent, or employee of Waccamaw, but shall remain at all times an independent contractor to Waccamaw. This Contract shall not be deemed to create any joint venture, partnership, or common enterprise between Contractor and Waccamaw, and the rights and obligations of the parties shall not be other than as expressly set forth herein.

7. NOTICES TO PARTIES: All notices to each party to this Contract, except routine notices of performance of the Scope of Services during the Contract term, shall be in writing, and sent as follows:

7.1. To Waccamaw:

7.1.1.

Wilhelmina B. Whitfield, Interim Executive Director
Waccamaw Economic Opportunity Council, Inc.
1261 Hwy 501E, Suite B
Post Office Box 1467
Conway, SC 29528

7.2. To Contractor:

7.2.1. Joseph Grate

Hachi No Su, Inc.
PO Box 1294
Pawley's Island, SC 29585

7.3. Form of Notice: All notices required or permitted under this Contract shall be effective:

7.3.1. On the third (3rd) business day after mailing by depositing the notice in the United States Mail, first class postage prepaid, addressed as set forth above; or on the day of receipt of such notice (whether by mail, courier, hand delivery, or otherwise), whichever is the earlier date of receipt; or

7.3.2. On the first day after receipt of a facsimile transmission of the written notice, with delivery confirmed, provided that such notice is also thereafter sent by first class mail as set forth above.

Exhibit A

SCOPE OF SERVICES

1. To provide management oversight for the preconstruction phases and for all phases of the construction project, including coordinating workers, material, and equipment, ensuring that specifications are being followed, and work is proceeding on schedule and within budget. Conduct any other work that Waccamaw Economic Opportunity Council, Inc. deems necessary for the Agency, within the realm of the Design and Construction Process for the Choppee Head Start Facility.
2. Develops a cost-effective plan and schedule for completion of the project; accomplished by following a logical pattern for utilization of resources, by incorporating schedules from the Project Architect and the General Contractor.
3. Confirm the coordination of work conducted by subcontractors working on various phases of the project, by way of coordinating with the General Contractor's field representative.
4. Monitor the performance of all trade contractors and review architectural and engineering drawings to make sure that all specifications and regulations are being followed.
5. Responsibility for proper administration of construction contracts and verify that the work performed in accordance with the necessary permits and licenses and that all permits and licenses have been issued.
6. Review all reports, monitor any reported difficulties, and address any safety violations or other reported deficiencies.
7. Track and adjust construction schedule and associated costs to achieve completion of the project within time and budget allocated. Contractor shall provide weekly reports to the Agency giving percentage of completion to date; work schedule for following week; analysis of funds expended to date; estimates for funds to complete and other information requested by the Agency.
8. Report (monthly at a minimum) to Waccamaw Economic Opportunity Council, Inc. about progress and any necessary modifications of plans that seem indicated.
9. The Project Manager shall provide its services in conjunction with the services of an Architect retained by the Owner under the terms described in the associated AIA Document, Standard Form of Agreement between Owner and Architect, as amended and executed by Owner and Architect. The Project Manager shall not be responsible for actions taken by the Architect.

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10. The Project Manager shall provide its services in conjunction with the services of a contractor retained by the Owner. The Project Manager shall not be responsible for actions taken by the contractor.

EXHIBIT B

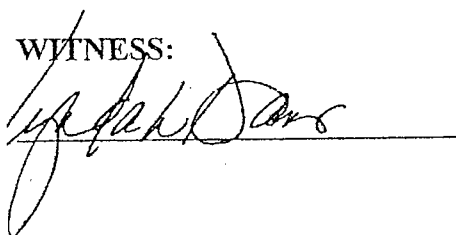
COMPENSATION

Contractor shall be compensated at a fee not to exceed 9% of the total building cost (excluding design, engineering and permitting fees), payable as set forth in 3-1 of the contract. Waccamaw EOC will pay contractor an advance payment (against future billing) of \$10,000 as soon as funds are available to Waccamaw EOC, Inc. Invoices must be submitted prior to payment. Final payment will not be made until entire project is complete.

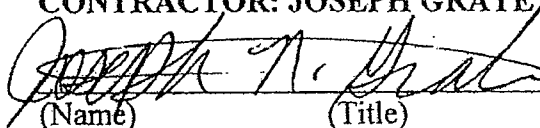
8. INDEMNIFICATION AND HOLD HARMLESS AGREEMENT: Contractor agrees to indemnify, hold harmless, protect and defend Waccamaw and Waccamaw's board members, agents, representatives, and employees from and against any and all claims, losses, liabilities, damages, costs and expenses, including reasonable attorney's fees, expert witness fees and court costs, that are alleged to have occurred in whole or in part as a result of or due to the negligence or fault of Contractor, its agents, consultants, employees or representatives, or otherwise arising out of this Contract, regardless of whether or not such claim, loss, liability, damage, cost or expense is caused in part by any party indemnified hereunder.

IN WITNESS WHEREOF, the parties have executed this Contract in duplicate originals, each of which shall be deemed to be an original on the Effective Date first above written.

WITNESS:



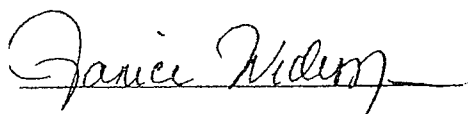
CONTRACTOR: JOSEPH GRATE

 4/30/2010
(Name) (Title)

57-1081742

Taxpayer Identification Number

WITNESS:



WACCAMAW ECONOMIC OPPORTUNITY
COUNCIL, INC.

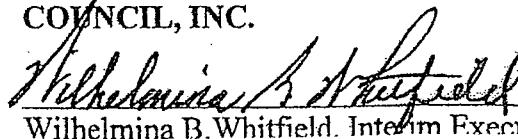
 4/30/10
Wilhelmina B. Whitfield, Interim Executive Director

Exhibit B

COMPENSATION:

Payments to the Project Manager

For the Project Manager's Services described under Appendix A, the Owner shall compensate the Project Manager as follows:

1. A Fee of Ten Percent (10%) of the Total Project Cost, which is the sum of the Design Cost plus the Construction Cost;
2. An initial payment of Twelve Thousand, Five Hundred Dollars and zero cents (\$ 12, 500.00) upon execution of this Agreement, which shall be credited to the Owner's account in the final invoice;
3. Unless otherwise agreed, payments for services shall be made monthly at the rate of \$8500.00 per month, due and payable upon presentation of the Project Manager's invoice; amounts unpaid thirty (30) days after the invoice date shall bear interest at the local prevailing interest rate.
4. For Additional Services that may arise during the course of the Project, the Owner shall compensate the Project Manager at the rate of \$125.00 per hour.

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Hachi No Su, Inc.
P.O. Box 1294
Pawley's Island, S.C. 29585
843-626-7976

INVOICE

December 6, 2010

Waccamaw E.O.C., Inc.
P.O. Box. 1467
Conway, S.C. 29528 - 1467

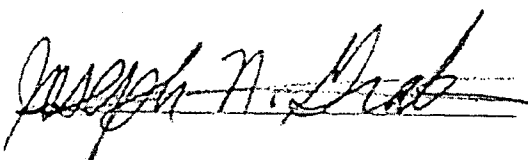
Additional Services
Invoice Number 02
Project Number 012010

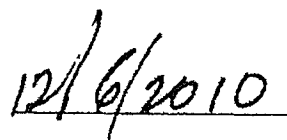
ATTN: Executive Director

For Project Management Additional Services associated with Negotions re:
Signed Contract.

Choppee Head Start Center

Date	Description	Value
10/11/2010	Meeting, Contract Negotiations	\$275.00
12/06/2010	Meeting, Contract Negotiations	\$687.50
Total	Due upon receipt	\$962.50





FAX 234-4111

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234-4100

WACCAMAW EOC, INC.
1251 HWY 501E, SUITE B
CONWAY, SC 29526



LOCAL TRAVEL MILEAGE FORM

REPORTED NAME: JOSEPH N. GRATE

PROGRAM COST CENTER:

WORK SITE LOCATION: CONWAY

POSITION: P.M. (CHOPPER H.S)

WORKING ADDRESS: P.O. Box 1294, P.I., S.C. 29585

DATE		ODOMETER READING	MILES	BETWEEN WHAT LOCATIONS	PURPOSE OF TRAVEL
5/30	START	42806	44	MYRTLE BEACH - CONWAY	MEETING RE: CHOPPER STUDY
	END	42850			
6/0	START	42880	44	MYRTLE BEACH - CONWAY	MEETING
	END	42932			
	START				
	END				
	START				
	END				
	START				
	END				
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	START				
	END				
	START				
	END				
	START				
	END				
	START				
	END				
	START				
	END				

I CERTIFY THAT THE REPORT INFORMATION IS TRUE AND CORRECT, AND THAT I HAVE NOT RECEIVED REIMBURSEMENT FOR THE MILEAGE. I UNDERSTAND THAT PROVIDING FALSE INFORMATION IS CAUSE FOR IMMEDIATE JOB SUSPENSION OR EMPLOYMENT DISMISSAL.

EMPLOYEE'S SIGNATURE: Joseph N. Grate

DATE: 5/5/2010

PROGRAM DIRECTOR'S SIGNATURE: _____

DATE: _____

UNITED DIRECTOR / CEO SIGNATURE: _____

DATE: _____

FISCAL USE ONLY:	TOTAL MILES:	RATE:	AMOUNT:

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WACCAMAW EOC, INC.
1251 HWY 501E, SUITE B
CONWAY, SC 29526



LOCAL TRAVEL MILEAGE FORM

NAME: JOSEPH N. GRATE PROGRAM COST CENTER: _____
LOCATION: CONWAY POSITION: CLIFFSIDE HEAD START - P.M.
ADDRESS: P.O. BOX 12914, PAULEN'S ISLAND, S.C. 29585

	ODOMETER READING	MILES	BETWEEN WHAT LOCATIONS	PURPOSE OF TRAVEL
START	43228	63	PAULEN'S ISLAND - CONWAY	MEETING W/ Z. GRATE RE: INVOICE OF 8/6/2010
END	43291			
START	44069	34	CONWAY - NORTH BERTH	MEETING @ R. WILSON'S OFFICE RE: CONTRACT
END	44103			
START				
END				
START				
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START				
END				
START				
END				

HAT THE REPORT INFORMATION IS TRUE AND CORRECT, AND THAT I HAVE NOT RECEIVED REIMBURSEMENT
LEAGE. I UNDERSTAND THAT PROVIDING FALSE INFORMATION IS CAUSE FOR IMMEDIATE JOB SUSPENSION
PLOYMENT DISMISSAL.

S SIGNATURE: Joseph N. Grate DATE: 11/30/2010

DIRECTOR'S SIGNATURE: _____ DATE: _____

DIRECTOR / CEO SIGNATURE: _____ DATE: _____

FISCAL USE ONLY:	TOTAL MILES:	RATE:	AMOUNT:



WACCAMAW EOC, INC.
1251 HWY 501E, SUITE B
CONWAY, SC 29526

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LOCAL TRAVEL MILEAGE FORM

PRINTED NAME: JOSEPH N. GRATE

PROGRAM COST CENTER: _____

WORK SITE LOCATION: CONWAY

POSITION: CHOPPER HEAD START - P.M.

MAILING ADDRESS: P.O. BOX 1294, P.I., S.C. 29535

DATE		ODOMETER READING	MILES	BETWEEN WHAT LOCATIONS	PURPOSE OF TRAVEL
12/4 2010	START	48215	28	CONWAY - LAMRICK BEACH	CONFERENCE @ R. WILSON'S OFFICE - RE: P.M. CONTRACT, etc
	END	48243			
	START				
	END				
	START				
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	START				
	END				

CERTIFY THAT THE REPORT INFORMATION IS TRUE AND CORRECT, AND THAT I HAVE NOT RECEIVED REIMBURSEMENT FOR THE MILEAGE. I UNDERSTAND THAT PROVIDING FALSE INFORMATION IS CAUSE FOR IMMEDIATE JOB SUSPENSION AND OR EMPLOYMENT DISMISSAL.

EMPLOYEE'S SIGNATURE: _____

Joseph N. Grate

DATE: 12/4/2010

PROGRAM DIRECTOR'S SIGNATURE: _____

DATE: _____

EXECUTIVE DIRECTOR / CEO SIGNATURE: _____

DATE: _____

FISCAL USE ONLY:

TOTAL MILES: _____

RATE: _____

AMOUNT: _____

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Update on Choppee Lease

Mr. Grate said Mr. Smith had already discussed the lease on Choppee and asked him if he had anything to add. Mr. Smith said he had talked to Wesley Bryant and he should have something back from him this week or next on the proposed lease changes. Mr. Smith said the third read had been postponed until the lease was finalized. Mr. Grate said everyone had received a copy of the lease agreement they were talking about. He said the items in blue were Mr. Smith's recommendations and the items in red were to be deleted. He said the lease terms were changed to an automatic renewal after 25 years; the parking lot issue was in the lease, and the portion about the parking lot being a joint venture. Discussion. Mr. Grate said he wanted to ask Ms. Fryar to go ahead and get the bids out for someone to actually bid on building the school at Choppee. Ms. Fryar said she had to have the architectural drawings back first. Mr. Grate said he thought we only needed the square feet. Ms. Fryar said no, you must have the drawings. Mr. Grate said we know the square footage is 12,500 and ask someone what they will build the building for. He said we had estimated it to cost \$103.00 per sq. foot, but there are other contractors that may do the work for less, maybe \$85.00 per sq. foot and we need to start looking to see whose these contractors are that may do the work for less. Dr. McKnight made a motion to go ahead and start getting bids for contractors to build the school at Choppee. Mr. Smith said he didn't agree with getting bids yet. He said he would agree with having Ms. Fryar to start investigating builders to see what they may charge us and get general information for the board. He said it was way too premature to get bids for a contractor. Mr. Grate asked why it was premature. Mr. Smith said because to get a bid they have to have the architectural drawings that will have the plans and the specifications. He said a contractor cannot bid without those specs showing quality of material, what work we expect him to do and warranty issues. Mr. Smith said every spec you ask for will change the square footage price. Dr. McKnight made a motion to start looking at prices for contractors and proceed with qualifications to find interested parties to get prices for the architect for the Choppee site. Rev. Smith seconded.

Board Committee Reports

Ms. Gowans said the amended by-laws had been mailed to each board member.

Mr. Grate said each member would start getting a copy of the attendance records and once they miss two meetings they will get a letter. Ms. Boyd asked regarding the board members that had called to say they were going to be absent, did that mean they were excused. Mr. Grate said no, they were only courtesy calls. He said there are no excused absences.

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MINUTES
WACCAMAW ECONOMIC OPPORTUNITY COUNCIL, INC.
REGULAR MEETING/ BOARD OF DIRECTORS

TUESDAY, JULY 28, 2009

Call to Order

The meeting was called to order at 6:25 pm by Mr. Zacharius Grate, Board Chair at the Williamsburg County Council Chambers, Kingstree, South Carolina. The invocation was given by Mr. Norman McGill.

Roll Call

Dr. McKnight called the roll. Ten members were present. Mr. Zacharius Grate, Board Chair, Mr. Richard Smith, Mr. Ulysses Dewitt, Mr. Michael Johnson, Ms. Patricia Gregory, Mr. Norman McGill, Ms. Ruby Rodgers, Ms. Sandra F. Gowans, Mr. Kennedy Johnson and Dr. Isabelle McKnight. A quorum was established.

Staff in attendance was Elizabeth Fryar, Executive Director, Shannon Tyler, Wilhelmina Whitfield, Leamon Bellamy, Emily Cooper, Janice Wideman, Lynda Davis, and Tom Grazioli.

Members of the public: Mr. Steve Strickland, Ms. Grace Brock, Mr. Joseph Grate, Mr. Steve Andersen, Mr. Christopher Coleman, Mr. Eddie Rodelsperger, and Mr. Chuck Earney.

Approval of Agenda

Mrs. Gregory made a motion to approve the agenda and Mr. Michael Johnson seconded. Motion carried.

Approval of Minutes

Dr. McKnight made a motion to hold off on the approval of the minutes to allow those giving presentations to go first. Mr. Richard Smith seconded and the motion carried.

New Business

Mr. Grate asked the architectural firms to come forth to give their presentations. Mr. Grate asked that while one of the firms was giving their presentation to the Board that the other firm would step out of the room. Mr. John Bowman from John Bowman Architect thanked the Board for allowing his firm to present their qualifications to them again. Mr. Bowman introduced Mr. Chris Coleman, Mr. Joseph Grate, Mr. Zach McGee and Mr. Steve Anderson who were consultants to his firm and would be working on the Choppee Project. Mr. Bowman showed different projects that his firm had worked on and pictures of those sites. Mr. Bowman said that they used Microsoft project software for all of their

projects. Mr. Bowman went over a concept schedule that he was proposing for the Choppee Head Start Center. Mr. Bowman said that the concept schedule was based on the concept design that was presented to him. Mr. Bowman said that the design phase would take approximately six weeks based on a design and that we have an understanding that we can move forward with the project. Mr. Bowman said there would be a nine week time frame for permitting and approvals. Mr. Bowman said once the design is completed that the funding source would probably request copies of the documentation before the bidding process is to begin. Mr. Bowman said that the bidding process is about a month process and once they have received the bids, that the contract award process could take anywhere from one month to sometimes three months based on the owner. The awarding of the contract is primarily based on the size of the client, how many people have to approve the bid and the funding source will often have to approve the bid. Mr. Bowman said that they have allowed four weeks for the awarding of the bid which makes it an aggressive period and Waccamaw EOC, Inc. would have to approve of this time frame but Mr. Bowman said that four weeks was doable. Mr. Bowman said that the construction phase would take approximately twenty-eight weeks. Mr. Bowman said that he did not see this as a difficult construction but that once they get into the design, that geotechnical reports will have to be done to tell what kind of soil conditions are at the site and based on those reports, getting out of the ground is sometimes the most difficult part of the project. If bad soil has to be taken out and replaced with good soil or if we have to come in and replace some of the foundation design and weather interferes, there could be slippage in the schedule but we feel that twenty-eight weeks is doable. Mr. Bowman said that overall a fifty-one week period for the total project. Mr. Bowman went over the existing conditions of the site. Mr. Bowman showed a block structure diagram to the existing conditions of a possible site location for the building, playground area, parking lot and a bus loop separated from the existing parking. Mr. Bowman said that the playground space was hard to judge because he did not know the number of children that the center would serve. Mr. Bowman said that the parking lot for staff and parents would be separate from the bus loop in order to avoid pedestrians and that the bus loop could stack from ten to fifteen buses. Mr. Bowman said that a study would have to be done to determine the number of buses. Mr. Bowman said that he wanted to make sure they design a building that meets the Agency's budget and wants to make sure the Agency gets exactly what it pays for. Dr. McKnight said that she noticed that Mr. Bowman had been in business for 5 ½ years and asked why did he branch out on his own. Mr. Bowman replied that he left a very good job and mentored a lot of young people and tries to get them involved in the architect field, which is a tough field, and left SC State University to start up his own practice and it has been truly a blessing. Dr. McKnight said that she saw that he was becoming a registered architect and are fulfilling all IDP requirements under the NACRB in the State of South Carolina and asked Mr. Bowman what did that mean. Mr. Bowman replied that he was a registered architect and was not certain what she had read. Mr. Bowman said that the NACRB is a national registration for architects and that Mr. Chris Coleman and Mr. Earnest Barkley are young architect interns working in his office that are studying to become registered architects. Dr.

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McKnight asked Mr. Bowman if he designed the structural outline and does he have people who build the building. Mr. Bowman replied no. Mr. Bowman said that we bid out the construction of the building to licensed general contractors and they will hire subcontractors to build the building. Mr. Bowman said that his firm would monitor the process on behalf of the owner. Dr. McKnight asked if Mr. Bowman would hire the builder or if the Agency would hire the builder. Mr. Bowman replied that his firm would assist the owner with advertising and bidding the project, but it was typical for the building to be bid out. Mr. Bowman said that his firm would make a recommendation to the Owner and it was up to the Owner for the final decision. Dr. McKnight said that she was trying to get a visual on what exactly Mr. Bowman did. Mr. Bowman said that his firm would give a detailed cost estimate of what his firm thinks it would cost to build the building. Mr. Richard Smith said that he noticed that Mr. Bowman worked with consultants instead of members in-house and asked when a problem arises, who do you structure to go to you when there is an electrical problem instead of going to the electrician or a plumbing problem going to the plumber, etc. Mr. Bowman said that all of his consultants carry error and emissions insurance and that his firm also carries the error and emission insurance but that when a problem arises we are to see him. Mr. Bowman said he would discuss the problems with the consultants. Mr. Bowman said that if it is an error or emission on the part of the design profession including the consultants that cost the Agency more funding, and then he will cover that under his error and emission insurance and that it would not be our responsibility. Mr. Richard Smith asked how much error and emission insurance did it cover and Mr. Bowman said one million dollars per claim. Mr. Richard Smith asked Mr. Bowman if the legal agreement would be between our agency and John Bowman Architect and Mr. Bowman said that the contract would be with the Board of Directors and John Bowman Architect. Mr. Bowman said their would be separate agreements between him and his consultants. Mr. Richard Smith asked Mr. Bowman could he give any insight into building green and the impact cost. Mr. Richard Smith asked if we should spend any time looking into building green. Mr. Bowman said now was the time to look into this. Mr. Bowman said that a ten percent savings by using the green power sources and also their would be savings by using low power energy appliances. Plumbing fixtures are a key component in cost savings when using green. Mr. Bowman said that his firm is doing research on building green and that there are benefits to building green if time and budget permits. Mr. Bowman said recyclable products were more expensive but would help save in the long run. Mr. Grate thanked Mr. Bowman for taking the time for coming and presenting his firm. Mr. Grate told Mr. Bowman that the agency would be in touch with him to let him know one way or the other.

Mr. Steve Strickland and Ms. Grace Brock from The Earthworks Group thanked the Board for allowing them to come back a second time and speak with them on the project. Ms. Brock handed out a timeline schedule for Choppee Head Start if given the opportunity to handle the project. Mr. Strickland asked the board to direct questions to him at any time and said that he would speak on the project again if the board would like.

Mrs. Gregory asked Mr. Strickland to give a brief summary of his previous presentation since their were board members that were not at the first meeting. Mr. Strickland said that his company was an engineering, architectural, surveying, and environmental firm that started in 1996. Mr. Strickland gave a brief history of his educational and employment background. Mr. Strickland said that he started out in the civil engineering and environmental fields first and then after the Grand Strand started to develop added on the building design services, architectural service and surveying services. He said that his firm wanted to be a turn-key service provider. Mr. Strickland said that he wanted to bring to the table things that are long term and will bring value. Mr. Strickland said value is a long term consideration. Mr. Strickland said that he provides construction management services. Mr. Strickland said that Earthworks is licensed in South Carolina to provide engineering services, architectural services, surveying services and is also a licensed general contractor. Mr. Strickland went through the time schedule and explained each individual part that make up the construction process. Mr. Richard Smith said that we would be anticipating hiring a general contractor and asked Mr. Strickland would he be proposing something different than that. Mr. Strickland replied that they would be the general contractor. Mr. Strickland said there were different ways to look at it. He said that if you did a CM at risk, the construction manager is the general contractor. If you do a CM Agency, then the subcontractors can talk directly with the owners. Mr. Richard Smith said that we would not have issues then if we went this way then you couldn't blame the architect. Mr. Strickland said that was correct. Mr. Strickland said you got one person, there are no excuses. With a building this size, it is not difficult. Mrs. Gregory said that in Mr. Strickland's presentation she saw no mentions of ADA requirements and asked Mr. Strickland to explain. Mr. Strickland said that ADA requirements are standard and are not an option. Dr. McKnight said that she liked Mr. Strickland's profile and noticed that he was an environmentalist; however she said that she was completely lost and wished Mr. Strickland would have brought something for her to visualize. Dr. McKnight said that the visual and lecturing sells me. Dr. McKnight said that she noticed in the portfolio, how is going green so different in energy conservation rather than old methods that we are operating on now, what is the percentage that will save us in the long run. Mr. Strickland spoke on environmental sustainability and said that it was nothing new. We were talking about environment sustainability in the 70's but at the time fuel prices were low and resources were plentiful so saving a little bit of money on electricity wasn't a big deal. Technologies that were out there for us to be green were expensive. Mr. Strickland gave an example of the building that they previously used and the building that they use now. Dr. McKnight said that if you use solar panels and we are going to wait on the sunlight to shine for us and the sun does not always shine through, especially in the winter months, how is solar panels going to help conserve that building and keep the heat in if that is the only thing we have going for us. Mr. Strickland explained environmental sustainability elements and how the use of the land versus the use of the materials to construct the building. Mr. Strickland said that materials that there are materials that are recyclable or long lasting. There are many energy aspects such as solar panels but Mr. Strickland said that he was not favorable to

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them because solar panels need a lot of sunlight and here it is hit or miss. The biggest impact is high efficiency HVAC units and high efficiency lights. Dr. McKnight asked Mr. Strickland did he mention if he believed in more of the metal roofing than of the shingles that we have now. Mr. Strickland said when you look at the types of roofing it depends on the building structure. Roofing material is only one aspect that you look at. You look at your initial cost and then you need to look at the long term cost. Dr. McKnight told Mr. Strickland that when you talk about cost and effect, that she would have hoped that he would have had that in the presentation such as cost of square footage, cost of building the building, the architectural cost which would have been helpful to her but that she did not see any of that in her reading. Mr. Strickland said right. Mr. Richard Smith asked Mr. Strickland to elaborate on the advantage of being local. Mr. Strickland said when you look at the projects that they manage on a day to day basis; they are basically able to make a photographic record of a building going up. Mr. Strickland said that by seeing what is happening everyday or by not seeing what is happening everyday and you are down there only once a week, there are going to be things that you are just not going to be able to see. I am concerned about the things that I don't see. Having the ability to put an actual person on the ground looking at what is happening, there is no substitute. Mr. Strickland said having the ability to put a knowledgeable project manager in the field to communicate with each one of the subcontractors is communication, pure and simple. There is no substitution. The people who are out in the field such as electricians, brick layers, plumbers, they want to see someone in the field that they can talk to when they have a question when the design says one thing but they can do something else to be better, quicker, or cheaper, that one on one communication having a knowledgeable project manager in the field so that he can see something before it goes wrong, I can't tell you how much value I can place on that. Mr. Strickland said the time schedule provided is what they typically show on a project so that you know when the one item is completed you can move onto the next. If the schedule can not be communicated to the subcontractors, being able to adapt to the schedule when something happens in the field and remain flexible and I don't know if I could be cost effective being two hours away. I am only forty five miles away, less than an hour away. Ms. Brock said that there would not be any extra travel expense and can respond to things quickly. Ms. Brock said that were able to offer grant writing assistance to help with the budget. Ms. Brock also said that the project was not Earthworks project, that the project was the Agency's project. When we say we might have used metal roofing on one facility, we have used dozen of different roofing mechanisms. When we went from a 5,000 square foot building to a 15,000 square foot building, our energy cost remained the same. Dr. McKnight said that she was talking about the presentation copy that was sent to her and all the environment aspects that it talks about and that is misleading to me because it doesn't tell me about your architectural design as little as a building. Dr. McKnight said that she saw information about wetlands, water trough, how you could conserve this as far as the state environmental agency would be concerned, but what I personally did not see but I'm sure the bid committees saw, I am a new student in your classroom for the first time and I am lost. The information on architectural design was

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not there and it was not explained on how to follow you tonight. Mr. Richard Smith asked Mr. Strickland if we were only looking for an architect would that be fine and Mr. Strickland said yes. Mrs. Gregory asked Mr. Strickland and Ms. Brock that you can do everything from the design aspect all the way through to the general contractor, you can do everything under one roof with your company. Mr. Strickland and Ms. Brock both said yes. Mr. Strickland said that based on the meeting with the selection committee, we were shown a concept design and floor plan and we think it works but if you are going to service infants then there would be some changes that would need to be made because of the state requirements based on the age groups. Mrs. Gregory asked Mr. Strickland that if he was awarded the bid for the architect, the proposed plan that you were allowed to look at, and if there were problems with trying to fit the building on the property the way that it should be, you would recommend any changes on the design of it. Mr. Strickland responded that the conceptual plan is just that, you have to decide on what things do you need now, but what things will you need in ten years. Changes would need to be made to the drawing in regards to the roof if you would plan to expand and build onto the building. Dr. McKnight asked do changes cost more. Mr. Strickland said that changes to improve the building value in the design phase are cheap, but more expensive in the construction phase. Mr. Strickland said that you already are ahead with the conceptual drawing but what you need to do is sit down as a whole committee and brain storm on the design. Ask yourself where you want to be now, where do you want to be at in five years and where do you want to be at in ten years. Consider could this project be built for use as a shelter. Mr. McGill asked Mr. Strickland did the plan and square footage of the building give him an idea of how many we want to serve in that building. Mr. Strickland said yes, that understanding the plan for service, how much space do you need to do the service that you need to do. Mr. Strickland said that the conceptual plan is workable there would just be a few changes from what he could see. Mrs. Gregory asked Mr. Strickland that if we gave you a budget and said design something, could he do that. Mr. Strickland said we try to bring reality to the plan first and ask the client how much do you want to spend. Mr. Grate said that the board had a better understanding from both firms and where we would be going. Mr. Grate thanked Mr. Strickland for coming and giving his presentation again. Mr. Strickland told Mr. Grate that he saw on the agenda where the board would be making a decision on the architect tonight and asked Mr. Grate if that was the case. Mr. Grate said yes, that an award decision would be made tonight.

Mr. Eddie Rodelsperger introduced himself from the PMH, LLC. Group. Mr. Rodelsperger said that he previously had worked for the Horry County School District for over twenty-five years. Mr. Rodelsperger handed out a presentation on the company and spoke to the board on considering a consulting firm. Mr. Rodelsperger said that they have the expertise to deal with the current project and future building projects Mr. Rodelsperger said that it was critical for the board to understand the pros and cons on the design of a building and asked them to look at the advantages and disadvantages. Mrs. Fryar told the board that Mr. Rodelsperger was who helped the Agency get Myrtle Beach

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a seven passenger van and Mrs. Fryar said because the state said to show justification. Mrs. Wideman said that every time she has to send in a budget amendment you must show justification and send with the amendment. Mr. Richard Smith asked if Weatherization was asking for a fifteen passenger sized van or for a van that would seat fifteen passengers. Mrs. Fryar said that Mr. Grate was the one who was asking for the fifteen passenger van. Mr. Grate said that he was talking about asking for a van that would be an extended, longer van to haul equipment in. Mr. Grate said that if you don't see a need for the van that would be one thing, but he was suggesting a fifteen passenger van for the size to haul equipment in when it was raining. Mr. Grate said we have a bunch of seven passenger vans in the agency, so why wouldn't we want a bigger van. Mr. Bellamy said there are liabilities with a bigger van about turning over and myself and my staff and sat down to discuss what size van we would need and personally I do not see a need for a fifteen passenger van. Mr. Grate asked Mr. Bellamy how you would carry something when it is raining. Mr. Bellamy said with the trucks can have the shells put on the back and Mr. Grate said you can't put anything is those things. Mr. Grate said that we don't have to beat the issue and if you don't want it lets just move on. Mr. Bellamy said that the seven passenger van will serve his needs. Mr. Grate asked if the purchase will be on state contract. Ms. Lynda Davis said that this was done in a bid so that we can purchase the van right away. Mr. Grate asked if purchasing from state contract would have been much cheaper and Mrs. Davis said that the state contracts have not come out yet with the seven passenger van. The State usually doesn't send bids out until August and September for the prior year models and would not be available. Mr. Dewitt made a motion to go ahead and award the bid the seven passenger van. Mrs. Gregory seconded and the motion carried. Mrs. Fryar said that the funds were in to purchase the vehicles.

Board Committee Reports

None

Old Business

None

Mr. Grate said that we needed to go ahead and vote on hiring an architect and both architects had presented here tonight at the board meeting. Mrs. Gregory asked did we want to award something when we don't actually have our funds to start anything yet. Mrs. Gregory asked do we have the funds. Mr. Grate said that we have already gone through the bid process, we have to get an architect for the design of the building, and we have already been approved for a loan through the bank, so the money is there. Mr. Richard Smith said I have not seen anything in writing where we have been approved for a loan; I have just seen rates from the banks. Mr. Grate said he was told by Mrs. Fryar that we have been tentatively approved through the bank for a loan. Mr. Smith said tentatively approval is not worth anything. Mr. Smith said that we have asked for a million dollars for the down payment and the down payment that we get will be

determined by the size of the building we get, if we get no down payment I don't see how we can go into a million three building. I think we are putting the cart before the horse but I have seen nothing in writing that provides us the funds to purchase a building, the funds to either borrow for it or if we did borrow the money to pay it back. Mr. Smith said he felt like hiring an architect was premature and we have not seen any prices from the architects unless it was given to the bid committee. Mr. Smith said he did like Mr. Strickland from the Earthworks Group but if he is ten times more expensive then I would not want him over the other firm. Mr. Smith said the question for the board was if you wanted to hire one of these firms which one would it be because we have not seen anything of what their charges would be. Dr. McKnight said that she had asked previously shouldn't we look at what they want to do the job for and everyone went against me. Mr. Smith said to Dr. McKnight that what you had wanted at the previous meeting was a contract for the building construction and you can not get a contract on the building construction until you have plans and specifications done by architecture, but you can hire an architect to build something. Mr. Strickland has said to tell him how much we want to spend and I can build you a building, but Mr. Smith said we are not in a degree of certainty on how much we are able to spend. Dr. Knight said that neither of the architects has provided us anything and Mr. Smith said that he would like to hear from Mrs. Fryar or someone who handles the finances to say here is what we have to spend and here is where it is coming from and here is the money where we are going to be able to pay for a \$1.2 million building. Mr. Smith said he has not seen that and if any other board members had he certainly would like to see it. Mr. Grate said that Mrs. Fryar had shown us before some statistics and Mr. Smith that Mrs. Fryar showed where certain cost savings might enable us to afford it. Mr. Smith said those cost savings would probably be for one year and I think that we need to be 100% sure of having dedicated funds that are available. Mr. Grate said that the conversation that he has had with the Executive Director and finance people and their conversations with the bank that we are already dealing with and that we will be able to secure a loan from them and that if that is the case we need to go ahead and give her the go ahead with the plan she has presented to us. She has already said this can be done and lets choose an architect and if we can get the money from the bank then I would like to see us go ahead and hire the architect. Dr. McKnight said she personally needed more time to think about the architect. Mr. Grate said that you have to get an architect if you want to build a building and that we have had two architects present at the beginning of the board meeting. Ms. Gowans asked if there were any other board members who had concerns because she would like to hear from them. Ms. Rogers asked if the board could hear what Mrs. Fryar's thoughts were. Mrs. Fryar said at the board retreat funds were identified at close to \$57,000 to go toward the cost of a mortgage which equates to a \$700,000 loan. Mrs. Fryar said that the \$700,000 is the mortgage that we can afford. The building we said was going to be at \$110 per square foot for a \$1.375 million. Mrs. Fryar said that we have asked for a down payment from Atlanta. Mrs. Fryar said we do not know how much of a budget we are looking at until we hear something from Atlanta. Mr. Grate asked were we not getting

the 25% also and Mrs. Fryar said that the 25 % has to be requested. Mr. Grate said that you can't request it until you get everything else in line. Mrs. Fryar said that she had sent in a second reading of the lease and I marked it "draft" and the minutes from the county council meeting where they had second reading on the lease. Mrs. Fryar said that we still will not know what our budget will be until we hear back from our grant. Mr. Grate said that we do know that Bank of America is going to allow us to get \$700,000 and that we can afford that. Mrs. Fryar said that we could afford the \$700,000 but most banks don't finance more than 90%. Mrs. Fryar said that they also will not give you a loan unless you have drawings and bids. Mr. Grate said that is why you need architect. Mrs. Fryar you can not get a loan until we know how much money is coming from Atlanta. Dr. McKnight said we need something on paper to show the banks. Mr. McGill said to keep in mind that whether you own the property that you are building the building or leasing the property will make a difference on how much the bank will loan you. Mr. Smith said that right now we are talking about possible \$600,000 or \$700,000 what we can borrow and the building is \$1.2 million so we are still \$500,000 short. Mr. Smith said that if we are going to hire an architect that we do not know what they charge and usually their charge is directed by the size of the building, we can give an assignment to an architect because it would be a foolish assignment to go out and build us a building for \$1.2 million and we only have \$800,000, it would be a waste of money for him to build a \$1.2 million building. Mr. Grate said that we already know that Atlanta is going to give us the 25%. Mr. Grate said that we have to get the paperwork in so that they can give us the money. Mr. Smith asked can we only decide which architect we would like to engage in and advise them that we do not know what the total amount is that we want to build but as soon as we do, we will want you to move forward. Mrs. Gregory said that is why she had asked the architects if we give you a price that we can afford, can you design a building to build for the price. Mr. Grate said that sounds good but can we move forward in Atlanta like that. Mr. Smith said we know what we would like to have but we do not know what funding we are getting. Mr. Grate said this was our best chance ever to get a building there and if we don't move forward then they are going to give it to someone else. Mr. Grate said they are only going to work with projects that are ready to go. Mrs. Fryar said that she emailed Atlanta and asked about the plans that we needed and she was told that the conceptual plans would work. Mr. Grate asked if Atlanta would pay for the drawings and Mrs. Fryar said yes only if the grant is approved. Mr. Grate said we are going to have the money and Mrs. Fryar said but we do not know how much we can borrow. Mr. Smith asked Mr. Grate why do we need to decide today anything but which architect we would like to engage and then when we know how much funding we will be getting then tell them how much and this will give them the scope of work. Mr. Dewitt asked what percentage the architect would charge because he did not know and are we going to hire a construction management or are we going to do this ourselves. Mr. McGill said that the architect would do the project management for you and would be included in the price of the project. Much discussion continued. Mr. Grate said let's move forward, consider one of them and engage in them what we need to do as we look

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at the money situation and asked Mrs. Fryar what her thoughts were on that. Mrs. Fryar said that she felt that we should not award the bid until we have the money. Mr. Grate said that we want to go ahead and choose someone from listening to the two presentations and we told them that we would know something tonight and I want to make sure we know something tonight when we leave here. Much discussion continued. Mr. Grate said let's lock someone in, obtain the architect and get an amount from them and have Atlanta say that they will actually pay for the architect for the drawings. Mrs. Wideman said that she was thinking money the whole time the board was talking and that she would want to know how much we would be charged for. Mr. Grate said lets choose one tonight and we will engage one of them and will find out how much it would cost to construct our building. Mrs. Gregory and Ms. Gowans said that we should engage both of them and find out what it is going to cost and Mr. Grate said no we need to pick someone, we can not engage both of them. Dr. McKnight asked why the bid committee did not ask the one architect to bring his price in and she was told it was in his presentation. Much discussion continued. Mr. Grate asked for a motion to hire someone tonight. Mr. Richard Smith made a motion to hire Mr. Strickland at the Earthworks Group. Dr. McKnight said that she thought Mr. Strickland would be very expensive because they have fifteen people on board and we will have to pay for all of them. Mrs. Gregory said Mr. Strickland had everyone under one roof and Mr. Bowman has to go out and get the other services. Mrs. Davis said that if you do commit to an architect that you should only do a letter of intent pending funding to protect yourself because there is no funding right now and the agency could be held liable for misinformation. Mr. Smith amended his motion to send a letter of intent to Mr. Strickland at Earthworks Group pending funding. Mr. Dewitt said that you never engage to hire someone without the funding. Ms. Gowans said that we had said a letter of intent pending funding and Mr. Dewitt said then you are locked in. Mr. Smith said then we could change the motion to say contingent on funding pending satisfaction to the board. Mr. Dewitt asked Mr. Smith, being that he was a lawyer, why would we want to engage in something that we have no funding for. Mr. Smith told Mr. Dewitt that there is no advantage to it other than this is something that the board wants to move forward on, there is no advantage to it legally, just that the board wants to move quickly on the Choppee site. Mr. Smith told Mr. Dewitt that he had voted no from the beginning but once we got past that I go out voted and now the board is saying that they want to move forward. Mr. Grate said that we have a motion on the table and Mr. Smith reread his motion. Mr. Grate asked if we say contingent on grant money then that might delay the project from moving forward because we might not find out about funds until December or so. Mr. Grate said he thought that we would move forward with getting what we need to get done by borrowing money for our building. Mrs. Fryar said that before you can start borrowing money the bank is going to want full architectural drawings and they are to know what percentage they are financing of it and we don't know that yet so we can not ask them to borrow money until we get our grant award from Atlanta. Mrs. Fryar said you can not borrow money when you don't know how much you will need to borrow. Ms. Gowans said that the one architect has everything under

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one roof and the other architect has everything but they are in different places and asked Mr. Dewitt if both applied with his remark of the fox guarding the hen house. Mr. Smith explained the architect and the building process and having someone available to be at the site watching over the contractor. Ms. Gowans asked do we need a different architect and have a different contractor. Ms. Rodgers told Mr. Grate that we were not getting any where and that we need to hold off on making a decision. Mr. Grate said that we need money to pay for the drawing and we are not going to get anywhere without the money for the drawing. Mr. Grate said we needed to go ahead and get the drawing drawn so that we can show the bank what we will need. Mrs. Fryar said that she did not agree because until we get our funding we are not going to know what size of a building we are going to be able to build. Dr. McKnight said that we needed to move forward and if we have to go back and build on that would be something we will have to do. Mrs. Fryar asked where we will get the money from to do the drawing. Mr. Grate said didn't we go and get money from the bank for the building on Highway 501 in Conway and he was told yes but that was to purchase a building not to construct one. Mr. Grate said that we can have them tell us what the drawing will cost and we can go to the bank and get the money. Ms. Rodgers said that you have to have the money before you can do anything. Mr. Smith asked what size building and Mr. Grate said that we already had a conceptual drawing. Mr. Smith said that we are going to pay some one \$50,000 to draw plans for a \$1.2 building and at the end of the day we only receive \$900,000 in funding. Dr. McKnight said that we are taking a gamble. Mr. Smith and Mr. Dewitt both said that we should not be gambling. Much discussion continued. Dr. McKnight said that she thought we should wait on another meeting to make a decision and Ms. Rodgers seconded. Mr. Grate said that we need to move on with a decision. Mr. Kennedy Johnson said that there was a motion on the table but no second. Ms. Gowans made a motion to send Mr. Bowman a letter of intent and Dr. McKnight seconded. Mr. Smith said that he would like to withdraw his motion from the table. Mr. Dewitt asked what the motion was. Ms. Gowans said that the reason for her motion was that if we are only sending a letter of intent then that is who she would like to send one to but if the board thought it was premature then she would also remove the motion that was made. Mr. Grate said that he would like to see someone awarded and for us to move on. Mr. Dewitt said that he was not against the project but he has never done business like this before. Mr. Smith said that if we did a letter of intent that he did not know how legally but we were obligated to that architect and Mr. Dewitt agreed and said that we could end up in a courthouse. Much discussion continued. Ms. Gowans said that she would remove her motion from the table to avoid any conflict. Mr. Smith asked to table the issue of awarding the bid for the architect until such time that the board has a better feel for fundings so that we can engage an architect to build a known project. He said that I move that we do not award a bid until we know what we want to build. Ms. Rodgers seconded. Mr. Grate asked for all in favor and the motion passed.

asked what the percent of stated debt is. He said we have no basis for asking for \$1 million, he said we just pulled that number out of the air. Mr. Smith said no bank will loan us 100%, and we need 1.3 million, where will the rest of the money come from. Mr. Grate said we will get \$300,000.00 from the feds. Mr. Smith asked how we know that, we have not received an award letter yet.

Mr. Grate said he was going to call for the question based on the Executive Directors recommendation to move forward making contact with Conway National Bank regarding funding for the Choppee building for \$1 million. Mr. Michael Johnson made the motion and Mr. Kennedy Johnson seconded.

Mr. McKnight said even though we are asking for \$1 million it doesn't mean we have to spend it if we don't need it.

Ms. Boyd asked for clarification on the motion and Mr. Grate said the Executive Director was to move forward with Conway National Bank to proceed with the loan of \$1 million for the Choppee facility.

The motion carried by a show of hands 7 to 6.

Mr. Grate	yes
Mr. Frazier	no
Ms. Gregory	no
Mr. Dewitt	no
Rev. Smith	no
Mr. Smith	no
Ms. Rodgers	no
Mr. Mustafa	yes
Mr. Eagleton	yes
Mr. K. Johnson	yes
Mr. M. Johnson	yes
Mr. McKnight	yes
Dr. McKnight	yes

Recommendations from Finance Committee regarding Architectural Services

Mr. Grate said we had a number of bids come in for the architect for the Choppee building and the bid opening committee had met and they were ready to make a recommendation to the board. He said there were two left on the table and that is Earth Works and Bowman. He said at this point they would like to make a decision so we could let the architect start looking at the drawings. He said we do have a concept drawing in place. Mr. Grate said he was asking for a motion. Mr. Michael Johnson made

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a motion to chose Bowman as the architect for the Choppee site and ask them for a letter of intent for designing and constructing the facility. Mr. Mustafa seconded.

Mr. Smith asked what we were talking about doing. Mr. Smith said before the architect can be engaged we have to know what we are going to build. He said you can't just say we are hiring an architect to build a building without a drawing. Mr. Grate said we had a conceptual plan. Mr. Smith said you cannot hire an architect without telling him how much you want to spend on the building; you must give them a dollar amount. He said you can give them your budget and square footage that you want to build. Mr. Grate said we just want to engage the architect and tell him that we have made a decision to hire him when we get the funds and when we get ready to build. Mr. Smith said you cannot do that, you either hire one or you don't, but you can't engage one. He said you can't tell an architect that we may or may not hire you to build a building that we may or may not get the funding for. He said we have no authority to send a letter of intent and the letter would be meaningless anyway. He said you either have to award the bid or not, but you cannot engage in an intent letter. He said if the letter is binding then it is the same as awarding the bid. He said if the letter is not binding that you did not award the bid. He said he was giving his opinion as a board member and not as an attorney.

Ms. Fryar asked if Ms. Lynda Davis, Procurement Specialist could speak to that issue. Ms. Davis said it was her professional opinion not to engage in anything if you did not have the funds to pay for it. She said that would be misleading and that will cause serious consequences. She said if the board felt like they needed to send a letter then she would suggest saying in the letter pending funding, which she said pending funding may mean a lot of different things to different people. Mr. Smith said we may get funding but maybe not enough for the project, but we have still received funding then they may want to make us pay for the project. He said if we are going to engage in an architect we should wait and do it when we get the funding. He said either you award the bid or not.

Mr. Kennedy Johnson said to word the letter to make it work. Ms. Davis said she would be very concerned with engaging with the architect until we get the funds in. She said there could be a lot of liability involved for any work that they have done for us if we don't get the funds. Ms. Davis said any type of intent could be misleading, to just inform the bidders that the bids are under advisement at this time. Ms. Fryar said a letter had already gone out to all of the architects that the board has not made a decision at this time. Mr. Smith asked what the need is for it at this point, he said we don't even have the funding to hire someone, and if we pick one architect now, we are sending them something meaningless that could be a liability and should not be done or why do anything right now.

Mr. Smith said the majority of the board voted to go ahead and work on getting funding from the bank and if we do that then we will know what we have to work with. He said then at that point we can engage in hiring an architect.

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Mr. Mustafa asked if we were trying to draw down to one architect and to move forward. Mr. Grate said yes. Mr. Mustafa said that Mr. Smith says it doesn't make sense to move forward with the architect. He asked if there was a deadline. Mr. Grate said there wasn't a deadline but we have been needing a building since three years ago.

Mr. Eagleton said he felt we would get funds from the feds and he said when he was in Atlanta, he and Mr. Grate were able to talk to some people and they said we were getting the money.

Mr. Michael Johnson made a motion to table the decision on the architect until Ms. Fryar negotiates funding with Conway National Bank at what percentage rate and at that point can determine what size building we need and then engage in an architect. Ms. Gregory seconded. Mr. Smith asked to have the motion modified that we will also wait until we receive notice from the federal government on what they are giving us before we engage with the architect. Mr. Grate asked for a vote. Mr. Smith said to also ask Conway National Bank what the loan to debt ratio will be.

Mr. Grate	yes
Mr. Frazier	abstain
Ms. Gregory	yes
Mr. Dewitt	no
Rev. Smith	no
Mr. Smith	no
Ms. Rodgers	yes
Mr. Mustafa	yes
Mr. Eagleton	yes
Mr. K. Johnson	yes
Mr. M. Johnson	yes
Mr. McKnight	yes
Dr. McKnight	yes

Motion carried 9 to 3.

Bid Awards Fire Alarm

Mr. Grate said when the bid committee opened the bids for the fire alarms that one was missed, staff thought it was late but it was not. Ms. Davis opened the bid. Mr. Eagleton asked Ms. Fryar about the concern of the certifications for the fire alarm. Ms. Fryar said she had spoken with Mr. Jacobs and he said he did misunderstand the question we asked. He said the person installing the fire alarm did not have to be UL certified, but the equipment does have to be UL certified. They do have to be licensed by the state. Ms. Davis said the Green Sea was \$14,281.00 and for Longs \$10,410.00 for the bid she had

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Mr. Grate asked if any board members had questions for any directors. Mr. Mustafa said he had a question for the Weatherization Director, that a gentleman had been fired. Ms. Fryar said that was a personnel issue and had to be covered in executive session. Mr. Bellamy said he had been instructed not to discuss the issue, that it was a Human Resources issue.

Secretary Report

None.

Board Chair Report

Mr. Grate said he wanted to plan a board retreat for October. Ms. Wideman said that IDC didn't have the funds at this time for a board retreat and asked to wait until funds started coming in again from the other programs in November and December. Ms. Fryar said the board's budget at this time is \$1,300.00 until the stimulus funds start coming. The board was in agreement to wait until the next board meeting to talk about the retreat.

Bid Awards

Green Sea Roof Bid

Mr. Grate said the bid committee had met and Ms. Gregory made a motion to award Summers Roofing from Pawleys Island the bid for the Green Sea Roof for \$21,190.00 if they meet the specifications. Mr. Eagleton seconded. Motion carried.

Architect for Choppee

Mr. Grate said from the last board meeting this was tabled until we identified the money and we have identified the money through our grant source. He said he was asking to move forward in coming down to one architect. Mr. Smith said we were still in the same situation that we were in at the last board meeting that we don't know how much money we are going to get until we meet with the banks and attorneys. He said we didn't know if any bank was going to lend us the money, we don't know if we are going to go with bonds and we will know a whole lot more after we meet with the county, the banks, and with the bond attorneys and then we will know how much we have to spend. He said with the information that Ms. Fryar gave tonight, we may not have funds to hire an architect, and we may not be able to get the funding to fit our needs for a Head Start center.

Mr. Grate said the last motion was to identify money and we have identified money with the federal grant of \$487,000.00. Mr. Smith said we do not have a loan and there is a big difference in being able to pay for a loan and having a loan. Mr. Grate said the bank was asking where the architect was and where the drawings are. Mr. Grate said he would

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entertain a motion to go ahead and chose an architect and Mr. Mustafa made a motion to go ahead with one architect. Mr. Smith said we were hiring an architect to draw plans for what size building. Mr. Grate said we already have a conceptual plan for 12,500 sq. ft. and he said we will take that to the architect and ask what they will charge to draw the plans for that building. He said he was not going to tell them how much money we have. Mr. Smith said if we don't get the funding then we have wasted tens of thousands of dollars. Mr. Grate said no, we could just tell them we want to downsize the plans based on the funding that we get.

Mr. Dewitt said based on the information he had heard tonight that the only money that had been identified is the \$487,000.00 from the feds and that we can only spend 25% of what the whole budget is. He said we don't know how much we need to borrow and we don't know what the banks are going to lend us. He said we were engaging someone and we didn't even know what we were engaging them for.

Mr. Mustafa asked what was being suggested. Mr. Smith and Mr. Dewitt said to wait on the money, the facts, and the commitment from the bank. Mr. Smith said we did not have in essence \$487,000.00 because that is the 25% match the feds are giving us for a \$2 million dollar building and we cannot afford a \$2 million dollar building. He said getting drawings for a 12,500 sq. ft. building is a waste of time. Mr. Smith said we are trying to do all of this in a hurry and all we need to do is wait until we have the facts and the commitments. He said we don't have one commitment from one bank and until we do, we don't need to engage an architect.

Mr. Mustafa said he withdrew his motion.

Mr. Grate said he wanted to table this until the next meeting.

BOARD COMMITTEE REPORTS

Green Sea Roof

Mr. Eagleton said we had already engaged the roof bid tonight.

Old Business

None.

Executive Session

Rev. Smith made a motion to go into Executive Session to discuss a personnel issue. Mr. Gregory seconded. Motion carried at 10:25 PM.

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Secretary Report

None.

Board Chair Report

Bid Opening

Ms. Gowans was asked to open the bids since the bid committee had not met. Mr. Grate said the whole board would open them together. Mr. Smith asked if for the sake of time that someone could open the bids and look over them and then report to the board at the end of the meeting or executive session and the board could make a recommendation at that time. The board was in agreement. The bids were given to Mr. Kennedy Johnson to open.

Assurance Policy

Mr. Grate said the staff had prepared an Assurance Policy that had to be voted on for the stimulus funds. He said the draft was on page 80 of the board packet. Mr. Smith said the last sentence needed to say including it on our agencies website. Ms. Gregory made a motion to adopt the policy with changes. Mr. Dewitt seconded. Motion carried.

Architect for Choppee Site

Mr. Grate said the facilities committee had met and were ready to make a recommendation to the board to hire an architect. Mr. Eagleton reported that they had clarified three items. Number one was that Atlanta had given us funds, number two, that we would use Bank of America for financing and number three was to go ahead tonight and to make a motion to hire an architect and the facilities committee was recommending Earthworks. Mr. Eagleton made a motion to hire Earthworks.

Mr. Smith asked what we were going to ask the architect to do. He said Bank of America is ready to lend us \$450,000.00 at a tax exempt rate and we have \$487,000.00 from the feds which is a 25% match. He said the site work alone would cost around \$400,000.00 and his question is what are we asking the architect to build, for example is it a 12,000 sq. ft. building at \$1 million.

Mr. Grate said the county had agreed to clear the site and take care of the parking lot and he said we could actually get \$500,000.00 from BOA and he said we would look at the 25% match when it comes to it.

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Ms. Fryar said she had heard from BOA and their underwriters said the max we could borrow is \$575,000. She said she had met with Kaplan and he is not a bank but he acts as a bank and he said not to worry with the bank. But she said his projection is \$10,000.00 per month and we cannot afford this so we are back to the bank. Mr. Dewitt asked Ms. Fryar if we had a commitment from BOA and she said no, they said they could not give us a commitment at this time. Ms. Fryar said on page 34 is a list of the items they need before they will give us a commitment letter. Mr. Dewitt said we don't even know how much of the \$487,000.00 from the feds that we can use, he said that was 25% of \$1.9 million. Mr. Grate said the \$1.9 million is just a projection.

Mr. McKnight said we have to hire an architect even if we don't go any further than that.

Mr. Smith said his question still was not answered. He said if we hire an architect what size building are we going to ask him to build. Mr. Grate said 10,500 sq. ft.

Mr. Michael Johnson made a motion to engage Earthworks to move forward. Mr. Mustafa seconded. The motion carried by a show of hands. Mr. Dewitt and Richard Smith voted no. Ms. Boyd asked if engage meant hire and Mr. Grate said yes.

Mr. Grate said we needed a motion to engage with Bank of America to borrow the funds for the Choppee site and Ms. Fryar added that the motion would include borrowing funds for the main office roof. She said a fixed rate would be 4.25% fixed for five years or 4.69% fixed for ten years. She said the roof loan would be 6.65 % fixed for 7 years or 6.92% fixed for ten years.

Mr. Mustafa made the motion for Ms. Fryar to go ahead with BOA for the financing of the Choppee project and the main office roof as per the agreed upon numbers from BOA in the board packet. Mr. Smith said the motion was improper. Dr. McKnight seconded. Motion carried by a show of hands. Mr. Smith, Mr. Frazier, and Mr. Dewitt voted no. Ms. Gowans abstained.

Roof for Green Sea

Mr. Grate said the decision for Green Sea roof was to award the bid to the next lowest bidder. Mr. Grate said the bids had been opened by the bid committee and the recommendation was to award the bid to Nobles which was the next lowest bidder. Ms. Fryar said the bid could not be awarded to Nobles because they were nonresponsive according to the bid tabulation sheet. Mr. Grate said then it would have to go to the next lowest bidder since Nobles was nonresponsive and Ms. Fryar said that would be South Coast Exteriors for \$46,564.00. Ms. Gregory made the motion and Dr. McKnight seconded. Motion carried.

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carried. Dr. McKnight made a motion to close the nominations. Mr. Mustafa seconded. Motion carried. Mrs. Boyd asked that a show of hands be recognized during each office during the election. Mr. Grate asked for nominations for First Vice Chair. Mr. McKnight made a motion for Mr. Michael Johnson as the First Vice Chair. Mr. Eagleton seconded. The motion was made to close the nomination by Mr. Mustafa. Mr. McKnight seconded. The motion carried. Mr. Grate asked for nominations for Second Vice Chair. Dr. McKnight made a motion for Mr. Eagleton as the Second Vice Chair. Ms. Rodgers seconded. Mr. Michael Johnson made a motion for Mr. Mustafa as the Second Vice Chair. Mr. Kennedy Johnson seconded. The motion was made by Dr. McKnight to close the nominations. Ms. Gowans seconded. Mrs. Boyd said that the vote would have to be done by secret ballot in accordance with the bylaws. Mr. Grate said no, we can do the vote right now. Mrs. Boyd said the secret ballot was in the bylaws and Mr. Grate said no, only if we want it to be done by secret ballot. Ms. Gowans seconded the close of nominations. Mr. Grate asked for votes from the board members for Mr. Mustafa and for Mr. Eagleton. Mr. Mustafa received three votes and Mr. Eagleton received four votes. Mr. Grate asked for nominations for Secretary. Mr. Mustafa made a motion to nominate Dr. McKnight. Mr. McKnight seconded and made a motion to close the nominations. Mr. Kennedy Johnson seconded. The motion carried. Mr. Grate asked for nominations for Treasurer. The motion was made by Mr. Michael Johnson to nominate Ms. Ruby Rodgers for Treasurer. Mr. Mustafa seconded. Mr. McKnight made a motion to close the nominations. Ms. Gowans seconded. The motion carried. Dr. McKnight read aloud the results of the election for the appointed positions for the 2010. Mr. Grate asked for nominations for the two member at large seats. Dr. McKnight nominated Mr. Kennedy Johnson. Mr. Michael Johnson seconded. Mr. McKnight nominated Mr. Mustafa. Mr. Michael Johnson seconded. Mr. Eagleton made a motion to close on the two said nominations. Mr. Michael Johnson seconded. Motion carried. Mrs. Boyd said that the second vice chair would be responsible for attending the Policy Council Meetings. The slate of new officers is as follows: Mr. Zacharius Grate as the Board Chair, Mr. Michael Johnson as the First Vice Chair, Mr. David Eagleton as the Second Vice Chair, Dr. Isabelle McKnight for Secretary, Ms. Ruby Rodgers for Treasurer, Mr. Kennedy Johnson and Mr. Abdullah Mustafa for the tow member at large seats.

Recommendation on Project Manager for Choppee

Mr. Grate asked for a recommendation on a Project Manager for Choppee. Mr. Grate said that we are looking at hiring someone and he would like for the Facilities Committee to look at the job description for the Project Manager. Mr. Richard Smith asked if we were looking to hire the Project Manager as an employee or as a contractor. Mr. Grate asked Mrs. Fryar and Mrs. Fryar said that staff was recommending to hire a contractor. Mr. Grate said the person would be our internal person who would be our eyes on the job which is required by the Federal grant. Mr. Eagleton said that the debate before was to hire a contractual person or to hire an employee. Mr. Eagleton said that as much improvement as we are doing, we need to have someone who is familiar with

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to look at these jobs and tell us what we need to do. Mr. Richard Smith said it was not a unique situation and he suspected that each of the counties could advise us on what we need to look for. Mr. Smith said they could help us get the qualifications. Mrs. Fryar said that staff was asking the board to come up with a scope of work for the Project Manager. Mr. Grate said that the facility committee will handle it. Mr. Eagleton said that he would get with Mr. Frazier to set up a meeting with his person to meet with them so that we can get some insight on what we need to do for our project and how to choose someone. Mr. Grate asked for a motion to be made to go ahead with the bid after the facilities committee gives Mrs. Fryar a scope of the job. Mr. Richard Smith made the motion. Mr. McKnight seconded and the motion carried.

Approval of Fundraiser

Mr. Michael Johnson asked Mrs. Fryar what was her take on the fundraiser. Mrs. Fryar said that we were \$100,000 short for funds for Choppee. Mrs. Fryar said that the book fundraiser was a win-win situation. Mrs. Fryar said that she thought we should set up a fundraiser committee that would have board members and staff. Dr. McKnight said that as a suggestion she thought it would be easier to ask Managers to be responsible for selling 3-5 or 10 books and each employee sells that it would be a sure thing. Mr. McKnight made a motion to go ahead and use the books as a fundraiser. Mr. Richard Smith seconded and the motion carried. Mr. Michael Johnson asked for a book for Florence or Charleston. Mrs. Fryar said that she would ask for some Charleston or Florence books. Mrs. Fryar said that Charleston was the closest book that was next available. Mr. Grate said that the treasurer was in charge for helping with the fundraising. Mr. Michael Johnson made a motion to have the treasurer help with fundraising. Ms. Gowans seconded and the motion carried.

Recommendation on Attorney for Contracts

Mr. Grate said that we need to look at this real close and that we would want our internal person to formulate with someone to help with contracts and asked the Board what was their desire on this and who we need to hire. Mr. Grate said that Ms. Emma Brittain could do the work because it was a conflict of interest. Mr. Richard Smith said that he thought Mrs. Fryar was asked to get one recommendation from each of the counties and bring them back before the board. Mr. Grate said that she had done this and Mr. Smith asked Mrs. Fryar what was staff's recommendation. Mrs. Fryar said that we had contacted attorneys and they all gave a reduced rate of \$200.00 per hour and staff's recommendation was to engage an attorney and to handle the loan closing also. Mrs. Fryar said that all of the attorneys were well familiar with the construction process and Mr. Eagleton asked who the attorneys were for each county. Mr. Richard Smith made a recommendation that the Board use an attorney from Georgetown County because it would limit travel and would be less costly to the agency being that the land is owned by Georgetown County. Mrs. Fryar named Singleton, Burroughs, and Young from Horry County, Mr. Charles Nation from Georgetown County, and Jenkins, Jarrett and Callihan

approve the schematic design of the Choppee building. Rev. Smith made a motion to approve the schematic design and Ms. Gregory seconded. Motion carried.

Attorney for Choppee

Mr. Grate said at the last board meeting the board had voted to hire an attorney, Mr. Charles Nation and since he had taken ill and would not be able to do the work for us and the board needed to vote for another attorney. He said that Mr. Dan Stacey had been referred by Mr. Richard Smith and Mr. Grate and he was from Pawley's Island and he had done a lot of this type of work before. Mr. Smith said he has an office in Georgetown and had done work for the County Council, and Planning and Zoning and he would do the job for \$2,500.00. Mr. Smith suggested approving at least \$5,000.00 to pay him because we would be asking him to handle all aspects of the Choppee project to include doing the contract for the Project Manager. Ms. Fryar said she had received the scope of the job from the Facilities Committee and the bid did go out yesterday and is due back on February 8th. Ms. Gregory made a motion to hire Dan Stacey as the attorney for the Choppee project and the price cannot exceed \$5,000.00. Mr. McKnight seconded. Motion carried.

Recommendation on Project Manager for Choppee

Mr. Grate said he would like for the Facilities Committee to interview the Project Managers and make a recommendation to the Executive Committee and then the Executive Committee can make a decision and asked if the board would go ahead and vote so the Executive Committee could go ahead and hire someone and not have to bring it back to the full board for the sake of time. He said this person should have already been on board by now and to expedite time, we need to hire this person as soon as possible. He said the Executive Committee could meet and any other board member that wanted to could be present. Mr. Smith said he didn't think that was in keeping with the bylaws. He said that the only authority any committee has is making recommendations and all recommendations had to be made to the full board. He said it was very clear in the bylaws that any one person or committee could not act independently. He said what we would be effectively doing is delegating this board's authority to a committee to hire someone that the rest of the board hasn't voted on and wouldn't even know who the committee hired. Mr. Grate said it was in the bylaws that we can do that. Mr. Grate said this board can give the Executive Committee the authority to hire the Project Manager. Mr. Smith said it was in the bylaws that we cannot do that. Mr. Grate asked where it said that. Mr. Smith said on page 15 of the bylaws, Section 3, Manner of Act, he read "Any and all acts of any and all standing and special committees must be ratified by an act of the Board of Directors at the next scheduled meeting of that body." Mr. Grate said if you look on page 16 it also says that "at all meetings of the Board of Directors, where a quorum is present, a fifty one percent vote by the members present and voting shall govern any action taken except elsewhere provided herein." Mr. Grate said that 51% of this board can give the Executive Committee the authority to hire the Project Manager. Mr. Smith said that elsewhere herein means what is within this document. He said there should be no question about whether this board can or cannot give a committee authority

children and then Atlanta say we can't do this. Mr. Grate asked Ms. Whitfield if we needed to get approval from Atlanta first. She said yes, that she had already mentioned it to Beverly Taylor and she said to let her know and send her some justification. Ms. Whitfield said in order to have home based the parents must be home during the day. Mr. Grate said to get approval from Atlanta and check with the City of Myrtle Beach and bring it back to the board in July.

Update on Project Manager for Choppee

Ms. Fryar said Mr. Joseph Grate's contract would be discussed in Executive Session

Summer Foods

Ms. Fryar said on page 27 is a list of the Summer Food sites for this summer and the program will run through July 30th.

Results of Weatherization stimulus Monitoring Visit

Ms. Fryar said on pages 28 and 29 was a copy of the results from the monitoring visit from May it was a great review. She said they did file inspection, dwelling inspection, inventory, and looked at dwelling completions and said the agency was on target with meeting or maybe exceeding the minimum quota.

Mr. Grate asked what ever happened with the houses that had not been completed in Georgetown. Ms. Fryar said she had met with the contractor on Friday and he had agreed to finish the houses, that he needed a couple of weeks to get this done. She said he had started 9 in Georgetown and 1 in Williamsburg County, and he said he would finish them by the end of July.

Dr. McKnight asked when the new program would start up. Ms. Fryar said applications had already been taken for Horry County and the dates have been set for the other counties for applications to be taken at the Williamsburg County Council Auditorium and the CSBG office in Georgetown. Dr. McKnight asked if that one meeting takes care of all of Williamsburg County. Ms. Fryar said yes and we know we will probably have to do this in other areas later. Dr. McKnight said yes, Hemingway. Ms. Fryar said yes. She said there were 10 DOE houses for all three counties and ARRA would be the same as last year if nothing changes and that number is 286. She said the breakdown between Counties had not been received yet from the State. Mr. Bellamy passed out flyers and told the board they could make copies of those and pass them out. Mr. Battiste asked for 100 copies to take to churches and small businesses. Mr. Bellamy said the application dates would be advertised in all newspapers. The Board asked to send out a reminder public service announcement. He said the call back list would be served first.

received past July 2nd would be obsolete. Mr. Sessions made a motion to set the deadline for letters to the board of July 2nd. Mr. Mustafa seconded. Motion carried.

Mr. Grate said the seating of new board members that was on the agenda would be tabled.

Executive Session

Mr. Sessions made a motion to go into Executive Session at 9:00 pm for contractual and legal matters. Mr. Mustafa seconded. Motion carried unanimously.

Mr. Sessions made a motion to come out of Executive Session at 9:58 pm. Mr. Battiste seconded. Motion carried unanimously.

Mr. Grate said issues were discussed regarding legal matters.

Mr. Eagleton made a motion that Ralph Wilson would be the attorney for the agency to take care of local legal matters. Mr. Mustafa amended the motion to also say that \$20,000.00 would be set aside in non-state non-federal funds for attorney retainer fees and that a check for \$15,000.00 needed to be made payable to Sasser Law Firm and sent immediately to their address. He said the address is 2000 Interstate Park Dr., Suite 300, PO Box 242127, Montgomery, Alabama 36124-2127. He said that the other \$5,000.00 would be set aside for future legal fees. Mr. Sessions seconded. Motion carried unanimously.

Mr. Grate said he would bring the contract to the Conway office and the original would be kept in the Conway office on file and a copy of the contract will be sent with the check and a copy of the contract will be mailed to all board members. Mr. Grate said he wanted to physically sign the check.

Mr. Eagleton made a motion to table the contract issue with Joseph Grate. Mr. Battiste seconded. Motion carried unanimously. Mr. Eagleton asked Mr. Grate to contact Mr. Joseph Grate.

Mr. Grate asked when the check would be ready. Ms. Boyd said the normal check writing days are Tuesday and Thursday, so the accounting department should be able to cut the check on Thursday. Mr. Grate said Thursday would be fine and he would bring the contract to the Conway office. He said when he brought the contract he would prefer to sign the check. Ms. Boyd asked for clarification, if he wanted to physically sign the check and he said yes, not computer signed. Mr. Grate said if the check is in the mail Friday, that should be fine. Mr. Battiste wanted clarification that the original contract would be kept on file at the office. Mr. Grate said yes, and a copy would be sent with the check to the law firm and a copy would be sent to all board members.

Ms. Boyd asked if the Board was going to handle the by-law amendments going out to the board members or was staff to do that. Mr. Grate said he would get with Ms. Boyd

matter was resolved. Mr. Grate said the OEO had already found this matter to be resolved. Mr. Eagleton made a motion to say this finding had been resolved. Mr. Battiste seconded. Motion carried unanimously.

Executive Session

Mr. Johnson made a motion to go into Executive Session at 9:30 pm for contractual, roof loan and legal matters. Mr. Mustafa seconded. Motion carried unanimously.

Mr. Battiste made a motion to come out of Executive Session at 10:45 pm. Mr. Eagleton seconded. Motion carried unanimously.

Mr. Eagleton made a motion to have the architect to draw up the plans for Choppee with Steve Strickland and Mr. Battiste seconded. Motion carried unanimously.

Mr. Mustafa made a motion to have Mr. Ralph Wilson to type a letter and send it to Joseph Grate detailing and updating the Project Managers position. Mr. Johnson seconded. Motion carried unanimously.

Mr. Eagleton made a motion for Ms. Fryar to engage with BOA to put the balance of the amounting owing on the roof loan into a permanent loan in the amount of \$48,700.00 plus the accrued interest. Mr. Mustafa seconded. Motion carried unanimously. Ms. Fryar asked for what terms the board would accept. She said the bank was offering a 5 yr. note with monthly payments of \$816.00 plus a floating interest rate which is prime plus 3% with no prepay penalty. Mr. Grate asked for staff's recommendation. She said that was it unless we go to another bank. She said BOA is offering this and at this time we really have no other choice.

Ms. Fryar said she had done the projections from the building account and we could stand the payment barring no emergency situations arise. She said the bank has to get the appraisal on the building. She said one was done two years ago when we refinanced the building. She said the person handling our account with the bank was new and she may not know that, so she said she would call her and tell her there should be one on file at the bank. She said we had about \$500,000.00 in equity in the building. Mr. Grate told Ms. Fryar to renegotiate the appraisal. Mr. Eagleton said he would like to amend his motion to include the terms of the loan to be 5 years, fixed principle, with a floating interest rate of prime plus 3% with negotiating the appraisal. Mr. Mustafa seconded. Motion carried unanimously.

Mr. Mustafa made a motion to transfer funds from the non-federal non-state funds and send a check for \$15,000.00 to the Sasser Law Firm and \$5,000.00 to Mr. Ralph Wilson Law Firm.

Ms. Fryar asked to go into Executive Session for a legal issue.

Board Chairman Report

Recommendations from Membership Committee, Bid Committee, and Personnel Committees

Mr. Grate said the recommendation from the Membership Committee was made by Dr. McKnight and was been completed. Mr. Grate said the bank deposit bids will be tabled for the Finance Committee to meet and to review them.

Mr. Grate called for the Air Conditioning Bids. Mr. Grate asked Mrs. Davis to give the specifications for the bid. Mrs. Davis handed out copies of the bid and said that the main requirement was for the units to be 8,000 BTU, which is what the grant calls for. Five bids were received. Mr. Wideman and Mrs. Davis opened the bids in front of the Board and passed them to each Board Member. The Board Members reviewed the bids. Mr. Battiste asked if the bids were all sealed and Mrs. Davis said yes, we just opened them in the presence of the Board. The Board continued with looking over the bids. Mr. Grate said that after looking through the bids it looked as the lowest bid was for 60 units at \$10,335.60 and asked what the desire of the Board was. Mr. Eagleton made a motion to accept the bid for Home Depot for 60 units at \$10,335.60. Mr. Battiste asked if there was any type of warranty with the air conditioners and Mrs. Wideman said the manufacturer warranty. Mrs. Davis said that no extended warranty was asked in the bid because it would be an additional charge. Mr. Battiste seconded the motion and the motion carried.

Mr. Grate said the Plan of Action on Board involvement on day to day operations has been tabled.

Executive Session

Mr. Eagleton made a motion to go into Executive Session at 8:11 pm. Mr. Mustafa seconded. Motion carried unanimously.

Mr. Mustafa made a motion to come out of Executive Session at 9:32 pm. Mr. Battiste seconded. Motion carried unanimously.

Mr. Grate asked for motions for action taken from Executive Session. Mr. Mustafa made a motion to make a payment to the Project Manager for whatever invoice he has effective tomorrow. Mr. Battiste seconded. Motion carried unanimously. Mr. Grate asked Mrs. Wideman to get together the figures for this invoice.

Mr. Battiste made a motion to adopt the resolution with Bank of America for the roof loan and repairs. Mr. Mustafa seconded. Motion carried unanimously. Mr. Grate said that the proper signatures will be added to the document, which is the Board Chair, the Vice Chair and the Secretary signatures.

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Board Minutes, August 31, 2010

Executive Session

Mr. Sessions made a motion to go into Executive Session at 7:30 PM for a legal and contractual issue.

Mr. Sessions made a motion to come out of Executive Session at 7:50 PM and Mr. Battiste seconded. Motion carried.

Mr. Grate said the contractual issue would be tabled with Earthworks and the Project Manager.

Mr. Johnson made a motion to terminate the Executive Director immediately. Mr. Eagleton seconded. Mr. Grate asked for ballots to be marked and give the Secretary. Mr. Grate read a statement that the Board of Directors held a meeting on today, August 31, 2010, the Chairman declared a quorum, no proxy voting was made, a motion was made and seconded to terminate the Executive Director by written ballot, the floor was open for discussion and questions and the vote was taken, six to one, to terminate the Executive Director effective immediately. Attorney Ralph Wilson was present and asked the board to call for discussion from the board. Mr. Grate called for discussion and the record states there was no discussion. Mr. Wilson asked for a show of hands since the ballots were not unanimous. A call for show of hands from Mr. Grate showed that the no vote came from Mr. Mustafa.

Approval of Minutes

Mr. Battiste made a motion to approve the minutes from July 19, 2010, July 27, 2010, and August 12, 2010. Mr. Sessions seconded. Motion carried unanimously.

Public Input

Mr. Grate asked to have public input limited to two minutes per person. Desiree Young spoke of her concerns regarding why clients could only be served twice per year and asked for the flyers to put the criteria on them in the future. Sherry Johnson asked about the Conway Housing authority and why they were not taking the Agency's vouchers. Mr. Grate asked staff to be sure this was taken care of. Minnie Randal spoke regarding questions about a GED program. Leshia Cooper stated the CSBG staff was sending out conflicting information and asked that they all be educated regarding the different program. Daisy Bishop asked questions regarding Weatherization.

Dr. McKnight asked Mr. Bellamy to speak regarding Weatherization. He said there were guidelines that had to be followed regarding income and what can be done to the homes. He said the funds are to help cut energy costs and are not for repairing of homes. He said he would send out notices of the next date to accept applications. Dr. McKnight said she will be sure that every church in Williamsburg County gets a flyer when the agency starts taking applications again.

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Mr. Grate said the architect had brought the plans by for the Choppee building and said we needed a motion to start the bidding process. He said we could start the bid process on November 23rd. Mr. Eagleton made a motion for Earthworks to work with staff to bid out the specs for the contractor for the Choppee project. Mr. Mitchum seconded. Motion carried.

Banking Bids

Mr. Grate said the Banking bids had been tabled and the Committees would meet to open the bids at a later date.

Weatherization Box Truck

Mr. Grate said that Weatherization had decided they did not need the box truck and asked for a motion to not buy a box truck at this time. Mr. Eagleton made the motion to not purchase the box truck and Mr. Battiste seconded. Motion carried.

Board Meeting Change

Mr. Grate asked to have the next Board meeting changed to December 21st. Mr. Harper made the motion and Mr. Johnson seconded. The Motion carried. Mr. Grate said the next meeting would be at the Chavis Early Head Start Center.

Amendment to Employee Guidelines (Employer Transfer Policy)

Mr. Grate asked for a motion to amend the employee guidelines to include a policy regarding the employer's right to transfer. Much discussion followed. Mr. Battiste made a motion to table the amendment at this time. Mr. Sparkman seconded. Motion carried.

Executive Session

Mr. Harper made a motion to go into Executive Session regarding legal, contractual, and Personnel issues at 9:10 pm. Mr. Battiste seconded. Motion carried.

At 10:15 pm Mr. Harper made a motion to come out of Executive Session. Mr. Cooper seconded. Motion carried.

Mr. Eagleton said that no action was taken and the issues had been tabled.

Comments/Discussion from Board Members

None.

Page Three
Special Called Board Meeting
December 7, 2010

driver start working yesterday at Longs Head Start.

Mr. Battiste asked if the transfer of funds needed to be done first before we can purchase a bus off of state contract and Ms. Whitfield said yes.

Ms. Whitfield said she had received the grant award on November 30, 2010 for regular Head Start.

Ms. Whitfield said the children from Georgetown County participated in the Georgetown Christmas parade and won first place among the children's float in the parade.

Ms. Whitfield said the Annual Report for the end of the year should have a draft copy ready by the end of the week.

Mrs. Cooper said she was trying to find a building for them in Williamsburg County. She said she was trying to get some information on a building and the rent for the building would be less than the first building that they looked at several months ago.

Mr. Battiste made a motion to transfer funds from regular Head Start to Regular Head Start in the amount of \$85,000 to purchase a bus. Mrs. Sejda seconded and the motion carried.

Executive Session

Mr. Sessions made a motion to go into Executive Session regarding legal, contractual, and personnel issues at 7:40 pm. Mr. Eagleton seconded. Motion carried.

At 10:03 pm Mr. Sessions made a motion to come out of Executive Session. Mr. Harper seconded. Motion carried.

Mr. Grate asked for motions to take care of issues pertaining to Executive Session.

Legal Issue

Mr. Battiste made a motion to allow Ms. Whitfield and Mr. Grate to handle all legal paperwork that was involved in the Exchange Bank. Mr. Harper seconded and the motion carried.

Contractual Issue

Mr. Grate said that the contract with the Project Manager had been tabled.

1 (January 10, 2012.)

2 MR. WILSON: This is based on the fact that there was an
3 agreement between Mr. Grate, who is an engineer or architect
4 and Waccamaw EOC. Waccamaw EOC is a non-profit organization
5 that operates on government funds. They were building a Head
6 Start Center and Mr. Grate was going to be the person who was
7 going to supervise the construction of that center. They
8 entered into a contract in April of 2010, if I make no
9 mistake, and as a result of entering into that contract, there
10 was a clause which is -- which I think has been designated as
11 Exhibit B, which is attached to the contract. That clause
12 Your Honor, specified the conditions of payment for Mr.
13 Grate's services. And one of the things that it says is that
14 the contractor shall be -- under Exhibit B, Compensation --
15 contractor shall be compensated at a fee not to exceed nine
16 percent of the total building costs excluding design,
17 engineering and permitting fees payable as set forth in 3.1 of
18 the contract. Waccamaw EOC will pay contractor an advance
19 payment against future billing of \$10,000 as funds are
20 available to Waccamaw EOC. Invoices must be submitted prior
21 to payment. Final payment will not be made until the entire
22 project is completed.

23 Well, obviously you can see right away that if you look
24 at this -- at the wording of this particular contract, it says
25 fee not to exceed nine percent. So, we don't really know what

1 the real fee is, we just know it's not to exceed nine percent
2 which is the first problem. But that's not the real problem.
3 The real problem is is that this kind of contract is forbidden
4 by law and that's where we're having a problem. Federal
5 regulations -- and what I'm referring to, Your Honor, is the
6 Federal Code of Regulations which is Title 45, Public Welfare,
7 Section 74.44 Procurement Procedures. It specifically sets
8 out -- and I don't know if you have that, I did attach it to
9 my motion.

10 THE COURT: Yes.

11 MR. WILSON: But it specifically sets out the procedures
12 that have -- that can be used and what it says is the type of
13 procuring instrument used, example fixed-price contracts,
14 cost-reimbursable contracts, purchase orders and incentive
15 contracts shall be determined by the recipient but shall be
16 appropriate for particular procurement and for promoting the
17 best interest of the program or project involved. The cost-
18 plus, which is what we're dealing with -- the cost-plus-a
19 percentage-of-cost or percentage-of-construction cost method
20 of contracting shall not be used and that's in the
21 regulations. Now, and if you'll look at South Carolina --
22 South Carolina's regulations, they specifically say -- and I'm
23 reciting now from -- this is Title 11, Public Finance, which
24 is dealing with non-profit institutions and governmental
25 agencies. And Section -- I'm referring specifically to

1 Section 11-35-40 and then this is Section 3 there which says:
2 Compliance with federal regulations where a procurement
3 involves the expenditure of federal assistance, grants or
4 contract funds, a governmental body also shall comply with
5 federal laws including authorized regulations as are
6 mandatorily applicable and which are not presently reflected
7 in this code. Notwithstanding where the federal assistance
8 grant or contract funds are used in a procurement by a
9 governmental body as defined in Section 11-35-310 of this
10 code, including any requirements that are more restrictive
11 that the federal requirements must be followed except to the
12 extent such action would render the governmental body
13 ineligible to receive federal funds whose laws on the -- I'm
14 sorry -- whose -- I apologize, my glasses are not working real
15 good -- receive federal funds whose receipt is conditioned on
16 compliance with mandatorily applicable federal law. In those
17 circumstances, the solicitation must identify and explain the
18 impact of such federal laws on the procurement process
19 including any required deviation from this code.

20 And, Your Honor, there -- I don't think there's any issue
21 in this case that the funds that Waccamaw EOC is a non-profit
22 organization that Head Start is a federally funded program and
23 that all the funds that were going to be used in this case or
24 in the particular contract were for the building of that
25 facility. And he was going to be paid out of those funds.

1 We provided him with the law. Apparently at the time the
2 contract was entered into between he and EOC, neither side was
3 aware of the regulations. When we became aware of the
4 regulations, I met with Mr. Grate, explained this to him. We
5 sat down and we talked and that's in his deposition that he
6 and I met on four separate occasions and I explained to him
7 that that was the law that EOC could not -- even if they
8 wanted to, they could not agree to pay him nine percent or
9 that we could change that to dollar figures and try to work
10 the contract out that way. He says absolutely not, he
11 refused. Waccamaw EOC then had no choice but to say we can't
12 comply with the contract.

13 So, our position is is that there is no breach because
14 there never was a contract because there was a material term
15 in this contract which could not be performed by operation of
16 law.

17 THE COURT: How much of the federal money was being used
18 for building this facility?

19 MR. WILSON: There was going to be about 1.2 million
20 dollars total.

21 THE COURT: All right. Was all of the money federal or
22 was it ---

23 MR. WILSON: All of it's federal.

24 THE COURT: All of it?

25 MR. WILSON: Yes, sir.

1 THE COURT: All right. Mr. Grate, I'll be glad to hear
2 from you.

3 MR. GRATE: Thank you. Your Honor, mostly what he said
4 was accurate. I was contracted to do -- to be the project
5 manager for that facility. That included everything that's
6 indicated in Exhibit A of the contract. Does Your Honor have
7 a copy of that?

8 THE COURT: I do.

9 MR. GRATE: Okay. From what was presented just now to
10 the Court was that I was contracted to be project manager or
11 do supervision or whatever on the facility for the building
12 itself. That agency and the agency's representative has
13 always been confused with that issue. They don't see what
14 Exhibit A is saying. Exhibit A is saying the project manager
15 is supposed to be involved with this process from
16 preconstruction all the way through construction. That
17 process is laid out by the funding agency, by Head Start.
18 They got eight steps.

19 The first step has to do with feasibility. That process
20 was taken care of by the agency's staff. They did a very good
21 job. If that was not taken care of, they would not have
22 gotten the funding.

23 Okay. From -- now, from the second step onward, second
24 step all the way through step six is like pre-design, pre-
25 construction stuff. Six is bidding; seven is construction;

1 and you know, eight wraps it up. So, what happened is when I
2 got involved, even before -- actually, I first sat foot for an
3 interview with these people on the 17th of November. I was
4 called by them. Why? Well, when they advertised for the
5 design of the project, I put together a team, a design team
6 and went after the project. Some thirty-five, thirty-some
7 people submitted on the project. They short listed five
8 groups, five firms. My group was one of the five. We went
9 and we presented. Okay, then they short listed two firms. My
10 firm was one of the two. Okay. They dropped us out, they
11 selected another firm. Okay. So, then I was called -- I met
12 with them on 17th of November, 2009. And when they told me
13 what they wanted to do, immediately I told them, I'm not
14 trying to talk myself out of a job but from what you're
15 telling me that you want, your architect is supposed to do
16 that for you. They say, no, well, our procurement regs say we
17 got to have somebody in-house. I said, okay, if you're gonna
18 do it -- everything's gonna be done correctly, I fine with it.
19 If you're not gonna operate correctly, I'm not the person for
20 you. Okay. So, I didn't -- they told me they wanted me on
21 board the first of December, 2009. I didn't hear from them
22 until about two days before Christmas and then they told me
23 they got to put it off or whatever. In the meantime, in the
24 meantime, right after Christmas they had a groundbreaking, I
25 went to that, everything.

1 Okay, now, in March, they advertised for the project
2 manager job in the state bulletin. Okay. I submitted my
3 paperwork for that job. When I did, in my package, I told
4 them, you know, I'm talking -- I'm saying, I'm a good person
5 for this job, you know, answer all these questions, how you
6 think you fit in here. I'm a good person for this job. You
7 know, I suggest you hire me for the job. If you do, the first
8 thing I would do is give you a report indicating where you
9 are, we hash out where you want to go and I'll map out a way
10 for you to get there. Keep you out of trouble.

11 Okay. The 24th of February, I got the word I was hired.
12 The 25th of February, I went by the office, I gave them that
13 report. Okay. It's in my petition. So, then -- Your Honor,
14 want me to tell you where it is?

15 THE COURT: Go ahead, you just keep talking.

16 MR. GRATE: Okay. So, I took the report by the office.
17 The staff -- they're very good staff. They look it, they say
18 this interesting. So, they sent it on to the board. The
19 board -- at the time the board was meeting, had a retreat in
20 Charleston. So, when I was in the office, they said, well, we
21 need you to go there and present this. I say they don't need
22 it, everything is spelled out. They say, you don't know this
23 board. I went to Charleston. I made my presentation. Okay.
24 Then they say well, okay -- one thing, the presentation, of
25 course, highlighted, like I told them, their problems. The

1 firm that they selected to do the design was not qualified
2 like the RSQ asked for, they were not qualified. I pointed
3 out to them why the firm wasn't qualified. The person that is
4 the head of that firm was putting himself across as being an
5 architect; he's not an architect. The next thing, he was
6 proposing to them to do a design-build of the project. He's
7 licensed -- his licensed as a contractor, his contractor
8 license said he can do project up to \$750,000. You just told
9 the building is over a million dollars. So, he was not really
10 legal -- it was not legal for him to submit to do the
11 construction. It was not legal for him to submit as an
12 architect when he's not. So, the information that I presented
13 to board to show -- was to show them that his man, he's a
14 licensed engineer. But what kind of engineer, chemical
15 engineer; has nothing to do with buildings.

16 Back and forth, dilly-dally, back -- okay, so what
17 happened is, they say -- after all that hashing out down
18 there, they say, well, we need to call this man in. So, that
19 was -- I met them down there. So a couple of days later, they
20 call him into the office. We sat down, went over everything,
21 cause they -- I'm working for this organization now. So, I
22 just -- I drilled that man. He admitted he's not an
23 architect, he admitted his contract and license wasn't valid
24 to do the project. Okay. One other thing about that, the
25 State does not permit anybody to design a project and to build

1 a project too. You can't do both. So, you know, I put that on
2 the table for them. Okay, so now, so now he -- there was a
3 issue -- so, now, he's gonna come back with some information
4 of what he can do contracting -- the man wasn't qualified
5 legally to do any of the architecton [sic] or the
6 construction but for some reason, at least on particular
7 person on that board wanted that man to do it.

8 THE COURT: Well, that's -- let me ask Mr. Wilson a
9 question real quick.

10 MR. WILSON: Yes, sir.

11 THE COURT: All right. There's no question but that
12 there is a contact between Mr. Grate and the Waccamaw EOC.

13 MR. WILSON: That is correct, Your Honor.

14 THE COURT: And that contract implemented the nine
15 percent billing or whatever that Mr. Gate submitted to
16 Waccamaw EOC, no question about that.

17 MR. WILSON: No question.

18 THE COURT: All right. Then Waccamaw EOC is going to the
19 federal government to get money to fund to project.

20 MR. WILSON: That is correct.

21 THE COURT: And then they had trouble getting the money
22 to fund the project because it didn't comply with the federal's
23 regulations regarding how you bill -- an architect can bill
24 for the project, right?

25 MR. WILSON: No, sir. No, sir. They were trying to get

1 money and they ultimately have gotten money for the project
2 and they hired Mr. Grate and paid him ten -- paid him \$10,000
3 to initiate the contract.

4 THE COURT: Waccamaw EOC hired him?

5 MR. WILSON: That's correct. Well ---

6 THE COURT: With federal funds?

7 MR. WILSON: --- with federal funds.

8 THE COURT: With federal funds.

9 MR. WILSON: Everything that's done has been done with
10 federal funds.

11 THE COURT: Is that listed in the contract anywhere that

12 ---

13 MR. WILSON: That he would be paid \$10,000?

14 THE COURT: Well, that he's receiving federal funds and
15 that he must submit his charges and his billings in compliance
16 with the federal regulations regarding the receipt of federal
17 funds.

18 MR. WILSON: Well, there is a paragraph in there which
19 simply states that all federal and state laws have to be
20 complied with, yes, sir.

21 THE COURT: All right. Contractor shall comply with all
22 federal, state and local laws ---

23 MR. WILSON: Right.

24 THE COURT: --- rules and regulations in providing
25 services described herein.

1 MR. WILSON: That's correct.

2 THE COURT: Would services be billing or would services
3 be his actual work on the job itself?

4 MR. WILSON: Well, it would be everything because that's
5 all he is providing is his services. He has nothing else to
6 provide. What he is going -- his total involvement in this
7 whole process, in this contract is service related. There is
8 nothing else.

9 THE COURT: Right, but it seems to me that the dispute
10 with the defendant is that his billing submissions were not in
11 compliance with federal regulations.

12 MR. WILSON: No, sir. That ---

13 THE COURT: Is that what's holding up the contract?

14 MR. WILSON: No, sir. What our position is, Judge, is
15 simply this, that the federal law does not allow EOC to enter
16 into a contract where there is costs-plus method of payment.
17 You cannot do it. And the reason for that is because it
18 allows the contractors to defraud the government. What would
19 happen is if you allow cost-plus, then it's in the best
20 interest of the contractor to jack up the prices of the
21 materials or services he's providing because as the cost of
22 the project goes up, so does the amount of income that that
23 person or entity would receive.

24 THE COURT: Is Waccamaw EOC a federal agency?

25 MR. WILSON: They are a non-profit agency which operates

1 on federal funds. And the Head Start is a federal project.

2 THE COURT: Are they a state corporation?

3 MR. WILSON: They are a state corporation, so they're
4 covered both under state law and it's the same rule as under
5 both state and federal law, which is what I just presented to
6 you. And just -- under state law again, let me read to you
7 this particular paragraph because I think this will help clear
8 it up a little and I'm now looking at, again, this is Title
9 11, Chapter 35 of the public finance provision which says
10 that: Procurement means buying, purchasing, renting, leasing
11 or otherwise acquiring any supplies, any service, information
12 technology or construction. It also includes all functions
13 that pertain to the obtaining of any supply, service or
14 construction including descriptions of requirements, selection
15 and solicitation of sources, preparation and award of
16 contracts and all phases of the contract administration.

17 THE COURT: Was there anything to stop EOC from getting
18 the money from somebody else to comply with this contract?

19 MR. WILSON: Well, it's a federal project, so they can't
20 -- what happens is ---

21 THE COURT: But, see, he didn't contract with the federal
22 government, he contracted with Waccamaw EOC.

23 MR. WILSON: That is correct. He contracted with
24 Waccamaw EOC ---

25 THE COURT: And this provision and that contract, if they

1 signed the contract, they entered into a contract with Mr.
2 Grate, it seems to me this regulation is simply gaumming up
3 their ability to get the money from the federal government.

4 MR. WILSON: No, sir. No, sir. It forbids the -- they
5 can't even -- they can't -- by law they can't enter into a
6 contract where they -- because they're committing federal
7 funds. When they committed to be in a contract with Mr.
8 Grate, they're committing to use federal dollars to pay him.

9 THE COURT: Seems to me that that ought to be listed in
10 the contract that this contract is contingent upon EOC
11 receiving federal funds and that all architects or whoever
12 else, contractors, must comply with the federal regulations
13 and statutes in order to receive those federal funds.

14 MR. WILSON: If there is a provision in here in this
15 contract which does refer to the fact that that all contracts
16 with EOC are dependent upon the availability of funds through
17 whatever source they are coming from. There is a provision in
18 the contract ---

19 THE COURT: Where is that provision?

20 And I'm gonna let you talk, Mr. Grate, I'm just trying to
21 clear this thing up in my mind.

22 MR. GRATE: Thank you.

23 Actually, on -- I think I could lend something to clear
24 it up now, I think.

25 THE COURT: Just hold on one second; I'll get with you.

1 MR. GRATE: Your Honor, in my previous exhibit A, the
2 contract is on Page 87 through ---

3 THE COURT: I've got it in front of me. I'm just gonna
4 see if Mr. Wilson can find me what I'm looking for.

5 MR. GRATE: Okay.

6 MR. WILSON: Judge, and if I'm understanding, are you
7 asking you if there is a provision in the contract that says
8 that Waccamaw EOC ---

9 THE COURT: What I'm getting at is, is there a provision
10 in the contract that lets Mr. Grate know that his billing
11 needs to be in compliance with any and all federal regulations
12 and that this contract is contingent upon him and his billing
13 complying with all federal laws and regulations. There is a
14 provision in there 1.6 that says that the contractor and the
15 contract does describe the architect as the contractor shall
16 comply with all applicable federal, state and local laws,
17 rules and regulations in providing services described therein
18 but it does not state that the contract is contingent upon his
19 billing methods complying with federal laws, state and
20 regulations.

21 MR. WILSON: Well, I don't know that that wording is in
22 there but ---

23 THE COURT: Because what I'm seeing is a contract between
24 Mr. Grate and EOC. Now, if EOC is having trouble getting the
25 money because they didn't comply with the federal laws and

1 regulations ---

2 MR. WILSON: They have the money, that's ---

3 THE COURT: But they can't use it.

4 MR. WILSON: Right, they -- but, but the reason that they
5 can't use it is because they're forbidden by law from using it
6 not because ---

7 THE COURT: But how does that have anything to do with
8 Mr. Grate who entered into the contract that was signed by
9 Waccamaw EOC?

10 MR. WILSON: Because we're all held responsible to know
11 what the law is and both parties, when they went into this
12 contract, there obviously was a misunderstanding by both
13 parties.

14 THE COURT: Then do we have to ---

15 MR. WILSON: Mr. Grate didn't understand that that was
16 the law, EOC didn't understand that that was the law. So, the
17 fact that both parties -- clearly, there's no contract if both
18 parties entered into this contract not knowing that the law
19 forbid the very thing that they were agreeing to do.

20 THE COURT: But then, why couldn't EOC go to First
21 Citizens Bank and borrow the money to pay Mr. Grate to build
22 the project pursuant to the contract.

23 MR. WILSON: Because the funds -- because this is a
24 federal project. It's not a EOC -- this is a Head Start
25 project which is funded by the government. It's not funded

1 from private funds.

2 THE COURT: Right, but the contract is between Waccamaw
3 EOC and Mr. Grate ---

4 MR. WILSON: That's correct.

5 THE COURT: --- not the federal government.

6 MR. WILSON: That's correct. You're absolutely correct.

7 But my point is, Judge, it wouldn't matter who the contract
8 was between, because the law doesn't permit them to agree to
9 what they agreed to. That's what I'm saying. There is a
10 federal statute for regulation which specifically forbids the
11 parties from agreeing to what they agreed to. This was the
12 law at the time they agreed to it, neither of them ---

13 THE COURT: But would the law prohibit Waccamaw EOC from
14 paying Mr. Grate as contracted to go ahead and do this project
15 ---

16 MR. WILSON: Yes.

17 THE COURT: --- forgetting about where the money came
18 from?

19 MR. WILSON: Yes. The law would prevent him -- they
20 cannot use those federal funds to pay him without violating
21 the law under this agreement. Now, and so what they did was,
22 meet with Mr. Grate on four separate occasions and say let's
23 change this.

24 THE COURT: But we're dealing with this contract right
25 here ---

1 MR. WILSON: That's correct.

2 THE COURT: --- between Waccamaw EOC and Mr. Grate.

3 MR. WILSON: That's correct. And what our position is is
4 simply this, that there is no way that that -- the only way
5 that the court could enforce this contract would be to cause
6 EOC to violate the law. They -- if the courts said, you got
7 to honor their contract ---

8 THE COURT: EOC could get the money somewhere else?

9 MR. WILSON: They have no way of getting -- it's a
10 federal project, so they would have to find -- what you would
11 suggest is that they'd have to find private funds to fund a
12 federal project, which they can't do anyway because the law --
13 because it is a federal project. Head Start is a federal --
14 federal project that they can't use their own private funds to
15 fund a federal project which is already funded.

16 MR. GRATE: May I ---

17 THE COURT: Mr. Grate, if you would go ahead and give me
18 your position.

19 MR. GRATE: Thank you, sir, Your Honor.

20 On, Your Honor, on -- from the very beginning, literally
21 the first day, I've been very straightforward with that
22 agency, tried to give them information even to the extent of
23 informing them when that -- if it come to the point when
24 you're gonna need an attorney, I will be able to advise you
25 that you need an attorney for this and everything and even to

1 the point of advising them if they needed a second opinion.

2 The point is this, Your Honor, unfortunately and I'm not
3 -- unfortunately, the Defendant attorney doesn't -- the
4 defendant attorney doesn't understand the situation. I don't
5 -- I hate to say but I really don't think that's his fault.
6 He just didn't get the proper information from those people.
7 One of the things that the federal law that he is saying that
8 neither party was aware of is actually incorporated in the
9 procurement regulations of that agency, of Waccamaw EOC. They
10 had it there all the time. I'm the only one that didn't know
11 about it. But Your Honor, I didn't really have to know about
12 it because here's the situation -- throughout this nation,
13 every state and the federal government, they have special area
14 for procurement even architectural services, engineering
15 services. It's in my paperwork and if they'd looked far
16 enough in Title 11, Chapter 35, they would've seen that the
17 legislature created a special entity called the State
18 Engineer's office. The State Engineer is over all of the
19 contracting for architectural, engineering and construction in
20 this state. Now, the federal government, the federal
21 government, when he cited 45 CFR 74, relating contracting,
22 that's good, that's true as far as it goes but the federal
23 government has a different regulation concerning architectural
24 services, engineering services, construction services; it's
25 under 48 CFR Chapter 36. And it's -- and it states in one

1 section that that particular regulation supersede anything
2 else that's said in the regulations concerning this subject
3 and it's all in my presentation to you. So, the point is, if
4 he want to -- the whole thing about this Title 45-74, I'm not
5 giving janitorial service and I'm not doing cooking or
6 whatever, this is a special area. It's created that way;
7 every state has that and the federal government has that.
8 Also in 41C -- 41 USC and 10 USC. 41 USC is the federal
9 acquisition regulation covers everything concerning the type
10 of services at issue here.

11 THE COURT: One last reply, Mr. Wilson.

12 MR. WILSON: Yes, sir.

13 THE COURT: Clear it up in my mind because my mind is
14 not fully clear and usually if what I'm thinking doesn't make
15 one hundred percent sense, summary judgment motion is not
16 appropriate and twelve people can fix it. Go ahead.

17 MR. WILSON: Oh, I thought -- I thought you said you had
18 a question.

19 THE COURT: I still have a hard time with it. I'm seeing
20 a contract between an architect and a corporation?

21 MR. WILSON: Yes, sir.

22 THE COURT: The corporation is having trouble paying him
23 because their funds are contingent on federal regulations and
24 laws that govern how the corporation uses the federal money to
25 pay their people.

1 MR. WILSON: Right.

2 THE COURT: I understand all of that but I'm still seeing
3 an isolated contract between a private individual and a
4 corporation. Now, if I can't -- if EOC cannot get the money
5 from the federal government, they have a contract that they
6 entered into, a state contract, so they have troubles.

7 MR. WILSON: Yes, sir, but ---

8 THE COURT: I see part of what you're saying but then I'm
9 missing ---

10 MR. WILSON: The problem is, the problem is though is
11 this, first of all, as I said, I think there are two issues
12 here. One, there was a bilateral mistake. When both parties
13 entered into this agreement, neither of these parties were
14 aware that this was the law. So, and even if we didn't go any
15 further, that would be enough if that were in fact the case.
16 If both parties went into this contract and Mr. Grate in his
17 deposition says that he didn't ---

18 THE COURT: But your contract wasn't contingent on
19 federal funds.

20 MR. WILSON: But I'm not even talking about federal
21 funds. I'm talking about just a standard contract.

22 THE COURT: Okay.

23 MR. WILSON: Whenever any two people enter into a
24 contract, one of the important issues is that there must be a
25 meeting of the minds. Both people must be on the same accord

1 and have the same understanding of the terms and conditions of
2 the contract.

3 THE COURT: Correct, right.

4 According to Mr. Grate, he didn't -- he was not aware
5 that this was the law when he entered into the contract. Mr.
6 Grate probably didn't care if the money came from the
7 federal government or not, he just wanted to go get his job
8 and do it.

9 MR. WILSON: It doesn't matter, doesn't matter. The
10 point is if you're entering into a contract, then both parties
11 have to be aware of the terms and conditions of the contract.
12 If either party is not aware of it or unaware of it, then
13 there's a problem. And because of that, the contract would
14 fail. You can't have a contract where only one party actually
15 understands and knows what the terms and conditions of the
16 contract are. Mr. Grate, in his deposition admits that he
17 wasn't aware that this was the law at the time he entered into
18 the contract which would in and of itself, which would -- that
19 alone would be enough to set aside the contract or make it
20 voidable because you can't have a contract unless both parties
21 are aware of all the terms and conditions of the contract.
22 That's the first thing. The second thing is that by operation
23 of the law, by operation of the law, the EOC and Mr. Grate,
24 either one could not enter into this agreement. It doesn't --
25 the statute doesn't just apply to EOC.

1 THE COURT: But nowhere in this contract does it say
2 we're using federal funds.

3 MR. WILSON: But it does not but Mr. Grate was always
4 aware that they were using federal funds, there was never any
5 issue about it.

6 THE COURT: So, let's say if I enter into a contract with
7 a private individual to do something, and all of a sudden, I
8 don't like something with the contract or whatever, does it
9 give me the right to say, well, I'm was gonna borrow the money
10 from the federal government and therefore the contract is
11 void?

12 MR. WILSON: No, sir. It does not. It does not. If
13 unless you fit in this category, if you are a non -- if you
14 are an agency and you're gonna use federal funds and you were
15 going to use federal funds ---

16 THE COURT: But this is not a federal agency.

17 MR. WILSON: Well ---

18 THE COURT: Waccamaw EOC.

19 MR. WILSON: It is not a federal agency, no, sir. It is
20 a -- it is a nonprofit agency which uses federal funds but
21 you're absolutely right. It is not -- it's not a federal
22 agency as such. They were using federal funds to build this
23 particular facility which is this building and, and the funds
24 for that building are federal. The -- again, it doesn't
25 really matter because the problem is the law is -- the law

1 applies to all of us regardless and these are the regulations
2 that were handed down. It applies both to the vendors as well
3 as to the agency. It applies to both Mr. Grate and to -- and
4 to EOC. It doesn't just apply to EOC. I think the Court's
5 opinion or idea is that somehow this law only apply to EOC and
6 prevented them from performing; no, no, no, no, no, this is
7 the law and it also applies to him as a contractor or ---

8 THE COURT: I agree with that but there's nothing to
9 prevent EOC from getting the money from the State or from a
10 private bank or anywhere else to pay Mr. Grate to perform this
11 contract. Yes, the law does prohibit the use of those federal
12 funds if all regulations are not complied.

13 MR. WILSON: The law forbids the contract. We're not
14 even talking about the funding, we're not even talking about
15 the funding because EOC has the money now. That's not even
16 the issue. The issue is could they -- could they enter into
17 this contract. Could this agreement become binding and the
18 answer to that would be no and the reason that it's no is
19 because the law forbids it. It's -- that's what I'm saying.
20 It doesn't have anything to do with being paid; that is not
21 the issue. He's been paid almost \$15,000; that's not the
22 issue. The issue is could these parties enter into this
23 agreement. And the answer is no, they could not. By
24 operation of law they could not and when you look at the fact
25 that even if you don't -- one with the operation of law but,

1 two, also with the fact that Mr. Grate admits on this record
2 that he did not know that this was the law. So, if they're
3 are entering into a contract, how can that possibly be where
4 he doesn't know what the -- what the issue is. The second
5 thing, Your Honor, is -- and if you look at this section --
6 under this -- which by itself I think is certainly
7 compensation is a material term of the contract and when you
8 look at that exhibit, one of things that it says in there,
9 it's a -- an amount not to exceed nine percent. Well, what
10 does that mean? That could mean anything. It could mean one
11 percent, it could three percent, it could mean six percent and
12 six percent of what or eight percent of what or nine percent
13 of what. It -- that term in and of itself is so ambiguous
14 that you can't have a contract, even that standing alone. And
15 so when you look at this contract in its entirety, there is
16 absolutely no way there was ever any contract formed between
17 these parties.

18 THE COURT: Briefly.

19 MR. GRATE: Sir?

20 THE COURT: Go ahead. You can respond just briefly.

21 MR. GRATE: Your Honor, I'll try to be brief. The
22 problem is confusion by the attorney here. He's trying to
23 stick with 45 CFR 74 and trying to implant that upon me as
24 being the law under which I have -- I'm governed. I'm not
25 governed by that and need to know about that. 48 CFR, Chapter

1 36 governs the kind of services I was giving. If I was doing
2 janitorial service, maybe, but for what I was doing is
3 governed under different -- so that law doesn't even apply to
4 me. I don't need to know. But to the extent that they are
5 relying on it, it is included in their procurement regulations
6 but it doesn't apply here. Specifically, what applies -- if
7 you look at Page 712 of the -- Page 7, Item 12 of my
8 affidavit, we speak to 48 CFR 36.101(b), which that -- that
9 takes precedence over any other -- any other thing concerning
10 architectural services or engineering or construction
11 services, related services concerning contracts. Also, Item
12 10, 48 CFR 16.301 specifically deals with this kind of
13 contract. He doesn't understand.

14 THE COURT: I'll tell you what let's do. Why don't we go
15 ahead and draw a jury this morning and then I'll -- we'll
16 start the trial this afternoon and that'll give me time to
17 think about it a little bit more and I'll have a decision on
18 this motion before we start.

19 MR. GRATE: All right, sir. What time?

20 THE COURT: Why don't we go ahead and draw a jury right
21 now.

22 MR. GRATE: Okay.

23 THE COURT: And then we'll start the trial at maybe 1
24 o'clock and then I'll have a ruling on this motion before 1
25 o'clock.

1 MR. WILSON: Thank you, Your Honor.

2 THE COURT: That'll give me time to think about it and
3 look at it a little bit more.

4 MR. WILSON: We're gonna go downstairs to do that or we
5 ---

6 THE COURT: I think they're gonna send them up here,
7 aren't we? Aren't there like thirty-five of them or forty?

8 DEPUTY: However you'd like to do it.

9 THE COURT: I think he said thirty or something like
10 that. If you would, go ahead and send them on up.

11 DEPUTY: Yes, sir.

12 THE COURT: Mr. Wilson, do you have a witness list of any
13 kind.

14 MR. WILSON: Yes, sir.

15 THE COURT: And how about you, Mr. Grate, do you have any
16 witnesses you plan on calling?

17 MR. GRATE: No, sir, I have ---

18 THE COURT: Just yourself?

19 MR. GRATE: Yes, sir. I haven't had time to do that.

20 THE COURT: Excuse me?

21 MR. GRATE: With the scheduling situation, I didn't have
22 time to get my witness list.

23 THE COURT: Okay. So, it'll be yourself?

24 MR. GRATE: And whatever -- whoever they ---

25 THE COURT: Okay. Gotcha covered.

1 MR. WILSON: May I approach?

2 THE COURT: Sure.

3 MR. WILSON: Witness list at the bottom.

4 THE COURT: Okay.

5 (REPORTER'S NOTE: The jury panel enters courtroom.)

6 THE COURT: Good morning. Just wanted to let y'all know,
7 we're gonna be selecting a jury for a particular case but
8 before we do so, I need a clerk of court who is supposed to be
9 right down here and she is on the way up and as soon as she
10 gets here, we'll begin with that process.

11 *****OFF THE RECORD*****

12 (On the Record.)

13 THE COURT: All right. Members of the jury, my name is
14 Williams Seals. I am a Circuit Court Judge from Marion County
15 and it's my pleasure to be here this week to serve Horry
16 County in this one week term of Common Pleas Court. Now, at
17 this point in time, you have already been qualified to serve
18 as jurors. However, I need to make sure that you are
19 qualified to serve as jurors on a particular case. And to do
20 that, I need to ask you certain questions and again I want you
21 to remember that you are under oath and the second thing I
22 want you to remember is that at any point in time, if you
23 would like to answer a question up here with me instead of out
24 there, that's fine, just let me know. Either way, just
25 remember you're under oath and if you need to respond, you

1 need to respond.

2 All right. The questions are as follows: This case
3 involves a contract dispute between a Joseph N. Grate, who is
4 an architect, and the Waccamaw Equal Opportunity Commission,
5 Inc., a corporation, regarding the design and construction of
6 a facility located in the Choppee Community of Georgetown
7 County, South Carolina. Now, in that regard, has anybody in
8 the jury panel heard anything about this case, read anything
9 about this case, talked to anybody that knows anything about
10 this case? If you have any information about this case from
11 any source whatsoever, please stand.

12 All right. I see one member. If you would come on up
13 here, please, sir. And lawyer, you may approach and Mr.
14 Grate, you may also approach.

15 (REPORTER'S NOTE: A bench conference was held off the record
16 in the presence of the jury but out of hearing of the jury.)

17 THE COURT: All right. Anybody else?

18 (REPORTER'S NOTE: Juror 319 excused.)

19 All right. Mr. Joseph N. Grate, if you would just stay
20 standing and turn and face the jury panel, please, sir.

21 Mr. Grate if the plaintiff in this case and he is
22 representing himself.

23 All right. You may be seated.

24 Is any member of the jury panel related by blood or
25 marriage or has a close personal or social relationship with

1 THE COURT: All right, Mr. Wilson, in regards to your
2 summary judgment motion, I have -- I started reading that file
3 yesterday and I thought about it all evening and I looked at
4 again over lunch for a couple of hours and read the applicable
5 state and federal statutes and it just swims on me a little
6 bit. My logic is still there yet I see exactly where you're
7 coming from. I have called some other judges just to see how
8 they would feel about the situation and they too are going
9 down two different roads. So, what I'm gonna do is submit it
10 to the jury and I'll let you have whatever latitude you need
11 to discuss your case and to argue those applicable sections of
12 law. It's an extremely high likelihood I'm gonna charge --
13 and the same with you, Mr. Grate, I'm gonna give you the
14 opportunity to present your case as you see fit and we'll let
15 the jury come back with a verdict. Hopefully, we'll decide
16 this case in a proper and just way.

17 All right. You can go ahead and bring in the jury.

18 (REPORTER'S NOTE: The jury returns to the courtroom.)

19 THE COURT: If you'll put Mr. Bell, in that front seat.

20 BAILIFF: Mr. Bell?

21 THE COURT: Mr. Bell.

22 BAILIFF: Mr. Bell, sit in the front seat, right here.

23 THE COURT: All right. Ms. Clerk, go ahead and swear the
24 jury.

25 CLERK: Please stand and raise your right hand and be

1 sworn.

2 (REPORTER'S NOTE: Jury is duly sworn.)

3 THE COURT: Thank you very much.

4 Mr. Bell, I made you the foreman of the jury. I don't
5 really know why, you just look like a patient man so I put you
6 in that seat.

7 FOREMAN: Thank you, sir.

8 THE COURT: All right. Members of the jury, we're
9 getting ready to start this case but before we do, I just want
10 to give you a little bit of working knowledge that you can put
11 in your back pocket and just sit on it throughout this trial.

12 First thing I want to tell you is that the burden of
13 proof in this case is by the preponderance of the evidence.
14 That simply means the greater weight of the evidence. The
15 plaintiff must prove his case by the greater weight of the
16 evidence. In this case, the defendant has filed a
17 counterclaim and they must also prove their counterclaim by
18 the preponderance or greater weight of the evidence and I will
19 explain that to you in greater detail at the end of this case.

20 Furthermore, I want to explain to you what your job is
21 and what my job is and how they differ. You are the judge of
22 the facts. I am the judge of the law. That means that you
23 and you alone determine what the facts of this case are, not
24 my clerk, not the court reporter, not the bailiffs, not the
25 lawyers, not anybody in the audience, just you. And you ask

1 yourselves, well, how do I determine what the facts of this
2 case are. It's very simple. You look at two things, it's
3 called the evidence; you look at the witnesses that come over
4 here and sit in that chair and raise their right hand and put
5 their left hand on the Bible and they swear to tell the truth
6 and nothing but the truth and the whole truth. Well, you said
7 back, you judge their credibility, you just their
8 believability. I want you to understand that you'll use the
9 same common sense, the same principles that you might use with
10 your children or with your spouse or with your coworkers. You
11 can believe all of what a witness tells you, nothing a witness
12 tells you, part of what a witness tells you. I want you to
13 understand you can believe one witness against many or many
14 against one; that's your job and your job alone. You are to
15 determine what the facts of this case are from what the
16 witnesses tell you and what you believe and you will add that
17 to any documents that are admitted into the record as evidence
18 such as maybe pictures or contracts or itemization schedules,
19 things of that nature. That's how you determine what the
20 facts of the case are.

21 In turn, I am the judge of law. I have a two function
22 role in my opinion. One, I'm here to give them a fair trial.
23 I don't know the plaintiff, I don't know the defendant, I
24 don't have a dog in this fight but I want to make sure they
25 get a fair trial according to the laws in this state.

1 Furthermore, I am the judge of the law and at the end of this
2 case, I will instruct you as to what the law is in great
3 detail. I will read it to you verbatim, word for word. And I
4 want you to understand that you have to accept the law as I
5 give it to you. If you have any preconceived ideas as to what
6 you think a law is or what you think ought to be and it
7 doesn't agree with what I tell you the law is, you have to
8 abandon those preconceptions and accept the law as I give it
9 to you. And the only when I tell you to begin your
10 deliberations -- in other words, when I tell you to start
11 making a decision, you will take the facts as you find them,
12 you will take the law as I give it to you, you'll put the two
13 together and make a decision there from. It's just a lot of
14 common sense.

15 Another thing I want to tell you is that what the lawyers
16 tell you is not evidence. They are advocates for their
17 clients; they are spokespersons for their clients.

18 Another thing I want to instruct you on is that at no
19 point in time during this trial or if we take a break or if by
20 chance we don't finish today and we come back tomorrow and you
21 go home tonight, do not talk about the case at all. If you
22 take a break and go into the jury room, do not talk about this
23 case. Talk about the football game, talk about politics, talk
24 about the weather, whatever you want to talk about but not
25 this case. And the reason I tell you that is I don't want you

1 to start deciding this case too early. You need to hear
2 everything. You need to hear from the plaintiff, you need to
3 hear his side of the story. You need to hear from the
4 defendant and his side of the story. And then you need to
5 hear the law from me. Once I determine that you have
6 everything you need to make a decision, I will specifically
7 tell you at that time and it will be at the very end to begin
8 your deliberations, only then do you start discussing this
9 case. Also, if we take a break or if you leave the
10 courthouse, like I told you earlier, do not undertake any
11 independent investigation into this case. Don't get on the
12 internet, don't look up the parties on the internet, don't
13 call people and ask about them; you don't need to research a
14 thing. All you need to do is sit back in that chair right
15 there, get everything you need right here in this courthouse
16 and you'll have everything you need to make a decision in this
17 case.

18 Furthermore, at any point in time, if I can do anything
19 to make your stay comfortable, if you need a drink, a coke, a
20 smoke break, you need to call a family member to make
21 arrangements for an particular item, you just raise your hand
22 and let me know and I'll take a break and make sure you're
23 taken care of.

24 All right. Right now I want you just to sit back. I
25 want you to relax. We're gonna have the opening statements

1 from the plaintiff first followed by the defendant.

2 All right. Mr. Grate, if you'll just introduce yourself,
3 introduce the case and briefly tell the jury what they can
4 expect to hear from you as you present your case.

5 MR. GRATE: Thank you, Your Honor.

6 THE COURT: You may go around and talk to the jury.

7 MR. GRATE: I should go here?

8 THE COURT: You may.

9 OPENING STATEMENT BY MR. GRATE:

10 Good afternoon, folks. My name is Joseph Grate. I am a
11 native South Carolina, native to Pawleys Island.

12 This case is about a contract that I had with the agency,
13 Waccamaw EOC. I want to just briefly introduce myself and
14 then when I -- I'm gonna give information or testimony or
15 whatever so we'll explain everything from the beginning to
16 where we are right now. So, with that, I'll just sit tight
17 for right now. Thank you very much.

18 THE COURT: Thank you, Mr. Grate.

19 All right, Mr. Wilson.

20 MR. WILSON: Thank you very much, Your Honor.

21 OPENING STATEMENT BY MR. WILSON:

22 Ladies and gentlemen, my name is Ralph Wilson and I
23 represent Waccamaw Economic Opportunity Council who is the
24 defendant in this particular case.

25 This is an action that was brought by Mr. Grate against

1 Waccamaw Economic Opportunity Council claiming that there was
2 a contract, an agreement between them and that Waccamaw
3 Economic Opportunity Council -- which I will call EOC because
4 it's simply simpler and easier to do -- that they broke or
5 breached that contract. That's the gist of why we're here.

6 In return, Waccamaw Economic Opportunity Council or WEOC
7 filed a counterclaim against Mr. Grate, alleging that he has
8 to repay them 14,000-plus dollars that they already gave him
9 towards this contract or agreement and so that's what we're
10 here to discuss.

11 Now, let me try to explain just a little bit about what I
12 think will happen during the course of this trial. And this
13 will not be a long trial by any means, so I don't expect and
14 maybe we'll finish today and if not, we're certainly going to
15 early tomorrow.

16 We have contracts all the time. And a contract is simply
17 an agreement where two or more people come together and agree
18 on terms or conditions to do something or not to do something.
19 We can have a contract to say for you to clean my house three
20 times a week and I'm gonna pay you \$10 an hour for cleaning
21 and that's a contract. That's legal as long as I make that
22 offer to pay you \$10 an hour, you accept that offer and come
23 clean my house, you provide the consideration for cleaning for
24 the money, for the \$10, by coming to clean. So now we have an
25 offer, which is my offer to pay the \$10, an acceptance when

1 you say yeah, I'll come clean and then the consideration is
2 you're actually gonna get -- you're actually clean my house
3 and get the \$10. That's what you have to have to have a
4 contract.

5 Now, what we're gonna show you in this particular case,
6 though is is that this is different. It's different because
7 the government, the law, federal and state law forbid the
8 existence of this particular contract. You're gonna hear the
9 word cost-plus during the course of this trial. What does
10 that mean, cost-plus contract. What happens in the
11 construction industry is that sometimes a builder or an
12 architect or a service provider will charge you based on the
13 cost of the project. The project cost \$100,000, their fee may
14 be ten percent of that. So, they get ten percent of that cost
15 and that's called a cost-plus-expenses, cost-plus.

16 What happens though because Waccamaw EOC is a non-profit
17 organization using government funds, which we will show to
18 you, that that is not permitted by federal regulation, that
19 you cannot have a cost-plus contract. Reason for that, I
20 would submit to you, is because it allows for too much abuse.
21 If you have a cost-plus then it's in the interest of the
22 person who has the job to get the cost up as much as they can
23 because if you get a percentage, then the higher you get the
24 cost, the more percentage you get. So, if you start out with
25 a \$100,000 contract and it ends up being 200,000, you know,

1 now instead of getting nine percent of 100,000, I'm getting
2 nine percent of 200,000, which allows for a lot of abuse which
3 is why the law forbids that type of contract. What you will
4 see is that that was the kind of agreement that was entered
5 into by these parties. Neither one of these parties were
6 aware at the time that they entered into the agreement that
7 that was the law. So, they entered it both in ignorance. You
8 will also hear that EOC once they learned that this contract
9 was an illegal contract went to Mr. Grate and said, look, we
10 can't have this type of contract, we need to change it to a
11 dollar amount. Mr. Grate refused and, as a result, we're
12 here. That is the extent of where we are.

13 You'll also hear that Mr. Grate has been paid more than
14 \$14,000 for absolutely no service and that that money should
15 be returned to Waccamaw EOC.

16 Thank you.

17 THE COURT: Thank you.

18 All right. Mr. Grate, if you would like to come forward
19 and testify, you may.

20 CLERK: Please raise your right hand and place your left
21 hand on the Bible.

22 JOSEPH N. GRATE HAVING BEEN SWORN,
23 TESTIFIED AS FOLLOWS:

24 CLERK: Have a seat, please, sir.

25 MR. GRATE: Thank you, ma'am.

1 CLERK: State your name for the Court, please, sir.

2 MR. GRATE: My name is Joseph Grate.

3 MR. WILSON: Just so I can see, Your Honor; I can't see
4 very well from there.

5 DIRECT TESTIMONY OF JOSEPH N. GRATE:

6 MR. GRATE: In the summer of 2009, Waccamaw EOC placed an
7 ad for architectural services to -- for -- to provide them
8 with a Choppee Head Start facility. I saw the ad, I put
9 together a team and we presented for the project. We
10 presented for the project and maybe thirty-some other people
11 presented also for the project. Of the thirty-some people,
12 five different firms were short-listed for the project. Okay.
13 So, we went and made a presentation to Waccamaw EOC. After
14 that presentation, they short-listed two -- two firms were
15 short-listed. Of the two, my firm was one of them. We went
16 and made a presentation again. Okay. Eventually, Waccamaw
17 EOC made a selection. They didn't -- and they didn't select
18 my firm.

19 Okay. At some point later, I received a call from
20 Zacharius Grate at Waccamaw EOC asked me if I was -- if I was
21 interested in being, you know, the project manager -- in-house
22 architect, what he said for them, for that project. So,
23 that's when I found out who was selected for the project and
24 at that point I told them that the firm you selected is not a
25 qualified architectural firm.

1 Okay. So, that led to me having a interview on the 17th
2 of November, 2009, at Waccamaw EOC's office. I walked in the
3 office for the interview. The interview session was conducted
4 by Mr. Zacharius Grate. When he introduced what the situation
5 was, he wanted me to come in as that in-house person to
6 oversee, you know, design and construction of the project.
7 Immediately, I told him, I said, thank you. I don't want to
8 talk myself out of a job but if you have selected an architect
9 for the job, he is supposed to do all of those things for you.
10 He told me, yeah, but our procurement says we have to have an
11 in-house person. I said, okay, but if you're not gonna do
12 things right, I'm not the person for you. If you're gonna be
13 correct, then okay I can do it for you. All right. So at the
14 close of that meeting, I was told that, well, we want to have
15 you -- first of all, they asked me -- well, I was asked by --
16 actually by Ms. Whitfield, Do you have time to do our project?
17 I said, Yes, well, I have a couple of jobs right now. I can
18 wrap those up and then I can do your project. I'm gonna get
19 them out of the way, you know, and then I'll be able to do
20 your project. Okay. So, I was told, Well, we'd like to have
21 you on board the first of December, 2009. Okay. So, now,
22 essentially I made a commitment then at that November 17th,
23 2009 meeting to go and work with Waccamaw EOC for the purpose
24 of, you know, providing them with the facility. I waited, I
25 didn't hear anything from them and then about two days, around

1 the 23rd of December, 2009, I got a call and I was told that,
2 well, you know, we haven't made a decision, whatever. So, you
3 know, I waited.

4 In the meantime, they had a groundbreaking in Choppee. I
5 went to the groundbreaking. I was told, well, you'll be
6 getting a call, you'll be getting a letter, whatever. Didn't
7 get anything.

8 So, then, I noticed the job was advertised again for the
9 -- not again, the job was advertised, the project manager job
10 was advertised. So, I saw the advertisement and I applied for
11 the job. There were several questions, you know -- there's a
12 big questionnaire you have to fill out and one of the
13 questions asked about what was my process for dealing with
14 this kind of work and I told them what it was. You know, I
15 told them, well, what I do -- they way I approach a situation,
16 I do -- I analyze it really good, then I make unequivocal
17 decision. I don't waiver once I make a decision.

18 Okay. One of the questions was about the fee. I said,
19 you're not a point now where we can determine a fee. There's
20 a lot of things has to happen and for where you are right now,
21 that doesn't even come into the picture. I'm paraphrasing a
22 little bit but I have all that down in here.

23 What else was asked of me? Oh, in that application, they
24 asked for my credentials and I provided all my credentials,
25 being an architect several states, being a general contractor

1 in South Carolina. I introduced my project manager
2 certification from NC State, my certification as an inspector
3 for Safe Home Program as well as a contractor for that South
4 Carolina Safe Home Program and some other things. Oh, also,
5 as a certificated grants writer, grants expert certified and
6 some other things I can't think of right now.

7 But anyhow, I submitted my credentials and -- but the key
8 thing I told them was that if I were selected for the position
9 -- this wasn't asked for but I told them if I were selected
10 for the position, the first thing I would do is present you
11 with a report indicating where you are, help you determine
12 where you want to go and help you map a course to get there.

13 Okay. So, around the 24th of February, 2010, I received
14 notification that I was hired for the position. Okay. So,
15 the 25th of February, 2010, I submitted my report to WEOC's
16 office. When I submitted a report, it was indicated that the
17 report would be forwarded to the board. At that time the
18 board was in a retreat in Charleston, South Carolina. So, it
19 was stated that I should go and make a presentation to the
20 board in person. I indicated that's not necessary because my
21 report is very detailed but I was urged to go. So I went
22 there to make a report in Charleston and I laid out my whole
23 -- the whole report.

24 Some key factors of the report are that I indicated to
25 them that the person that they had hired as their architect

1 was not a qualified person and I indicated why because he
2 didn't have a license as an architect. I also indicated to
3 them -- well, the person who they hired, actually, they hired
4 him -- that firm, to do what we call a design-build situation
5 wherein he would design the project, also build it. The
6 person had -- also had a general contractor's license. But in
7 my report I indicated that his license was not sufficient
8 under state law to construct that building. His license
9 limitation was for \$750,000. State law require that you have
10 an unlimited license to do that building because the building
11 was gonna cost upwards of a million dollars. Okay. So, I
12 indicted to them that the person they had hired, that they
13 were already set on to do the project, which was to do the
14 design work as well as to go to the building. That firm
15 wasn't qualified in neither one of those areas.

16 Okay. So, now, that led them to say, well, we need to
17 get a meeting together with that person, that firm. So, about
18 two or three days later, we -- the representative from that
19 firm came to WEOC's office and we all met around the table.
20 And they had me to speak and I did and I laid out my whole
21 situation, that, you know, you're not an architect. He
22 couldn't admit to being an architect. His general
23 contractor's license was not up to the limit that it needed to
24 be. Okay. Not only was he not an architect -- his was state
25 licensed as an engineer, however, as a chemical engineer

1 dealing with chemicals, nothing to do with any construction or
2 anything.

3 Okay. So, now what this person was gonna do, what he had
4 planned anyhow was to hire out the architectural part of it.
5 There was a person in his firm formerly, the person left the
6 firm went opened his own firm upstate South Carolina,
7 Greenville, Spartanburg one of those places. So, what the
8 local firm who had the contract now with WEOC to do the design
9 contacted that firm, that person who had left them, brought
10 him to a meeting at WEOC. I sat down with them again, went
11 through the whole process. So, now, what was gonna happen,
12 they were gonna allow, perhaps allow that firm from upstate to
13 come in and join with this person. I mean, I didn't know the
14 situation, but anyhow but so -- now, the question came up
15 about -- one thing, that firm had already roughed up some
16 drawings and some figures. This is what we gonna do, this is
17 what it's gonna cost you. I looked at it, I knew it wasn't --
18 the drawings were not good, the figures were not good. There
19 was some elements in the drawings that were not good at all,
20 you know, and somebody should've caught it. They had the
21 trash area, where you put your garbage inside the building,
22 you know, and all that kind of stuff, a lot of stuff that was
23 bad.

24 Anyhow, so now, while this group, the one out of
25 Greenville and one from here, they got together and I'm asking

1 this about the structure, different questions about the
2 structure, you know, and I -- one of the things I asked them,
3 I -- where is your program? They didn't have a program.
4 Well, how can you not have a program, how you can you design
5 the building if you don't have a program? Well, the agency is
6 supposed to give us the program. Okay. What happens with
7 Head Start is that Head Start has the procedure that you're
8 supposed to follow, the eight steps. The first step is the
9 feasibility study. That one was completed before I arrived.
10 The staff with WEOC and Ms. Whitfield did an excellent job,
11 that's how they got the money from the government. They did
12 that feasibility study, real good. You know, I was able to
13 determine, given my background with grants writing and stuff,
14 I knew, grants education, I knew. So, anyhow, and that's the
15 first step.

16 Going on down the line is schematics and, you know,
17 program and schematics, all the stuff going on way down the
18 line, and then the seventh step is when you do the actual
19 construction. So like I say, the first step was done and then
20 design is down -- the design process take off from two going
21 all the way down to six. But now this firm that they hired
22 already had everything done, supposedly. They did design
23 everything but they didn't do the second step which is the
24 program.

25 So I got together with the firm, I mean, with the agency

1 and we did a program. We put together a building program and
2 presented it to that design firm. There was a lot of email
3 back and forth and just conversations back and forth with me
4 and WEOC. We got this thing put together. Ms. Whitfield and
5 myself and Ms. Fryar, we worked on it. I don't know if -- I
6 don't think Ms. Wideman was on it but anyhow Ms. Whitfield,
7 Ms. Fryar and myself, we worked up this program and submitted
8 it to these people.

9 Now, there was the matter of the contract for that
10 service. Ms. Fryar, the former executive director submitted
11 me a copy. I asked her for it, she dug up a copy of the
12 contract for the architectural service by that other firm. I
13 went through it line by line and I -- you know, I scrutinized
14 the whole thing. Then I took it back to WEOC, we sat it on
15 the table and I went line by line, I said, and showed them
16 what was right and what was not right. There was a lot that
17 was not right. Even to the -- there was a lot that was not
18 right. So I marked that up, submitted it to the WEOC. WEOC
19 called this firm together. We sat around the table, you know,
20 agreed on what had to happen, what had to change. Then now
21 it's just a matter of them signing that and for the WEOC
22 person to sign it, then they would've had a contract. Okay.

23 So now, at some point down the road, I had a contract
24 with WEOC. I got into a contract with WEOC. And from the
25 beginning, from the very beginning, even the application

1 process, they asked for the fee and I told them that we were
2 not in the position to talk about fee because we don't know
3 what's happening yet. So, as I'm working with them and
4 developing stuff, giving them reports, we reached the point
5 where it's still cloudy but I said, well, okay, I submitted a
6 document indicating what my fee would be. And I have it here,
7 it's -- on Page 95 of my -- on Page 96 of my previously
8 submitted exhibit, I asked them, I said, the fee would be ten
9 percent of the total project cost, which is the sum of the
10 design cost plus the construction cost.

11 An initial payment of \$12,500 upon execution of this
12 agreement, which shall be credited to the owners account in
13 the final invoice.

14 Unless otherwise -- unless otherwise agreed, the payments
15 for services shall be made monthly at a rate of \$8500 per
16 month due and payable upon presentation of project managers
17 invoice; amounts unpaid thirty days after the invoice date
18 shall bear interest at the local prevailing interest rate.

19 For additional services that may arise during the course
20 of the project, the owner shall compensate the project manager
21 at the rate of \$125 per hour.

22 Okay. That was submitted to Waccamaw EOC. At some
23 point, Waccamaw EOC -- I went in for -- this was really for
24 negotiation of this rate and I met with some people from WEOC
25 and we go -- we negotiated the rate down to nine percent.

1 Okay.

2 So now after about, maybe a month or so late nothing had
3 happened and I'm writing to them back and forth, email back
4 and forth, nothing had happened and I discovered later after I
5 got into this process of this lawsuit that whenever the issue
6 of the project manager, anything concerning the project
7 manager came up during the board meeting, it was always
8 tabled. So I'm corresponding with WEOC, I'm looking for --
9 I'm writing to them, there's not no correspondence, looking
10 for something in return and I never receive anything in
11 return. And I'm sending emails saying, what's going on, not
12 knowing that whenever my situation came up, they would just
13 table it. So, this went on many months. I signed a contract
14 with them -- I signed a contract with them the last --
15 initially, the last day of March, 2010. At the time, Mr.
16 Zacharius Grate was the board chairman. And it was my
17 understanding everything has to go through him and he's the
18 one that sign off. So they had an attorney, Dan Stacy from
19 Pawleys Island area and there was some communication back and
20 forth with the board and Dan Stacey but from what I
21 understood, my contract, once we decided nine percent was sent
22 to Dan Stacey's office. And from what I understood, Mr.
23 Zacharius Grate was supposed to stop by Dan Stacy's office and
24 sign the contract. More than a month went by, nothing
25 happened.

1 So now at some point, after I keep writing to him wanting
2 to know what's going on, I was called to Waccamaw EOC's office
3 and told that okay, now I can come and sign, pick up my check.
4 When I arrive at the office, I waited at least two hours,
5 sitting there just waiting. Eventually, Ms. Wideman, who is
6 head of there, came out with a document. I have it on Page 94
7 of my previously submitted exhibit. It's called Exhibit B,
8 Compensation. It amounts to five lines and it says,
9 Contractor shall be compensated at a fee not to exceed nine
10 percent of the total building costs, excluding design,
11 engineering and permitting fees, payable as set forth in 3.1
12 of the contract. Waccamaw EOC will pay contractor an advance
13 payment against further billing of \$10,000 as soon as funds
14 are available to Waccamaw EOC, Incorporated. Invoices must be
15 submitted prior to payment. Final payment will not be made
16 until entire project is completed -- is complete. Okay.

17 I waited, after I waited at -- more than two hours,
18 Janice -- Ms. Wideman came out with this document, what I just
19 read as part of the contract and then we signed again, I
20 signed it, witnessed by a lady, Ms. Davis, witnessed by Ms.
21 Wideman and Ms. Wilhelmina Whitfield signed it the 30th of
22 April, 2010. And they gave me a check for \$10,000. Okay.

23 Now, part of the contract is a section called Exhibit A
24 and its -- which is the scope of services that I'm supposed to
25 provide to Waccamaw EOC. It states Scope of Services: To

1 provide management oversight for preconstruction phases and
2 for all phases of -- and for all phases of the construction
3 project including coordinating workers, material and equipment
4 and showing the specifications are being followed and work is
5 proceeding on schedule and within budget. Conduct any work
6 that Waccamaw EOC Council Incorporated deems necessary for the
7 agency within the realm of the design and construction process
8 for Choppee Head Start facility.

9 Develop a cost effective plan and schedule for completion
10 of the project. Accomplish by following a logical pattern for
11 utilization of resources by incorporating schedules for the
12 project architect and the general contractor.

13 Confirm the coordination of work conducted by the
14 subcontractors working on the various phases of the project by
15 way of coordinating with the general contractors field
16 representative.

17 Monitor the performance of all trade contractors and
18 review architectural and engineering drawings to make sure
19 that all specifications and regulations are being followed.

20 Responsibility for proper administration of construction
21 contracts and verify that the work performed in accordance
22 with the necessary permits and licenses and that all permits
23 and licenses have been issued.

24 Review all reports, monitor any reported difficulties and
25 address any safety violations or other reported deficiencies.

1 Track and adjust construction schedule and associated
2 costs to achieve completion of the project within time and
3 budget allocated. Contractor shall provide weekly reports to
4 the agency giving percentage of completion to date, work
5 schedule for following week, analysis of funds expended to
6 date, estimates of funds to complete and other information
7 requested by the agency.

8 Report monthly at a minimum to Waccamaw EOC -- to
9 Waccamaw Economic Opportunity Council, Incorporated about
10 progress and any necessary modifications of plans that seem
11 indicated.

12 The project manager shall provide his services in
13 conjunction with the services of the architect retained by the
14 owner under the terms described in the associated AIA
15 document, standard form of agreement between owner and
16 architect as amended and executed by owner and architect. The
17 project manager shall not be responsible for actions taken by
18 the architect.

19 The project manager shall provide the services, its
20 services in conjunction with the services of a contractor
21 retained by the owner. The project manager shall not be
22 responsible for actions taken by the owner. Okay.

23 One point I want to jump to first of all and that is when
24 they talk about the project manager provides its services in
25 conjunction with the services of an architect retained by the

1 owner under the terms described in the associated AIA
2 document, standard form of agreement between owner and
3 architect as amended and executed by owner and architect. The
4 project manager shall not be responsible for the actions taken
5 by the architect.

6 The reason I brought -- the reason I dealt with that just
7 then is because about six or more months after I had not heard
8 anything from Waccamaw EOC, kept writing to them, I kept
9 sending monthly reports with no feedback until I sent one
10 report late in the year, maybe July or so of 2010. And I
11 asked them to just let me out of the contract and I indicated
12 how that could be done. Pay me a certain amount of money and
13 we just part company. Oh, I gave them three alternatives. I
14 better find that and bring that up, too. One second, please.

15 Okay. This report was issued the 20th of July of 2010.
16 It's very short; it's only one page. Attention WEOC -- it's a
17 monthly report. There's nothing new to report even after
18 thirteen months since advertisement of the project, thirteen-
19 plus months. Therefore, pursuant to all documentation
20 applicable -- all documentations, applications, reports,
21 proposals, audio recordings, transcripts, email, contract, et
22 cetera, and all meetings and telephone contact, nothing has
23 occurred that precludes the following -- One thing before I go
24 further, this that I just read is from Page 84 of my
25 previously submitted exhibit. Okay. So, I said that all the

1 meetings and telephone contact, nothing has occurred that
2 precludes the following. Then I list -- here's what the
3 following are: Option 1, with regards to Choppee Head Start
4 Center, continue along -- continue along your present course
5 of inaction but buy out my contract by paying me the sum of
6 \$45,000 and we cut all ties. Given the level on consciousness
7 business -- of the organization, pretty much as a whole, this
8 is my preferred option. The preference is to separate myself
9 from you and this craziness and go on with my life. That's
10 the first option.

11 Option 2, commence -- commence the contract immediately
12 and disburse the sum of \$28,000 and continue with the project
13 without delays until the completion of the construction. In
14 the event of any delays in the process, pay \$125 per hour
15 during any day, Monday through Saturday up to the amount of
16 \$8500 for any contiguous thirty-day period. For any period
17 less than thirty days, the stated hourly rate applies, the
18 \$125 an hour, none of the money paid thusly, which is money
19 payable while work is discontinued for any reason beyond my
20 control, any money that's paid then, if you discontinue work,
21 is to count against the -- none of that money is to count
22 against the contract price for the -- for the to be agreed
23 upon contract sum or fee for this project. This option is
24 predicated upon an acceptable plan of action and scheduled for
25 completing the project. In other words, I'm telling them, you

1 know, if you're gonna continue with the project, due to all
2 the delays to date, pay me \$28,000 and then we continue like
3 we should continue and if you delay like you've been delaying
4 all the time, \$125 an hour for any day Monday through
5 Saturday, okay, up to \$8500. Now, that's for any continuous
6 thirty-day period and for a period less than thirty days,
7 still \$125 an hour, that applies. And I'm saying now if you
8 delay, that's -- that don't count. That's extra money; that
9 don't count against the project itself. Whatever sum we come
10 up for the project, that don't count against that. So, that's
11 the way that was.

12 Now, the options available to you are therefore 1 and 2
13 above. I'm saying they can choose either one of these.
14 Otherwise, I would be forced to behave in a manner which I am
15 sure you would have had I breached the contract in any
16 fraction of the manner in which you have. What I'm saying is
17 that had I not performed, had I done anything not even close
18 to what they have done, they would have done something,
19 something to me. So, I'm saying -- so I'm saying, if you
20 don't accept 1 or 2 above, I'm now gonna have to do to you
21 what I know you would've done to me had I done to you what you
22 did to me. So, in the event you do not concur with either
23 option 1 or 2, immediately upon receipt of this proposal, this
24 should therefore be considered my notice of contract
25 termination per Section 5 of the contract. From that point,

1 we shall -- we will continue this matter in accordance with
2 Section 1.1.4 of the contract and Option 3 will come into
3 effect.

4 Option 3, the only other option to resolve this stagnant
5 situation is in accordance with 1.1.4 of the contract. 1.1.4
6 of the contract is where we are right now trying to resolve
7 this situation. So that -- that was sent to them the 20th of
8 July, 2010. But like I say, that came after thirty-plus
9 months of them not doing anything, dragging their feet.

10 Now I could regress a little bit. This is a report for
11 July 20th, 2010. I think I'm gonna regress and go back to the
12 -- back and show from the other reports what was occurring.
13 Going back one step back, I have a June -- a June 23rd letter
14 that I wrote to them. It is imperative that you immediately
15 address the issues at hand as laid out in the above mentioned
16 monthly reports. WEOC -- WEOC's apparent SOP, which is
17 standard operating procedure, does not work in the real world,
18 at least as far as I can see. Should an occasion arise when
19 you realize that you are in need of assistance, I am willing
20 to try to provide same. Meanwhile, I wish you luck in your
21 future activities. That's from June 23rd, 2010. June --
22 monthly report for June 21st. This report is submitted
23 pursuant to Exhibit A, which is scope of service, which that
24 stuff I told you all about was supposed to happen in Exhibit A
25 -- submitted subsequent to and incorporated -- incorporates

1 references May report. I'll get back to May in a minute but
2 right now I'm doing the June 21st report, this is a much
3 earlier -- month earlier from the first -- from the July one,
4 anyhow. Current status, again, there is nothing new to report
5 since the May report. There has not been any response or
6 comments from the May submission. However, this date makes
7 one year and six days since the Choppee Head Start Center
8 project was advertised. It was first advertised June 15th,
9 2009 and the projection was for them, what they had in mind
10 was for them to have the building up and occupied by September
11 of 2010. Okay. That's that.

12 Okay. Continuing from that June 21st, 2010 report,
13 Waccamaw EOC should be advised that I did not commit to
14 position of stagnation with respect to the flow of information
15 as well as the flow of funds. After more than a year of
16 nothing to show for all the time that has passed, I -- it is
17 extremely difficult to understand your process and how I might
18 be able to assist you or to fit in with your process.
19 Nevertheless, the records of services is all about time and
20 money and in order to remain solvent and provide for
21 maintenance of recurring taxes, insurance, license fees, et
22 cetera, which are currently due, my situation and consequently
23 my status with Waccamaw EOC will require an infusion of cash
24 before June 30th, 2010 in order for me to remain solvent
25 regardless of your process. The process as outlined in the

1 May report entails a steady workflow process toward the design
2 and construction of a facility in compliance with Head Start
3 guidelines. For sure, I cannot subsist in limbo and the
4 current situation is stagnant and does not -- and does nothing
5 to support my sustainability. This limbo is essentially
6 having my hands tied with respect to any other work due to the
7 exclusive commitment to the Choppee -- to the Choppee project.
8 There's nothing happening with respect with the project that I
9 can see. Therefore, it is incumbent upon WEOC to do something
10 and time is of the essence. I can see no justifiable reason
11 for the stagnation since I'm here to provide you with the
12 necessary guidance. For you not to take advantage of what is
13 available is inconceivable.

14 And I concluded that June 21st, 2010 report with this:
15 It has been established that I possess the ability to perform
16 the functions necessary for your needs. That ability from my
17 perspective is a translation of time. Therefore, what WEOC is
18 contracting for is in essence my time. The clock is running
19 and my time must be compensated for. It is up to you to avail
20 yourself of the product of my time and effort within the
21 context of my making my time available to you and I cannot
22 appropriate -- I cannot be appropriated without compensation.
23 Consequently, it is incumbent upon WEOC to address the issues
24 immediately. This -- that's the -- a May report from Page 79
25 -- 79 through 82 of my previously submitted exhibit.

1 What I was saying is that I'm here to work for you. I am
2 exclusively committed to work for you. I'm not doing anything
3 else. I'm here to do this job for you. What is the hold up?
4 They're not doing anything and they're not saying anything.
5 They never respond to me. Okay. So that went on for over a
6 year, thirteen months, no funds coming in now. Okay.

7 So now, the first report I gave them was the May report
8 and I -- the issue of their Exhibit B versus my Exhibit B.
9 Their exhibit B, I informed them that there was a problem with
10 their Exhibit B and I'm saying by compensation in the
11 contract, it shall be compensated not to exceed nine percent
12 of the total billing costs excluding design, engineering and
13 permitting fee payable as set forth in 3.1 of the contract.
14 Okay. That part I want to deal with because I'm saying to
15 them, I interpret this as meaning that WEOC is not interested
16 in my providing any preconstruction services and that this is
17 -- that it is only interested in my providing services during
18 the building and construction phase. It also implies that
19 there is no cost consideration attached to my activities to
20 date. And although I'm saying, I have done all this stuff
21 before. Whereas they call themselves having a building ready to
22 be constructed but they never had a building program. Now,
23 the building program has to come first. I'm going to get to
24 that in a minute and show you why it has to come first. Okay.

25 Okay. The ultimate implication is that my activities are

1 restricted to step seven. That's -- I'm gonna tie that in.
2 Step seven of the Head Start process. Construction
3 administration includes all participation, excludes -- it
4 excludes all participation and design, engineering, permitting
5 associating activities when it introduced -- I'm saying that
6 when they introduced this clause in Exhibit B that exclude --
7 it exclude design, engineering and construction -- and
8 permitting fee, in that -- I'm saying that that -- I'm reading
9 it -- in that -- this contradicts other elements of the
10 contract as well as information I have submitted to date on
11 this subject of the process for getting the project completed.
12 And that -- and that it in no way resembles the procedures,
13 the procedure or guideline provided by the Head Start Program
14 as outlined by US Department of Health -- Health and Human
15 Services. I hereby call your attention to the source of my
16 confusion. At this point, I do not understand what your
17 objectives are.

18 See, I perceived confusion when we first presented our
19 credentials to do the design of the project. So, when I --
20 when I got to the point of signing on to be project manager, I
21 knew they were confused. So, that's why when I submitted my
22 documentation application, that's why I told them that I --
23 the initial thing I will do is give y'all a report explaining
24 to you where you are, help you to find out where you want to
25 go and help you along the way to get there. So, what I'm

1 saying now, I'm saying that, you know, at this point, I do not
2 understand your objective because now it's -- it's crazy to
3 me. Currently, I do not know what the status of the project
4 is, however it is evident that there is no intention to follow
5 the established design process and indeed it appears -- indeed
6 it appears that all activity up to step seven of the of the
7 Head Start process has been discarded, disregarded or
8 discarded. I had previously gone to considerable length to
9 convey that the project consist of the many items that come
10 into play long before the construction process and those
11 elements need to be addressed. The preconstruction elements
12 consist of pre-design and design activities. Seemingly, WEOC
13 has discontinued all activity with respect to the project or
14 at the very least has chosen to disregard all of my
15 recommendations, regarding contractual issues, expediency,
16 procedure or process. What I'm saying is everything I mention
17 to them about contracts, contractual issues, even my contract,
18 everything I mention to them about expediency, how you get
19 from here to there, the least amount of trouble, shortest
20 amount of time, least amount of dollars, whatever, they
21 disregard all of that.

22 So I'm saying this, this is some of what I was offering,
23 what I felt you needed, it is the general process of design
24 and construction -- it is the general process of the design
25 and construction industry. However -- however, it is

1 presented here as specific to your situation.

2 And I had -- when I submitted my -- when I submitted my
3 application in February, February 8th, they were asking about
4 the fee and this is what I said. This is what I gave in
5 addition to -- additional information concerning fees. I am
6 amenable to meet with the agency so as to discuss project
7 need, determination and project focus. Upon establishing
8 these aspects of the project the foundation will be in place
9 to discuss compensation. That means once we know what we
10 gonna do, we can talk about fees. Until then, there's no
11 definitive reference point; we got nothing to talk about, you
12 know. We don't know -- if you tell me -- you can't tell me
13 you're gonna sell me something amount of money and I don't
14 know what the something is. So I'm saying, until I know what
15 you want -- until you know what you want, we're not in a
16 position to even talk about what it's gonna cost. Okay. I'm
17 saying until then there was no definitive reference point.
18 Some -- a few of these many aspects of the project, I'm
19 saying, as follows: Preconstruction fees (in concert with the
20 appropriate AHG). That's a key thing that they missed from the
21 -- my very first submission to them the 8th of February. I'm
22 saying that I'm gonna -- I gonna deal with the preconstruction
23 phase of the project in concert with the appropriate AHJ.
24 They never asked me anything. The AHJ stand for authority
25 having jurisdiction. Now, so if I were working on the

1 project, I would've made sure all the T's were crossed and all
2 the I's were dotted. Wouldn't have had a problem with the
3 authorities, with the county, with the federal government,
4 with anybody. Okay.

5 Then I went down a whole list of things that, you know,
6 of what I was gonna do, deliver a current status analysis
7 report. I'm saying that was important. This is -- this was
8 in my first -- when I applied for the job, this is what I told
9 him, deliver the current status analysis report, that's what I
10 would do for you if you hire me, I will give you this report
11 letting you know where you are, okay, highlight the necessary
12 course correction action, indicate the proper delivery method
13 -- how are we gonna get this job done -- establish the project
14 goals. Now, where you wanna go. I provide assistance to
15 compile, consolidate the facility program; we did that. We --
16 me and -- working with the staff, Ms. Whitfield and Ms. Fryar,
17 we put together the program. But like I say now, they had
18 input from the designers which needed to incorporate the
19 program but they didn't have a program and they were buying
20 it, hook, line and sinker, they were buying it but, you know,
21 it wasn't right. In other words, they had put their shoes on
22 and then come back later and put their socks on. That wasn't
23 gonna work. Okay.

24 Now, chart the course of activities with the architect.
25 After -- that's when they dropped me off. After -- dropped me

1 off way back when but when they got to the point where they
2 hired this supposed architectural firm, there was no contact
3 between me and them. But it's clearly indicated in Exhibit A
4 that I'm supposed to interface with them, you know. A series
5 of things need to happen in dealing with them. One thing we
6 did provide the program but then they were supposed to go and
7 get into the process, do the design work and preliminary
8 design work, submit it to us -- us being Waccamaw EOC. Then
9 if I'm the project manager, I'm supposed to review what they
10 did and say this is right, this is not right, whatever, you're
11 not going in the right direction. Now in my application to
12 them, I indicated some of my background. I'm perfectly
13 skilled at this. I was involved with the Corp of Engineers
14 for five years, did a lot of this, found a lot of problems,
15 you know, which amount to a lot of millions of dollars. So,
16 this was nothing new to me -- it wasn't strange -- and like I
17 spotted stuff right away. But anyhow, I was cut out of the
18 loop. So now during one of the -- so anyhow at one point I
19 was -- when I was -- at one point I was called by the attorney
20 sitting here to go to his office to assist him in the contract
21 for that architectural firm, I had done that before. I have
22 it here, already lined and we polished that off before.
23 Called me to go because at this time, he's a new attorney for
24 the firm. Before they had a different attorney and now he's
25 the new attorney so I had to start that process, that's extra

1 work, that's additional service, you know. It's not included
2 in this contract because they wrote it out when they provided
3 this other Exhibit B here, they wrote it out. That wasn't for
4 me to do but I went to his office but what I did, I prepared
5 an invoice before going and I took it with me. I submitted it
6 at Waccamaw EOC office. I wanted to be paid. I never got paid
7 for that but I did assist the attorney with that contract. I
8 went over it for as long as he could and then he had to leave
9 to go to court. He said he was gonna call me back next day,
10 next week, whatever to finish it; he never did. At some point
11 down the road, I realized they had a -- I had another meeting
12 at this attorney's office and I learned that -- from them, I
13 learned that the design work was done, you know, and I was
14 informed about the process when bidding would happen,
15 construction and all that stuff but no till -- the agency
16 shortchanged itself because when I went through the process of
17 this whole contract for that design firm, there was a
18 contract, there's an Exhibit A portion to that contract also.
19 When I went through it with them, I made them submit that
20 Exhibit A, some very important information. But when the
21 contract was done after they dropped me out and they did it
22 again with this attorney, there's no Exhibit A in that
23 contract. A lot of stuff is left out, important stuff.

24 But anyhow, the report I just read is from -- oh -- and
25 okay, now on this same report, this same May 26, 2010 report,

1 one of the items I indicated -- okay -- it was determine
2 project manager requirements in contract execution. And I'm
3 saying -- I'm saying that was -- that was dependent upon to --
4 which highlight necessary course of action. In other words,
5 once we highlight the necessary course of action, then I'm
6 saying that that would determine what my requirements would
7 be. Once I know what we're gonna do -- I'm trying to build a
8 picture. Once I know what has to happen, then we will know
9 what I'm gonna do. But anyhow, and I also included the Head
10 Start process. This is from the website at ECLKC. That's
11 Page 6 -- 76 of my exhibit. This ECLKC website, I got that
12 information from Ms. Whitfield during one of the meetings. I
13 didn't know anything about that website but I went there and
14 they indicated a eight-step process. The first one,
15 feasibility study; second one programming, which we did
16 between me and Ms. Whitfield; then schematics design, which
17 the architect was supposed to do and then submit to Waccamaw
18 EOC for my review; and then design development, the architect
19 was supposed to do, submit to me for a review; construction
20 document, he was supposed to do and submit to me for review.
21 Bidding and negotiation, I was supposed to be involved with
22 that; and then construction administration, I was supposed to
23 do that; and the post occupancy training, that's the agency's
24 job.

25 Now, when I was going through this stuff, I made mention

1 to some things that I say I would come back to and indicate
2 how I'd tie it in. Okay. I -- when I say I interpret this as
3 -- the ultimate implication is that my activities are
4 restricted to step seven. Step seven in the process is, like
5 I say, the building construction, construction administration.
6 Building would be going on and I was supposed to be there to
7 administer that construction. But now before you construct
8 the building, you have to have a building -- a design, you
9 know. And what I'm trying to say is we did the programming
10 and then they just were stalling on everything so the
11 schematics design, design development, construction
12 documentation, bidding and negotiation, I don't know anything
13 about it. It's supposed to be for me to do. I was available
14 to do it but they didn't communicate with me. So, in a
15 meeting at the attorney's office, I mentioned those things
16 when he's saying I refused to take a certain amount of money
17 or whatever. I mentioned those things. I can't -- I don't
18 know what's going on, I don't know what has happened, I don't
19 know where we are in the process and I mentioned -- at one
20 point, I asked had those -- when the architect do design, a
21 schematic design, design development, all those things,
22 they're supposed to -- when they turn it into the Waccamaw
23 EOC, we call them submission, did anybody review the
24 submission? I was told that, yeah, now it was done in-house.
25 Also in -- when I requested documentation from the agency

1 asking, after this lawsuit, who was in a position to do your
2 reviews, who is the project manager; the response was that
3 it's done in-house. Well, who in-house? I know on the
4 contract it indicates Mr. Zacharius Grate as the agency's
5 representative.

6 So I don't know who did that stuff. I was told that it
7 was done but still if it was done, it wasn't done according to
8 the contract because whereas these elements, feasibility
9 study, programming, schematics design, design development,
10 construction documentation, bidding and negotiation,
11 construction administration, like I said, I got this after I
12 got information from Ms. Whitfield about this ECLKC website,
13 that's where I got this information from. But you know what,
14 it ties in with the design -- it is the design process for
15 architects in the United States of America, I think Canada
16 too. This is -- this is the process we follow. So, I didn't
17 have to know about this from the -- from anybody. I already
18 knew it. I've been doing this since I've been involved with
19 architecture, you know, from 1969. So, that's the way it is,
20 so when I saw this, it put a -- a light bulb went on and I
21 could tell there was something within our organization. I'm
22 told that these people, the staff was trying to tell the board
23 about this, they're refusing to follow. They want to go to
24 step seven, which is construction. And so eventually, you
25 know, I was out of the picture. They wound up in construction

1 and as far as I know, the job got shut down a month later. As
2 far as I know, it's still shut down. So from -- it was
3 supposed to occupied by September 2010 and it's not even
4 constructed. It's -- the job is shut down as far as I know.

5 Let's see. So, okay, now, in the process -- like I say,
6 one meeting I went to the attorney's office, Mr. Ralph
7 Wilson's office to deal with that contract for design -- okay.
8 He had to leave to go to court. I never went back. The
9 contract to me is not good but they went ahead.

10 The second meeting there came about after I submitted my
11 letter giving them the options how we can separate ourselves
12 from each other. I went there and met with them and I was
13 told about -- I was told about this regulation and, of course,
14 I said, no, I don't believe that. That doesn't exist. I
15 mean, it don't exist for me for the architectural people.

16 Third meeting, I was told again -- no, the first meeting
17 we tried to negotiate, you know, even with -- we didn't deal
18 -- if I can remember correctly, we didn't deal with the issue
19 of that regulation but the third meeting, the issue of that
20 regulation came up. I adamantly was against that. I said,
21 no. Now, of course, if the job was -- let's say the job was a
22 dollar and I got ten percent in there, I'm gonna get a dime.
23 If I know I'm gonna get a dime -- if this -- if it's just a
24 matter of having that wording, ten percent, they wanted me to
25 change, I said, no, take out the ten percent and say ten

1 cents, a dime.

2 THE COURT: Mr. Grate, if you would, I'm gonna give you
3 fifteen more minutes to wrap it up.

4 MR. GRATE: Oh, okay. Thank you, sir.

5 THE COURT: Thank you.

6 MR. GRATE: So I'm saying, no. When I told these people
7 that I'm correct, I am going to deal correct. I won't do any
8 funny stuff. If that's what you want to do, I'm not the
9 person for you. So anyhow, I refused to go along with that.
10 That's at the third meeting. But at the third meeting, I was
11 told about this regulation and I said I don't believe it and I
12 asked the attorney, I said, are you gonna cite it for me. He
13 told me, no, I'm not gonna cite it. You know, how am I gonna
14 know. You're telling me that. That doesn't mean anything for
15 me.

16 And back up -- back one minute. At the second meeting,
17 actually, second meeting, actually, I was told -- when we met
18 at the second meeting, after I submitted the options how to
19 get me out of this contract, how we can separate ourselves, I
20 was told that we gonna go forward with the project. I said
21 okay. You're telling me that but I need something in writing
22 just like I stated in that -- in that -- I need to see what
23 the schedule is because I don't want to get bogged down in
24 this for a year or more and nothing is happening. Well, we
25 want to go forward. I can't be no more clear than that, I'm

1 telling you we gonna go forward. They didn't give me anything
2 in writing. So, when the third meeting come and then they
3 were telling me about this regulation, I said no, that don't
4 exist for me. So now -- but he refused to cite it. I said
5 okay. He didn't know the number or nothing, wouldn't cite it,
6 wouldn't give me anything, so, okay.

7 The fourth meeting, I went there at his office and we
8 waited and eventually he came up with -- he eventually came up
9 with the document. That was the 12th -- that was the 6th day
10 of December, 2010. Let me see. Yeah, 6th day of December,
11 2010, he came up with a copy of the regulation. I said, look,
12 I got to digest this thing, I don't know about this, I got to
13 digest it but I'll give you an answer, you know, I'll give you
14 an answer tomorrow or whatever I told him. But then in the
15 meantime, we went on a long time. He said he was gonna take
16 my information back to the board and he would give me a
17 decision, he would let me know something by that coming
18 Wednesday or the next day or Wednesday, two or three days
19 later. I didn't hear from him, that was the 6th of December.
20 And after having been dealing with these people all this time
21 back and forth, the 20th of December 2010, I filed this
22 action. I -- let's see, now I have in the file, in the
23 records here, I have -- I have exhibits of everything -- not
24 everything but a lot of stuff, emails and reports and copies
25 of minutes.

1 You know, a strange thing happened at one board meeting
2 -- at every board meeting, there was a lot of back and forth
3 because some of the knowledgeable people on the board didn't
4 want to say to proceed with the work because they didn't have
5 the amount of money needed to do the construction. And so
6 that was big thing.

7 At one point when they had a concept drawing, that's no
8 more than an eight-and-half-by-eleven sheet showing what the
9 building would look like. Mr. Zacharius Grate gave the
10 executive director at the time, Ms. Fryar direction to seek
11 bids for the construction. She told him, you can't do that,
12 we've got to have architectural drawings. He said, well, I
13 thought we -- as long as we got the square footage, we can get
14 the price, find out what the price of the building is gonna be
15 -- no, it's not done that way. They didn't have an architect
16 yet but he wanted to know what it was gonna cost -- what is
17 was gonna cost to do the building, to construct the building.
18 So, now my point is, I don't know -- cause I wasn't able to
19 get the information from them but I don't know who the person
20 is at Waccamaw EOC who took on the position as project manager
21 but I -- like I said, I do know Mr. Zacharius Grate's name is
22 on the contract with the contractor as being Waccamaw EOC's
23 representative and he signed the contract. So, I'm saying if
24 there was a concern for the government money, there was a lot
25 of government money that's -- that's been -- I think has been

1 squandered and some information I couldn't get back, and as a
2 matter of fact, an invoice for Mr. Zacharius Grate, in invoice
3 for Mr. Ralph Wilson, an invoice for another attorney named
4 Sasser where some money -- some money kind of just -- I don't
5 know what happened but I never was able to get the invoices.
6 In particular, I wanted to see how -- I mean, how, what was
7 happening because Mr. Zacharius Grate had been paid over
8 \$5,000 in the course of less than a year for travel. You
9 know, I figure if the government pay fifty cents a mile for
10 travel, that's 10,000. There's a lot of funny things going
11 on.

12 Now, the issue of me paying paid has nothing to do with
13 them having the money to pay me. They have -- they had the
14 money, probably still have the money, but where the problem
15 came is was they thought, I think people at the agency, the
16 staff people were thinking that they didn't want to do
17 anything against the law and they were thinking that the law
18 was saying that they couldn't pay me because it would've been
19 illegal according to this particular law that they have. But
20 what I was trying to -- I kept telling them that doesn't apply
21 to me. Now, in the United States of America and I think -- I
22 don't know about Canada but I'm certified to practice
23 architecture in Canada also but I haven't done it but in the
24 United States of America, every state and Horry County,
25 Georgetown County, have a special section of the procurement

1 code, a special procurement for architect, engineers,
2 contractors and all of that. The law that they are relying on
3 pertains to janitorial service, any other things other than --
4 any other things other an architectural service -- not any
5 other thing because some other things do not apply --
6 architectural service but I do know for architectural service
7 and related services engineering related services, contract --
8 construction situation, a special code section, special laws
9 dealing with those matters. Quite different from what the
10 agency is trying to put forth here and the -- and the laws,
11 I'm telling you, 48 USC -- no, 48 CFR specifically states that
12 the way this is laid out in 48 CFR supersedes anything else.
13 Nothing else can touch it, this is the way it's done for the
14 work that I was hired to do. Also, with respect to being paid
15 cost-plus percentage whatever, specifically, 41 USC, which is
16 the federal regulation for acquiring services, specifically
17 says that for the kind of services I was providing up to ten
18 percent can be charged, not more than ten percent. So with my
19 contract made for nine percent, I see it as being legal but
20 then the jury and judge is gonna determine about all of that
21 and I think that -- I think that I'm gonna -- I think I'm
22 gonna wrap it up for right now.

23 THE COURT: 'All right. Thank you very much.

24 Mr. Wilson, if you'd like to cross examine.

25 MR. WILSON: It's gonna take a few minutes; is that all

1 CROSS EXAMINATION OF JOSEPH N. GRATE BY MR. WILSON:

2 Q: Mr. Grate, let's go back. In your testimony you
3 indicated that you met with me, I think you said on three or
4 four separate occasions; is that correct?

5 A: I said four.

6 Q: Four. And at one -- at least on one of those four
7 occasions you admit that there was a discussion, do you not,
8 about this federal statute that we're talking about?

9 A: Yes.

10 Q: And do you -- are you familiar now with that particular
11 statute?

12 A: What do you mean when you say now?

13 Q: Now, today, this week, today?

14 A: As opposed to before also?

15 Q: Well, I'm just asking, are you today familiar -- have you
16 read ---

17 A: Yes.

18 Q: You now understand that statute?

19 A: I've read it, yes.

20 Q: Okay. Let me show you this document, take a look at it
21 for me, please, sir.

22 A: (Reviews document.) Okay.

23 Q: I want you to turn to the second page and you're gonna
24 see a provision that's highlighted on the second page.

25 A: Okay.

- 1 Q: All right. Have you read that provision before?
- 2 A: Let me see, what is this. CFR -- which number? 74 -- it
- 3 say 74.44, what CFR is this from?
- 4 Q: I'm sorry?
- 5 A: On this thing it says Section 74.44 Procurement
- 6 Procedures, what is this from?
- 7 Q: If you'll look at the heading on there ---
- 8 A: Oh, I see. Title 45.
- 9 Q: All right. 45 CFR which is Federal Code of Regulations;
- 10 is that correct?
- 11 A: Right.
- 12 Q: And what does the Federal Code of Regulations do or do
- 13 you know?
- 14 A: I don't want to say that I know.
- 15 Q: Okay. All right. So, you don't know what the Federal
- 16 Code of Regulations does?
- 17 A: I don't want to say that know. The parts that pertain to
- 18 my profession, I understand.
- 19 Q: Okay. Well, let's make it simple. Let's go with
- 20 something else. Looking at that particular section, is that
- 21 the section of the statute that you read? On the second page
- 22 ---
- 23 A: Right.
- 24 Q: --- outlined area ---
- 25 A: Yes, I've read that.

1 Q: Okay. And tell us what that section says.

2 A: The type of procuring instruments used, example, fixed-
3 price contracts, cost reimbursable contracts, purchase orders
4 and incentive contracts shall be determined by the recipient
5 but not -- but shall be appropriate for the particular
6 procurement and for promoting the best interest of the program
7 or project involved.

8 Q: Read the last part.

9 A: The cost-plus-a-percentage-of-cost or percentage of
10 construction method of contracting shall not be used.

11 Q: Okay. The cost-plus-percentage shall not be used. Is
12 that -- is there any question in your mind that that's what
13 that says?

14 A: No question at all.

15 Q: All right. And now, the contract -- and Your Honor, I'd
16 ask that this be marked as an exhibit.

17 THE COURT: Sure.

18 DEFENDANT'S EXHIBIT NUMBER ONE

19 MARKED FOR IDENTIFICATION.

20 Q: Now, when was it you first learned about this particular
21 law?

22 A: You want to know the date?

23 Q: Yes, sir, or as close to it as you can tell me.

24 A: Close to it, let me see. I would say August of -- wait a
25 minute, back up. The particular law I would say December 6,

1 exactly, 2010.

2 Q: Okay. So, you weren't aware of it, you said, in 2010; is
3 that correct? That's what you're saying, December of 2010?

4 A: December 6th, 2010, you gave me a copy of it.

5 Q: All right. We discussed it before I gave you a copy of
6 it, did I not?

7 A: We discussed something but I didn't know what we were
8 discussing because you wouldn't cite it and I had nothing to
9 go by.

10 Q: Okay. And after we had the discussion about the statute,
11 did you have a meeting with me where we talked about
12 conforming the contract to the statute so that you would not
13 be in violation of the statute? Did we have a discussion
14 about that?

15 A: We talked about that, however -- okay, I will leave it
16 there. We talked about that.

17 Q: Okay. And did you tell me that you were not going to do
18 that, that you refused to do that?

19 A: To do what?

20 Q: To conform the contract to the statute.

21 A: You never made such a statement to me.

22 Q: What statement?

23 A: What you just said, conform the contract to the statute.
24 You never said that.

25 Q: I didn't use the word conform?

1 A: No, you never said ---
2 Q: Did I ask -- go ahead, I'm sorry.
3 A: No, you never said that to me.
4 Q: Well, let me change the wording and ask you this way.
5 Did we have a discussion where we talked about your replacing
6 the percentage-cost-plus with a dollar figure in the contract?
7 A: Yes.
8 Q: All right. And you said no, you weren't gonna do it,
9 didn't you?
10 A: I did.
11 Q: Okay. And to this day, you haven't done it?
12 A: That's correct.
13 Q: That's correct. All right. Now, let's go back for a
14 minute. You indicated that for thirteen months you'd been
15 trying to get somebody to do something -- is that what you
16 said -- at EOC? Isn't that what you said?
17 A: What I could do is to read that section again and ---
18 Q: I'm not asking you about the section now. I'm asking you
19 now, did you say in your earlier testimony that for thirteen
20 months you were trying to get EOC to do something with this
21 project and nobody would do anything?
22 A: That's not what I said.
23 Q: All right. Well, tell me what you said.
24 A: Thank you, sir. Okay. From a monthly report July 20th,
25 2010, Attention WEOC, there's nothing new to report even after

1 thirteen-plus months since advertisement of the project.

2 Therefore pursuant to all documentation, applications,
3 reports, proposals, audio recordings, transcript, emails,
4 contract, et cetera, and all meetings and telephone contact,
5 nothing has occurred that precludes the following... Then I
6 went -- that's when I did -- give my option of what I wanted.

7 Q: All right, sir. So, you did say that for thirteen months
8 nothing was happening, right?

9 A: No, sir. I said what I just said. There's nothing new
10 to report even after thirteen-plus months since advertisement
11 of the project.

12 Q: Okay. Let me ask you this -- in fact, that's not even
13 true either, is it? In fact, you were meeting with EOC
14 continuously from April when you signed the contract right on
15 up until August or September of the year when you filed this
16 complaint, were you not?

17 A: Well, you started off the question by saying that that's
18 not true either -- what is not true?

19 Q: What I'm asking you is isn't it true that you were
20 meeting with EOC -- not only were you meeting with them, you
21 were billing them for meetings with them from April when you
22 signed this contract right on up until August or September
23 when you stopped. Isn't that true?

24 A: Not the way you put it.

25 Q: Let me show you these invoices that you received. Take a

1 look at these for me. Do you recognize those documents?

2 A: Yes, sir.

3 Q: All right. And those -- are those in fact invoices that
4 you received payment from Waccamaw EOC?

5 A: Well, I don't know that I received payment for all of
6 these now ---

7 Q: Well, look at it and tell me ---

8 A: --- because I submitted some that I didn't get paid for.

9 Q: That's what I'm asking.

10 A: I don't know from these.

11 Q: Tell me which of those that you were never paid for.
12 Which of those invoices that you were never paid for that
13 you're holding in your hand.

14 A: I think all of those were paid.

15 Q: All of those were paid?

16 A: Yes.

17 MR. WILSON: Your Honor, I'd ask that these be marked as
18 Defendant's Exhibit, please.

19 DEFENDANT'S EXHIBIT NUMBER TWO

20 MARKED FOR IDENTIFICATION.

21 BY MR. WILSON:

22 Q: Now, let's talk about these because you said that there
23 were months when nothing was happening. In April -- it was
24 April of 2010 that you signed the contract; is that correct?

25 A: That's correct.

1 Q: All right. And just so that we know what we're talking
2 about. Let's -- I want you to take a look at this document
3 for me.

4 A: (Reviews document.) Okay.

5 Q: Do you recognize that document?

6 A: I do.

7 Q: Is that the contract that you signed on April 30th in its
8 entirety?

9 A: Um...

10 Q: Well, let me help you a little bit. Look at the
11 signature on the back on that fourth page. All right. And
12 tell us whether or not that's your signature at the bottom of
13 that page.

14 A: Not at the bottom but that's my signature.

15 Q: Well, it's at the bottom of the page, is it not?

16 A: No, it's up here.

17 Q: Hold it up and how -- hold it up and show the jury where
18 your signature is on the -- I'm gonna ask you to hold it up
19 and show the jury where your signature is on the page.

20 A: My signature is here.

21 Q: Okay. But that's not the bottom of the page.

22 A: You can call it what you want.

23 MR. WILSON: Okay. And, Your Honor, I'd ask that this be
24 marked as Defendant's Exhibit.

25 THE COURT: Yes, sir.

DEFENDANT'S EXHIBIT NUMBER THREE

MARKED FOR IDENTIFICATION

BY MR. WILSON:

Q: Now, prior to April 30th of 2010, there was no contract between you and EOC, was there?

A: No.

Q: And so there was no legally binding agreement between y'all to do anything until April the 30th of 2010 when you signed this document which has now been marked as Defendant's Exhibit Number Three, which is now in the trial of this case, correct?

A: Correct.

Q: All right. And that document agreed that you were gonna get \$10,000, correct?

A: I don't know what you mean.

Q: As an advance for your services?

A: Right.

Q: And in fact, they paid you the \$10,000 on April 30th, correct?

A: Correct.

Q: And so when you signed this contract on April 30th, you weren't complaining at that point about them not performing, you weren't upset because you signed the contract agreeing to work for them as of April 30th of 2010, correct?

A: Oh, I had complained.

1 Q: Okay. But you still signed a contract?

2 A: Yes.

3 Q: So, in spite of your complaints or in spite of whatever
4 was going on with you, you wanted to sign the contract, you
5 agreed to sign the contract, right?

6 A: Right.

7 Q: Now, in April 30th of 2010, you weren't aware, you
8 weren't aware of the regulation that said that cost-plus
9 contracts were improper; you weren't aware of that, were you?

10 A: Until now, I'm not aware of it as pertaining to me and my
11 services.

12 Q: Okay. Not aware of it as it pertains to you and your
13 services?

14 A: Right.

15 Q: All right.

16 A: Or architectural services in general in the United States
17 of America.

18 Q: Were you aware that there was a federal regulation which
19 said that procurement of any kind of services was -- could not
20 be cost-plus? Were you aware of that on April 30th of 2010?

21 A: No, I had no need to be aware of that because I know the
22 regulations that pertained to me.

23 Q: So, when you signed this agreement, you were not aware of
24 that, right?

25 A: But it's totally irrelevant to my contract.

1 Q: Were you aware of it or weren't you?
2 A: No.
3 Q: All right. And do you know whether or not EOC was aware
4 of it at that time?
5 A: I do. I do.
6 Q: You do know whether they were?
7 A: I do.
8 Q: All right. How do you know that?
9 A: Because it's in their procurement ---
10 Q: Who at the EOC told you they were aware of it?
11 A: Nobody have to tell me; it's in their documents, in their
12 procurement regulations.
13 Q: When did you find it in there?
14 A: Oh, I don't know when.
15 Q: Well, you say it's in there, show it to me in there.
16 A: Okay. You can turn to Page 48 of what I put my exhibit I
17 previously submitted.
18 Q: Just find it and show it to us. That's great.
19 A: Okay, here.
20 Q: Okay. All right. All right. Now, this is the
21 regulations, right? Read it -- read it for us. Which part
22 are you referring to; read it for us.
23 A: W -- Waccamaw Economic Opportunity Council Incorporated,
24 Procurement and Property Management Guidelines. Section One,
25 Procurement, federal law, pursuant to the requirements set

1 forth in 45 CFR Part 74, and it goes on to say -- you want me
2 to read the whole thing?

3 Q: I want you to read that part that you're talking about,
4 yes, sir.

5 A: Well, we -- the issue here is CFR 45 -- 45 CFR, Part 74.
6 So, I just read the procurement -- pursuant to requirements
7 set forth in 45 CFR, Part 74.

8 Q: Okay. All right. Read the rest of the sentence that
9 you're referring to.

10 A: Okay. Whoever being an officer, director, agent or
11 employee -- that is whoever being an officer, director, agent
12 or employee of or connected in any capacity with any agency
13 receiving federal assistance under this act, embezzling,
14 willfully misapplies, steals or obtains by fraud any of the
15 monies, funds, assets or property which are the subject of
16 grants or contracts of the assistance pursuant to this act
17 shall be fined not more than \$10,000 or imprisoned for not
18 more than two years or both. That's the end of the sentence.

19 Q: Where in that paragraph does it refer to cost-plus?

20 A: It refers to it when it's made -- mention 45 CFR -- wait
21 a minute now. What's your question?

22 Q: Where in that paragraph does it refer to cost-plus?

23 A: I don't see your point and I don't see cost-plus in here.

24 Q: Okay. And that was my question to you, was cost-plus.

25 When did you become aware -- you said that cost-plus was in

1 the regulations?

2 A: I didn't say that. I didn't say that.

3 Q: What did you say?

4 A: I said what I -- what is your question? You only brought
5 up cost-plus right now when I was reading this because I told
6 you that the federal regulation was in the agency's
7 procurement guidelines and it is here.

8 Q: That's what I asking you. Show it to me.

9 A: I didn't say cost-plus; I'm saying that CFR 74 which it
10 indicating CFR 74.

11 Q: Mr. Grate, my question to you originally was when did you
12 become aware of cost-plus. And then I asked you when did EOC
13 know about cost-plus and then that's when you indicated --
14 and, Your Honor, I don't want to get into it at this point ---

15 A: I don't neither; I really don't.

16 Q: Let me rephrase the question and try to ask it a
17 different way so we can move on with this.

18 Show me anything in EOC guidelines which specifically
19 referenced cost-plus.

20 A: Okay. I would have to look for it. I don't know where
21 the records is -- it's probably in this -- let's see. Okay
22 here. Under -- in this Paragraph F.

23 Q: Okay.

24 A: Do you want me to read it?

25 Q: Yes, sir, if it relates to cost-plus.

1 A: Yeah, the types of -- the types of procurement used so
2 that it would be appropriate for the particular procurement or
3 for promoting the best interest of the program involved that
4 may include purchase order and formal bids, formal bids,
5 competitive sealed bids, formal advertisement, contract
6 negotiations, competitive proposal or non-competitive
7 negotiated -- the cost-plus-a-percentage-of-cost or percentage
8 of construction cost, methods on contracting shall not be
9 used.

10 Q: Shall not be used?

11 A: Yes.

12 Q: And when is the date of that document that you've got
13 there? }

14 A: I don't have a date on it because this is incorporated in
15 -- this is incorporated in -- this is a part of Waccamaw EOC
16 Procurement and Property Management Guideline. I don't know
17 the date.

18 Q: And what I'm asking you is, when did you become aware
19 that that as in the guidelines for Waccamaw EOC?

20 A: Oh, I don't know. I really don't know when I became
21 aware of this. Probably -- I don't know; I really don't.

22 Q: Well, were you aware when you had your meeting with me in
23 July or August or September or whenever it was, when I asked
24 you to change based on that?

25 A: Well, possibly, I knew about it then but then, before

1 then, as well as now, is of no -- it's of no consequences
2 because it does not pertain to the services I was providing.

3 Q: Okay. So, show me -- what is it -- you're saying that
4 that statute does not pertain to you?

5 A: It does not.

6 Q: Okay. Show me something that says that it does not
7 pertain to you?

8 A: Okay. I will do just that.

9 Q: All right. I have to go there, please.

10 THE COURT: What do you need?

11 A: On my table.

12 THE COURT: Go ahead.

13 A: Thanks. Okay. It's contained in 48 CFR, Chapter -- at
14 36.101(b) which indicates that all other -- all other -- which
15 take precedence over all other laws regarding architectural
16 related services.

17 Q: Read that section to the jury that says that cost-plus is
18 permitted for architects or engineers. Read that section.

19 A: No, sir. The -- if I may explain, please.

20 Q: Yes, sir.

21 THE COURT: Why don't you go ahead and read it and then
22 you can explain it.

23 A: No, sir, I don't have the here because see the -- our
24 contract is not a cost-plus contract, that's the first thing.
25 There's a misunderstanding of the definition. There's several

1 different types of contract, there's a cost-plus, cost-plus-a-
2 fixed-fee, cost-plus-reimbursement, a lot of different ways.
3 But the one that I -- cost-plus is not the kind of contract I
4 have. You just -- by reading the regulation and it talks
5 about against having cost-plus, you just assume that my
6 contract is cost-plus because it mention the percentage. What
7 I'm saying is 48 CFR at 16.308 deals with cost-plus-a-fixed-
8 fee contract. And this contract is fixed and also 41 USC at
9 Section 254(b) addresses the issue of contract so long as it's
10 ten percent or less.

11 Q: Mr. Grate ---

12 A: Yes.

13 Q: Read to this jury any document that you have that says
14 that this statute does not apply to you, anything that you've
15 got, any law that you have to the contrary, read it to them
16 now.

17 A: I don't have the law represented here but I have a
18 citation for it so -- 48 CFR ---

19 Q: What does 48 CFR that you're referring to, what does it
20 say?

21 A: It says that different -- it says that this cost-plus-a-
22 fixed-fee contract or architectural type contract is -- might
23 be mentioned other placed in the code but this particular code
24 section is the one that governs this, this type of service.

25 Q: Mr. Grate ---

1 A: Yes.

2 Q: Let me show you this.

3 A: Yes.

4 Q: Take a look at that for me. Do you know what that is?

5 A: Okay. 48 CFR 16.306, okay.

6 Q: 48 CFR, the one that you're trying to refer to, right?

7 A: Uh-huh (affirmative response), uh-huh (affirmative

8 response).

9 Q: Read anything in there, anything you see in there that

10 says that cost-plus does not apply to you or to engineers or

11 architects, read that for the jury where it says it does not

12 apply you.

13 A: Okay. I read it here and this -- it's B, Application. A

14 cost-plus-fixed-fee contract is suitable for use when the

15 conditions of 16.301-2 are present, that's it. And now 16 --

16 16.301-2 speaks specifically to a situation where your

17 specification is such that everything is not defined to the

18 point where you can put a fixed fee on the contract.

19 Q: Mr. Grate ---

20 A: Yes.

21 Q: Read 16.302.

22 A: I don't know if it's on here.

23 Q: Well, how do you know what it says?

24 A: Because I read it before.

25 Q: You read ---

1 A: I might have it in my documentation, I don't know; let me
2 see.

3 Q: Well, you said you earlier before that it was 48 CFR and
4 I handed you 48 CFR.

5 A: Correct.

6 Q: And now you're saying it's not 48 CFR, it is 16 what --
7 16 what?

8 A: No, I'm telling you it is 48 CFR but 48 CFR 16.303 deals
9 with cost-plus-fee contracting -- fixed fee contracting.

10 Okay. Then there's A section, which is description and then
11 there's B section which is application and that's where it
12 says a cost-plus-fixed-fee contract is suitable for use when
13 the conditions of 16.301-2 are present -- are present and
14 that's it.

15 Q: And what are the conditions, Mr. Grate?

16 A: I don't know if they got -- the conditions are as I
17 described. When you have a situation where you cannot fine
18 tune what the requirements are, there's no way to do that,
19 then those conditions are suitable for this fixed fee.

20 Q: Where does it say that in that statute, Mr. Grate? Read
21 that section that you're saying it says that to this jury.

22 A: Well, give me a second, please, sir.

23 Q: Okay. Take your time.

24 A: I don't know if you have it here but I'll see. 16.301-2
25 -- it's not -- this is not the statute here. I mean, this

1 reference -- this reference, 48 CFR 16.301-2 but that's not --
2 that's not what this is. This is 48 CFR 16.306, so I'm not
3 gonna find it here. It's telling you to go to that statute,
4 16.301-2 and that's what I did and I know -- I don't know if I
5 have it in here or not but ---

6 Q: Mr. Grate, did you know that you were coming to court;
7 did you know that?

8 A: Yes, I know I was coming to court.

9 Q: All right. And you've known for how long?

10 A: About a week.

11 Q: Okay. And you never got this statute that you're saying
12 that applies here that you can't find?

13 A: Oh, no, no, no, no. I read it, I had it and it may even
14 be in my stuff here but I can't -- I got to look and see if I
15 have it here. I might not but -- give me a second, please,
16 sir. I don't think I have it but you can't just ---

17 Q: Mr. Grate, let me ask you this, Now, you are familiar
18 with state law on procurement issues?

19 A: I am.

20 Q: All right. And are you familiar then with -- let's see,
21 this will be Chapter 35, which is public finance, Article 1,
22 General Provisions, 11-35-10 et seq, which is a description of
23 what procurement means since you say this does not apply to
24 you? Take a look at that for me. And I'm specifically
25 interested in the second page and you'll see where it's

1 highlighted, Mr. Grate.

2 A: No, sir. We got to go to Section 29 that deals with
3 architectural procurement; it's in here.

4 Q: Okay. Go right ahead.

5 A: I don't know if you got it here or not. Okay. Now,
6 what's your question, please, sir?

7 Q: Let's go back, Mr. Grate.

8 A: Okay.

9 Q: If you look at the second page of the document I handed
10 you.

11 A: Yes.

12 Q: Take a look at the front page first. What is that
13 document that I handed you?

14 A: South Carolina Legislature, South Carolina Code of Laws,
15 and it's South Carolina Consolidated Procurement Code.

16 Q: Okay. And if you look at page two of that document ---

17 A: Okay.

18 Q: And you'll see a highlighted area?

19 A: I do.

20 Q: Okay. Read to the jury what that highlighted area says.

21 A: Okay. That's Paragraph 24.

22 Q: Okay.

23 A: Procurement means buying, purchasing, renting, leasing or
24 otherwise acquiring any supplies, services, information
25 technology or construction. It also includes all functions

1 that pertain to the obtaining of any supply, service or
2 construction including description of requirement, selection
3 and solicitation of source, preparation and award of contract
4 and all phases of contract administration.

5 Q: Award of contract or contract administration?

6 A: Right.

7 Q: Now, read anywhere in there where it says architects or
8 engineers are exempted from that section of the statute.

9 A: Okay. It'll probably take awhile but there's a section
10 here in this same code you gave me, Article 9, construction,
11 architectural engineering, construction management, and land
12 surveying services. Here -- this area is the area that deals
13 with architectural and related services.

14 Q: What I'm simply asking you to do is show me anything in
15 that statute which says that architects or engineers are
16 exempted from what you just read.

17 A: I have to study this and find it for you but I know it's
18 -- okay, one second please.

19 Q: It's okay. That's okay. Let me move on to another
20 question.

21 A: Okay.

22 Q: I don't want to keep us here all day.

23 A: If you would submit this as an exhibit also ---

24 Q: Yes, I would. Thank you so much.

25 A: Yes, sir, you're welcome.

1 MR. WILSON: I'm gonna also ask that this be marked which
2 is the 48 CFR that he referred to.

3 DEFENDANT'S EXHIBIT NUMBERS FOUR AND FIVE

4 MARKED FOR IDENTIFICATION

5 BY MR. WILSON:

6 Q: Now, let me go back -- you made some reference to the
7 fact that there had been a number of months involved in in
8 that you were -- we talked about, I think, briefly -- and I'm
9 unstapling what's now been marked as Exhibit Number Two for
10 the Defendant and let me show you this. Now, this is a
11 voucher from Waccamaw EOC and tell me if that's your signature
12 at the bottom of that voucher?

13 A: It is.

14 Q: All right. And this voucher is dated August 9th of 2010;
15 is that correct?

16 A: Yes.

17 Q: And you were contracted on April 30th, if I make no
18 mistake, of 2010?

19 A: Yes.

20 Q: Okay. So, six months after you were -- I'm sorry, four
21 months after you were contracted, you were actually receiving
22 money from Waccamaw EOC; is that correct?

23 A: Not quite accurate, no.

24 Q: Well, does your bill here not say that you performed
25 services on March the 5th and March the 9th?

- 1 A: This is a bill for travel. This is not for services.
2 This doesn't -- they only paid for the travel for those days
3 when I traveled to Waccamaw; they don't pay for the work.
4 Q: We're coming to the services.
5 A: Okay.
6 Q: But you got paid for that?
7 A: I got paid for that, yes; that's not an issue here.
8 Q: All right. Okay. All right. Then here's another bill
9 March 30th of 2010, where you billed on March 12th, March
10 14th, March 24th, and March 30th, all you said for the Choppee
11 Head Start project; is that correct?
12 A: Again, for travel.
13 Q: Okay. And here is another one where you billed on March
14 the 4th and I think you were -- your signature is dated March
15 4th and you were actually paid, I think, on March 12th for
16 services that you billed February 25th, February 27th, March
17 the 2nd and March the 4th all of 2010, all saying meetings at
18 Choppee Head Start, correct?
19 A: Correct in that all of these documents are mileage -- the
20 trip ticket, that's what these are for when I went to Head
21 Start conducting meetings or participate -- mainly conducted
22 meetings there. That doesn't say I got paid for what I did
23 there. This is the trip ticket and this is Waccamaw EOC local
24 travel mileage form.
25 Q: Okay. All right. So, you were obviously working, going

1 back and forth to the site because you were getting paid
2 mileage for going back and forth to the site. Is that
3 correct?

4 A: Get paid mileage ---

5 Q: Yes, sir, you ---

6 A: Can I answer, please?

7 Q: Yes, sir.

8 A: Mileage to travel. It doesn't pay for what I did at the
9 site. All of these meetings I was there to help them with
10 something and some of the stuff I indicated. Like for this
11 month -- what's the date on this -- the last one you gave me,
12 January, that's February, 2010?

13 Q: Yes, sir.

14 A: That's even before I signed the contract.

15 Q: Yes, sir.

16 A: Okay.

17 Q: When were you paid? Look at the date of your signature
18 when you were paid.

19 A: My signature is here and the 30th, the March 4th is when
20 I -- when I executed those documents. I don't know when I was
21 paid. This thing here, I don't know when I was paid. But the
22 bottom line is all of this stuff is just a matter of trying to
23 muddy the water because this is -- when I was working with
24 them, at least I -- in these particular instances, I got paid
25 for travel.

1 Q: Okay.

2 A: I didn't get paid for the work.

3 Q: Fair enough. All right. Here we go. Let me show you

4 this document. Here's another bill you received -- an invoice

5 that you submitted to Waccamaw EOC and were paid for; is that

6 correct?

7 A: I don't know if I got paid for it or not.

8 Q: Well, you said earlier that you got paid for all of these

9 invoices, did you not?

10 A: The ones you showed me so far.

11 Q: Yes, sir.

12 A: I don't know if I got paid for this one -- you just

13 showed me ---

14 Q: These are the same invoices.

15 A: Well, then there should be another one. It's the same

16 one -- these two are the same thing.

17 Q: Where are the two the same? All right. This one is

18 March -- February 25th, March 27, March 2nd, March 4th. Okay.

19 All right.

20 A: Same thing right?

21 Q: Well, they've both got your signature on there and one of

22 them is not signed by the executive director.

23 A: The point is the meat of document is the same, right?

24 Q: Okay. Put it right back here for me because we've got

25 some more to go through.

1 Now, you also got paid, let's see, you got paid \$4,591 on
2 August the 5th of 2010. Right?

3 A: As far as it goes, that is right, but the purpose for the
4 payment is for when I went over the contract with you, a
5 couple of meetings at your office -- no, no, no, no, not for
6 that -- oh, on the reports and contract negotiation, yes,
7 including the contract negotiation. Not just a matter of did
8 I get paid 45 -- I have to submit -- I have to submit some
9 kind of invoice that spoke to what I had done. So, this is --
10 from the time, from the time February 23rd through August 5th,
11 that's what it says here. We gonna talk about we should be
12 specific and say what it is.

13 Q: Okay. August the 5th of 2000, you were -- you signed the
14 contract in April. You got \$10,000 in April right? Now, in
15 August, four months later, you're getting another \$4500 under
16 this same contract, are you not?

17 THE COURT: You can have a seat, Mr. Grate, if you'd
18 like.

19 A: Let me look at it just and see what we got here. Okay.
20 Here's the situation here, initially, upon signing, what I was
21 asking for was \$12,500. Then I was paid \$10,000. There was a
22 remaining \$2500. That's included in this 45, so -- that's
23 including that 25 -- you've got 45 -- there's only \$2,900
24 that's new money there. You see what I'm saying. \$2500 left
25 over from before.

1 Q: So, the bottom line is you -- in August of 2010, three or
2 four months before you filed this action, you got a \$4500
3 payment from EOC.

4 A: Yes.

5 Q: And you had already -- and then in -- I think this is --
6 let me show you this and see if you recognize that.

7 A: Oh, yes.

8 Q: All right. And that is where you got the \$10,000 in
9 April of 2010.

10 A: Yes.

11 Q: So, between April and August you were paid a total of
12 \$14,459, how much was it?

13 A: If that's what it is, I guess, yes.

14 Q: \$14,590.

15 A: Okay.

16 Q: Is what you were paid in that timeframe.

17 A: Okay.

18 Q: Tell us what you were doing to earn that money; for the
19 \$14,500 that you got, tell us what you did to earn that money
20 after April 29th or 30th when you signed this contract? What
21 did you do to earn that \$14,590?

22 A: I did whatever I invoiced them -- whatever I invoiced
23 them is what I did and it was their position, it was their
24 position now to make sure that what I invoiced for was
25 something that I actually did. So, you're talking about

1 something that's -- I don't see the relevancy here. I mean, I
2 don't know right off the top of my head, whatever the invoices
3 say, that's what I did. They didn't just -- I didn't rob
4 them. They have to ---

5 Q: Well, other than travel, other than travel, what were you
6 -- what did you do?

7 A: In what space of time -- oh, no, no, no, no, no, no, it's
8 not travel just to be moving around.

9 THE COURT: You can have a seat, Mr. Grate.

10 A: I'm sorry. Your Honor, the reason cause I have to focus;
11 I'm sorry. The travel, it was not -- I wasn't in a situation
12 where I was a Greyhound bus driver, no. I was traveling back
13 and forth to Waccamaw EOC and like when I say had a meeting
14 about Head Start which was this one -- a lot -- this duplicate
15 one here. Or if I say -- whatever I said on these invoices is
16 what I did; I didn't just travel, get in the vehicle and
17 travel, no. I went there for a reason.

18 Q: Okay. All right. And you got mileage for your travel?

19 A: Only mileage, that's all, no pay, that's it.

20 Q: What I'm concerned about is tell us about the 10,000 and
21 then the 4,500. What was that for?

22 A: Okay. The 10,000 is -- that's a part of the 12,5 that I
23 contracted for that I got up front but it -- because of what I
24 had done for them, I file a lot -- I put in here, reports,
25 meetings, contracts and negotiations; that's what it's for.

- 1 It's in the invoice.
- 2 Q: All right. And who were these meetings with?
- 3 A: You have to say which meeting because -- it was always
- 4 with -- as I went through my long discourse in the beginning,
- 5 the first meeting was in Charleston, went to Charleston and
- 6 met with the board. The second meeting was ---
- 7 Q: And you got mileage for that?
- 8 A: I'm pretty sure I did.
- 9 Q: Okay. All right.
- 10 A: The second meeting was at Waccamaw EOC with the Waccamaw
- 11 EOC board and the person they selected to be the designer.
- 12 The third meeting -- well, for some of the other meetings, I
- 13 had meetings with the board other than with those people and
- 14 meeting with the person out of Greenville, a lot of meetings
- 15 at WEOC but it always included members of Waccamaw EOC.
- 16 Q: So, you had some meetings and on these vouchers that you
- 17 filled out, you put meeting Choppee Head Start, meeting
- 18 Choppee Head Start, meeting Choppee Head Start, meeting
- 19 Choppee Head Start and -- as the purpose of this travel; is
- 20 that correct?
- 21 A: Yes.
- 22 Q: All right. And then you billed mileage for that, 30
- 23 miles, 202 miles, 30 miles, 30 miles, 30 miles, 30, 30, 30,
- 24 30; so you billed them for those miles ---
- 25 A: Yes.

1 Q: And then they paid you for those miles and I understand
2 that; I don't have an issue with that. What I'm asking you
3 now is the 14,000, you got mileage separate, you were paid
4 mileage in addition to the 14,000-plus dollars. What did you
5 do to earn the 14,000?

6 A: The things that occurred at those meetings -- I did
7 whatever occurred at the meetings.

8 Q: What did you do at the meeting that -- that helped you to
9 earn the money?

10 A: Okay. The very first meeting in Charleston, even before
11 the meeting, I prepared a report; it's something like eighteen
12 pages or more. I prepared the report first.

13 Q: When was that, Mr. Grate?

14 A: I can tell you in one second. It should be Page 11 of
15 this -- of my previously submitted stuff, submitted February
16 25th, 2010.

17 Q: I'm sorry?

18 A: Submitted February 25th, 2010, the day after I was hired.

19 Q: Well, you didn't have a contract in February, Mr. Grate;
20 your contract wasn't until April.

21 A: I'm just answering your question.

22 Q: Okay. So the bills that you submitted were for stuff
23 that you'd done before you ever signed the contract is what
24 you're saying?

25 A: What I'm telling you is that when you asked me about the

1 items on the travel voucher ---

2 Q: Yes, sir.

3 A: --- when they say meeting at Waccamaw EOC ---

4 Q: Yes, sir.

5 A: I'm telling you -- you asked me what was the meeting was
6 about, I'm telling you what everything was about. This was
7 just one of them. This was the very first one.

8 Q: All right. Well, let me ask you this way so we can get
9 to the bottom of this. The project that you were hired to
10 work on hadn't gotten off the ground, had it?

11 A: Oh, it got off the ground but it got shut down by the
12 government because the way they went about it.

13 Q: Well, what I'm asking you is you keep saying that you
14 went through these meetings, what did you do in regards to the
15 project, the project itself, the building of the Choppee Head
16 Start Center, that's what you were hired for, right?

17 A: No, that's the -- that's the major problem. As I
18 indicated in one report I submitted today, you as well as
19 primarily Zacharius Grate kept referring to the project and it
20 wasn't until our last meeting at your office that we were able
21 -- I knew we -- you had something wrong but kept saying the
22 project and what you mean by the project was Zacharias Grate
23 meant by the project is the actual building construction.
24 That's not the project. The project is everything from the
25 very first step of the situation. Even if we leave out the

1 work that done by the staff, which is the feasibility study,
2 the project is everything preconstruction-wise through
3 construction.

4 Q: Mr. Grate, you never had a contract with EOC until April
5 30th of 2010; is that correct?

6 A: That's correct.

7 Q: All right. So, the only thing I'm interested in is what
8 you did from April 2010 under this contract, cause that's why
9 we're here ---

10 A: Okay.

11 Q: It's about this contract, not what you did before or
12 after but what you did during the course of this contract.

13 A: So, in other words, you want to forget about all these --
14 you showed me that that's before ---

15 Q: I'm simply asking you -- I'm simply asking you about what
16 you did under the terms of this contract which is why we're
17 here.

18 A: Yes, sir, but I need to explain that all this stuff that
19 you brought in here is prior to the contract, it's prior to
20 the contract, so ---

21 Q: August, August of 2010 when you got that last \$4,000 that
22 was not prior to the contract -- that was not prior to the
23 contract and when you got the \$10,000 on April 30th, that was
24 not prior to the contract, Mr. Grate.

25 A: Okay. But some of these items here are prior to the

1 contract.

2 Q: Your travel is what you're referring to?

3 A: No. What I did when I traveled to where I traveled to.

4 Q: Let's move on to something else. Let me ask you this,

5 Mr. Grate.. Now, the truth of the matter is you're really

6 upset with Waccamaw EOC because you applied to be the

7 architect on this project, didn't you?

8 A: No, wait a minute, now, let me see; what's your question

9 now?

10 Q: My question is simple, did you apply to be the architect

11 on this project?

12 A: I did.

13 Q: All right. And you didn't get it?

14 A: I didn't get it.

15 Q: In fact, they hired this other local firm, right?

16 A: Right.

17 Q: And that didn't set well with you, did it?

18 A: Well, the answer to that is to the degree that it didn't

19 sit well with me, I addressed it the way I did in my very

20 first report in the 25 February report when I indicated to

21 them that the state law says that the agency or anybody else

22 in the profession is to report those actions to the board. I

23 did that and I left it alone. I don't care what happens after

24 that.

25 Q: You were upset about the fact that they didn't give it to

1 you and then they turned around to appease and tried to make
2 you the project manager.

3 A: No, sir.

4 Q: Didn't they offer you the project manager's job?

5 A: They offered me the project manager's job but I wasn't
6 upset.

7 Q: All right. And you accepted the project manager's job?

8 A: On the condition that they gonna do things correctly.

9 Q: And then you started to complain about what the architect
10 did and hadn't done because you were upset because they didn't
11 do the seven steps or the eight steps or whatever the steps
12 are that you say should've been done and you were upset
13 because you say they didn't do those steps?

14 A: No, I complained about what Waccamaw EOC did not do.

15 Q: Well, who were you complaining to?

16 A: To them about what they were not doing.

17 Q: And who was supposed to have done these seven or eight
18 steps?

19 A: I was the person that was supposed to do them.

20 Q: No, I'm talking about from the architectural ---

21 A: Oh, oh, yeah, the architectural firm but ---

22 Q: They were supposed to have done it according to you,
23 right?

24 A: Yes, but in that timeframe, they didn't have an
25 architect. They didn't sign an architect till later like

1 maybe June or August or some timeframe, I don't know.

2 Q: Well, they hired an architect before they hired you,
3 didn't they, before they hired you as project manager?

4 A: They did but then they didn't. They -- after -- what I'm
5 trying to say to you is they had hired an architect, yes,
6 before but not officially everything signed off on. When I
7 came into the picture on the 25th of February and I showed
8 them what the mistakes were, everything kind of dropped off.

9 Q: Who made the mistakes that you're referring to, Mr.
10 Grate, who made those mistakes?

11 A: Well, one of them is Ralph Wilson made it when he signed
12 the architectural contract -- when he put together this
13 contract for the architect in late June or July or August,
14 whenever he did this for that firm and did not consult with me
15 and, you know, on Exhibit A of that contract. That's when a
16 big mistake was made which lead to the job being shut down.

17 Q: So, you wanted the lawyer for EOC to consult you before
18 they made any agreement with any other people; is that what
19 you're saying?

20 A: No, but the lawyer for EOC did consult me to a degree
21 until he had to go to court and he said he would call me back
22 another day and didn't and that made -- and the left exhibit A
23 off the contract.

24 Q: So, you're upset because the lawyer didn't get back to
25 you ---

1 A: No, I'm not upset.

2 Q: --- and get your opinion or your advice; is that what
3 you're saying?

4 A: No, I'm not upset.

5 Q: All right. What else wrong happened other than the
6 lawyer didn't call you back or get back to you and you were
7 upset about that?

8 A: The only thing wrong happened that I have any feelings
9 about, that I'm upset about is that Waccamaw EOC did not pay
10 me. Utilized my time, just squandered my time but didn't pay
11 me, that's what I'm upset about. The rest of it, I don't
12 care. I have reported to the appropriate authorities and they
13 can take it from there and the proof is then that the job got
14 shut down because y'all were not doing things correctly.

15 Q: Okay. And that's -- I keep asking you this question, Mr.
16 Grate, you're saying that they weren't doing the job
17 correctly; who wasn't doing the job correctly?

18 A: Well, in order ---

19 Q: Other than me, you said that I wasn't doing mine
20 correctly but who else?

21 A: Primarily, you though.

22 Q: Okay.

23 A: But Waccamaw EOC because had -- had Waccamaw EOC's
24 attorney advised them properly, which I could've done, I'm not
25 an attorney but advised them properly, they would not have

1 gotten into the debacle they got into.

2 Q: So, you could've advised them better than a lawyer could
3 have, right?

4 A: It's all documented here.

5 Q: All right. And what would -- what advice is it that you
6 were gonna give them, Mr. Grate?

7 A: I gave them from the first report -- every report, I got
8 a report the February 25th, I got a report May -- February
9 25th, 2010; one May of 2010; one June, a couple in June of
10 2010; one July of 2010.

11 Q: And if they'd listened to you, we wouldn't even be here,
12 would we?

13 A: That's true. And it's in my emails also when I told them
14 certain things would happen, if they didn't act in a certain
15 way.

16 Q: Right.

17 A: All that's in my report here.

18 Q: All right. And it doesn't matter what the law says, if
19 they had just listened to you, everything else would've been
20 okay?

21 A: It does matter what the law says because I was gonna
22 advise them according to the regulations.

23 Q: You were gonna advise them. You said you didn't even
24 know about the regulations.

25 A: That's not a regulation that pertained to what we were

1 doing.

2 Q: Okay. And that's in your legal opinion?

3 A: My legal opinion, whatever kind of opinion, it's written
4 in the 41 -- 48 CFR 36.

5 Q: Just give me one second, Your Honor.

6 I don't think I have any other questions, Mr. Grate.
7 Thank you so much.

8 THE COURT: All right. You may step down, sir.

9 A: Thank you, sir.

10 (REPORTER'S NOTE: Witness leaves the witness stand.)

11 THE COURT: If you would call your next witness.

12 Mr. Grate, if you would call your next witness.

13 MR. GRATE: All right, sir. Your Honor, I will call, if
14 I may, Ms. Whitfield, please.

15 THE COURT: All right.

16 CLERK: Please raise your right hand and place your left
17 hand on the Bible.

18 WILHELMINA B. WHITFIELD, HAVING BEEN
19 SWORN, TESTIFIED AS FOLLOWS:

20 CLERK: State your name for the Court, please, ma'am.

21 MS. WHITFIELD: My name is Wilhelmina B. Whitfield.

22 THE COURT: Thank you. Continue.

23 MR. GRATE: From here if it's okay?

24 THE COURT: That's fine.

25 DIRECT EXAMINATION OF WILHELMINA B. WHITFIELD:

- 1 Q: Please, ma'am, Ms. Whitfield ---
2 A: Hi.
3 Q: What is your job description?
4 A: I work as director for Head Start and Early Head Start.
5 Q: Please, what -- did you have a previous position?
6 A: Yes, I did.
7 Q: What was that position, please, ma'am?
8 A: I worked temporarily as a -- as Interim Executive
9 Director for Waccamaw EOC.
10 Q: You familiar with the contract between Waccamaw EOC and
11 myself?
12 A: Somewhat, yes.
13 Q: Did you sign that contract?
14 A: Yes, I did.
15 Q: Thank you, ma'am. You're familiar with the Head Start
16 website ECLKC?
17 A: Yes, I am.
18 Q: Okay. Do you -- do you remember introducing me to that
19 website?
20 A: I don't recall.
21 Q: You gave me a sheet of paper with the information on it?
22 A: Don't recall. I don't recall that.
23 Q: Okay. Are you familiar with the Head Start process for
24 facilities construction, the eight steps?
25 A: No, not the eight you discussed but I am familiar with

1 some portion of it.

2 Q: I mean, you know, you're familiar with the steps, you
3 know the eight steps, right?

4 A: No, I don't know.

5 Q: You're familiar with -- you're familiar with the first
6 step which is feasibility study.

7 A: Yes, sir, I do.

8 Q: Right. You prepared that, didn't you?

9 A: Yes, I did.

10 Q: Thank you, ma'am.

11 A: Yes, sir.

12 Q: You're familiar -- okay, I can tell you the second step
13 is the program for the facility. I testified that we worked
14 on that program together. You familiar with that program?
15 Are you -- do you remember working on that program with me for
16 the site?

17 A: It was -- yes, sir, awhile back.

18 Q: But you remember working on it. We worked -- we put it
19 together for the site. We compiled that program, yourself,
20 Ms. Fryar and myself.

21 A: Yes, sir, we did.

22 Q: Okay. Now, while you were -- how long were you in that
23 position as the temporary executive director?

24 A: I worked from September of 2010 until October -- until
25 April of 2011.

1 Q: Okay. Now, after we signed the contract, do you know of
2 any other work that we did or that I did on -- for that
3 project?

4 A: No, sir. I do not.

5 Q: Do you know -- do you know of anybody who contacted me
6 about the project?

7 A: No, sir; I do not.

8 Q: Whose position -- whose job it would've been to have
9 contacted me about that project within Waccamaw EOC
10 organization? Would it have been you or the chairman of the
11 board or who, to interface with me?

12 A: Can you tell me what time period you're talking?

13 Q: For the whole time when you were there as a temporary
14 executive director?

15 A: I don't ever remember -- recall contacting you, sir.

16 Q: Okay. Do you remember receiving email from me?

17 A: No, sir; I have not received any emails from you.

18 Q: You don't remember?

19 A: No, sir.

20 Q: I sent you -- just one second, please.

21 A: Sure.

22 Q: Do you -- in the process of preparing the building
23 program, we were in the process of emailing each other, were
24 we not?

25 A: I don't recall.

1 Q: So, any information concerning the building program you
2 received from maybe from Ms. Fryar?

3 A: I would have there had been any.

4 Q: Okay, good. But the time you were in your position,
5 there was no -- you don't remember any email between yourself
6 and myself?

7 A: No, sir, I don't.

8 Q: So, do you know if it was your position or was it the
9 chairman of the board's position to interface with me, you
10 know, concerning the project, concerning the Choppee project?

11 A: No, sir, I don't know.

12 Q: You don't know if it was you or the board, chairman?

13 A: No, sir, I don't -- I know it wasn't me.

14 Q: Okay. Were you on board there in your position when the
15 contract was signed with the design firm for Choppee?

16 A: I don't remember the design contract.

17 Q: Okay. Are you in a position -- so, was the Choppee, the
18 actual construction started while you were in your position as
19 temporary?

20 A: Yes, it did. Yes, sir.

21 Q: Do you know when it started?

22 A: Not the exact date.

23 Q: Okay. Is it finished now?

24 A: No, sir.

25 Q: What's the status right now, please?

1 A: It's on hold.
2 Q: It's what?
3 A: It's on hold. It's not being worked on at this point.
4 Q: How did it get to the on-hold position?
5 A: I don't -- I don't have all of the details on that.
6 Q: Okay. So, on -- from the -- when it got started, how
7 long did it continue before it was put on this hold situation?
8 A: I really don't recall the timeline from when the date it
9 started until it was suspended.
10 Q: Okay. Do you know what -- what phase it's in right now,
11 its foundation or walls or roof or whatever?
12 A: No, sir, I don't.
13 Q: You don't know?
14 A: No.
15 Q: Okay. Do you remember a meeting with -- do you remember
16 any meetings at Waccamaw EOC where I was in the same meeting
17 with you?
18 A: Yes, sir.
19 Q: Okay. Do you remember the meeting, my initial interview
20 on November 17th, 2009?
21 A: Could you repeat that or maybe be a little bit more
22 specific?
23 Q: Okay. Do you remember our first -- the very first time
24 we met at a meeting November 17th, 2009 for my interview for
25 the position of project manager?

1 A: I do; yes, sir.

2 Q: In my testimony I indicated that at the point when Mr.
3 Zacharius Grate presented the position to me and I told him
4 that I didn't want to -- I didn't want to talk myself out of
5 job but that the position he was indicating he had, his
6 architect was supposed to take care of that; do you remember
7 that?

8 A: No, sir; I do not recall that conversation.

9 Q: Okay. Do you remember me telling him that -- saying to
10 you people at the meeting that if the job was done correctly,
11 I'm the person; but if not, I'm not the person to deal with
12 it?

13 A: I do remember that statement, yes, sir.

14 Q: Okay. Do you remember a meeting with -- okay -- so, I
15 indicated in my testimony that after I went to Charleston and
16 presented my first report that following that a meeting ensued
17 at the Waccamaw EOC where we called in the prospective
18 designer which was Earthwork or Steve Strickland. Do you
19 remember being at that meeting?

20 A: Yes, sir, I do.

21 Q: Okay. Do you remember the questions I asked him about
22 his license pertaining to architectural or whatever and
23 general contracting?

24 A: Yes, sir; I do.

25 Q: Do you remember finding out -- did you find out at that

1 meeting whether he was an architect or not?

2 A: No, sir; I didn't.

3 Q: Do you remember when -- do you remember -- okay -- prior
4 -- do you remember saying to me at that meeting that you
5 didn't know that he wasn't an architect?

6 A: I don't recall that, sir.

7 Q: Do you think you found out -- I already asked you that;
8 sorry about that -- okay -- now, following that meeting, there
9 was a meeting with the same person, Mr. Strickland, and an
10 architect out of Greenville, Mr. Valonzi (spelled
11 phonetically), were you at that meeting?

12 A: Yes, sir.

13 Q: Okay. Do you remember me questioning both of them about,
14 you know, their credentials and everything they were gonna do?

15 A: Yes, sir.

16 Q: Okay. Do you remember they presented some figures and
17 some drawings saying what they were gonna do -- drawing for
18 the building and -- anyhow, a drawing for the building and
19 some figures to show how they arrived at the fee that they
20 were gonna charge, do you remember that, and I said you can
21 throw in the garbage; do you remember that?

22 A: Yes, sir.

23 Q: Okay. Do you remember me -- do you remember asking them
24 about a program?

25 A: Yes, sir; I do.

1 Q: Do you remember them saying that they didn't have a
2 program, that the agency was supposed to provide that?

3 A: I don't remember -- recall how that conversation went but
4 I do remember you asking them about a program.

5 Q: So, you remember following that we did get together about
6 a program as you testified before, put together a program?

7 A: Yes, we did.

8 Q: Okay. Thank you, ma'am. Let's see. As far as you know,
9 when we signed the contract, we had a valid contract; is that
10 correct?

11 A: When I signed the contract, yes, I thought it was valid.

12 Q: Okay. Thank you, ma'am. I think that's sufficient.
13 Thank you so much.

14 THE COURT: All right. Mr. Wilson?

15 MR. WILSON: Thank you very much, Your Honor.

16 CROSS EXAMINATION OF WILHEMINA B. WHITFIELD BY MR. WILSON:

17 Q: Ms. Whitfield, I just have a couple of questions
18 actually. Ma'am -- and he just asked one of them.
19 When you signed this contract, you were under the impression
20 that what you were signing was a legal binding document; is
21 that correct?

22 A: Yes, sir.

23 Q: All right. And at that point in time, you were not aware
24 of this CFR regulation that we were talking about?

25 A: No, sir; I wasn't.

1 Q: And you didn't become aware of that until long after the
2 signing of the contract?

3 A: Yes, sir.

4 Q: Okay. And had you been aware of that, you would've never
5 signed the contract?

6 A: No, sir; I would not have.

7 Q: I don't have any other questions.

8 THE COURT: Thank you.

9 MR. GRATE: May I ---

10 THE COURT: Follow up.

11 REDIRECT EXAMINATION OF WILHEMINA B. WHITFIELD BY MR. GRATE:

12 Q: Ms. Whitfield, you -- you put -- you did the feasibility
13 study for this ---

14 MR. WILSON: Your Honor, that's not responsive ---

15 THE COURT: Sustained. You need to ask your questions in
16 reply to the cross examination.

17 Q: Regarding the regulation that he just spoke about, do you
18 know that it's included in the agency's procurement
19 guidelines?

20 A: No, sir; I don't.

21 Q: Okay. Do you -- that's good, Your Honor. Thank you so
22 much. Nothing further from this witness.

23 THE COURT: All right. You may step down. Thank you.

24 A: Thank you.

25 (REPORTER'S NOTE: Witness leaves the witness stand.)

1 THE COURT: All right. Mr. Grate, you may call your next
2 witness.

3 MR. GRATE: Ms. Wideman, please.

4 CLERK: Please raise your right hand and place your left
5 hand on the Bible.

6 JANICE WIDEMAN, HAVING BEEN SWORN,
7 TESTIFIED AS FOLLOWS:

8 CLERK: Have a seat, please, ma'am.

9 State your name for the Court, please, ma'am.

10 MS. WIDEMAN: My name is Janice Wideman.

11 DIRECT EXAMINATION OF JANICE WIDEMAN BY MR. GRATE:

12 Q: Thank you very much, Ms. Wideman. Please, ma'am, what's
13 your position, please?

14 A: I'm the finance director.

15 Q: All right. And by being a financial director, do you
16 give -- do you get involved with procurement?

17 A: Yes, I do.

18 Q: Okay. How do you -- what is your role with procurement?

19 A: I try to follow procurement procedures when procuring
20 goods and services.

21 Q: Do those procedures include dealing with the regulations?

22 A: Yes, it does.

23 Q: Okay. So you are familiar with the regulations that
24 Waccamaw EOC have to deal with?

25 A: Yes, I am.

1 Q: Okay. Are you -- have you procured for architectural
2 engineering services before?

3 A: No, sir; I haven't.

4 Q: This was the first time?

5 A: This is -- this was the first time.

6 Q: Okay. So, and you -- in your position, you deal with
7 Title 11, Chapter 35 of the South Carolina Code?

8 A: No, I normally follow the federal regulations.

9 Q: But you're familiar with the chapter?

10 A: No, I'm not.

11 Q: Have you ever advised Waccamaw EOC in any way concerning
12 Title 11 Chapter 35?

13 A: I'm not familiar with that.

14 Q: You're familiar with the design-build process?

15 A: No, I'm not.

16 MR. GRATE: Your Honor, may I show her something?

17 THE COURT: If you would, show it to Mr. Wilson first.

18 MR. WILSON: I have no objections, Your Honor.

19 BY MR. GRATE:

20 Q: Please, ma'am, do you recognize this?

21 A: Yes, I do.

22 Q: Would you be read what it says, please.

23 A: Currently, our agency procurement code does not address a
24 method to be design-build -- design-build means a project
25 delivery method in which the agency enters into a single

1 contract for design and construction of a infrastructure.
2 This is in reference to the construction of the Choppee Head
3 Start. We recommend that we amend our procurement policy to
4 comply with Title 11, Chapter 35, South Carolina Consolidated
5 Procurement Code.

6 Q: Thank you, ma'am.

7 MR. GRATE: Your Honor, this is Page 44 of my previously
8 submitted exhibit.

9 THE COURT: All right. Thank you.

10 MR. GRATE: Thank you, sir.

11 BY MR. GRATE:

12 Q: Ms. Wideman, did you compose this?

13 A: Yes, I did.

14 Q: Okay. So, you do have limited knowledge of this?

15 A: I have limited just to define the design-build -- what's
16 in the memo.

17 Q: You're gonna advise them to you -- to change -- to comply
18 with this particular chapter of the law?

19 A: I was advised by a procurement person who was on our
20 staff at the time that this is what we should -- what we need
21 to do because I'm not familiar with all the South Carolina
22 Codes that -- with regard to construction.

23 Q: Okay. Thank you, ma'am.

24 And in your position, were you in any way involved with
25 the procurement of my services.

1 A: I put out the -- the request for proposal, if you would,
2 for the -- your procurement of services.

3 Q: Okay. So, what -- also do you remember signing my
4 contract as a witness?

5 A: Yes, I do.

6 Q: Okay. Do you remember Exhibit B of my contract?

7 A: Yes, I've read it.

8 Q: Okay. Did you compose it?

9 A: Yes, I did.

10 Q: Did you do that on your own?

11 A: No, I didn't.

12 Q: Okay. Did you -- you had input from an attorney?

13 A: What I had was input on what the board had voted on in
14 the -- as to what your compensation should be.

15 Q: Okay. One second, please, ma'am. How did you come to
16 compose that Exhibit B?

17 A: I was told by Mr. Grate, our board chair, that this is
18 what the board had voted on and this is what your compensation
19 was negotiated to be.

20 Q: Was there -- was that the initial indication of any
21 compensation?

22 A: That's all I've been told. That's all I was told.

23 Q: What I'm saying is, are you -- is it your understanding
24 that everything was -- everything in my contract was there and
25 needed this compensation clause -- but that was -- there was

1 no compensation indicated in the contract?

2 A: According to what I know, yeah, that there was no
3 compensation.

4 Q: Okay.

5 MR. GRATE: Your Honor, I want to introduce Page 96 of my
6 previously submitted exhibit and -- I want to ask ---

7 THE COURT: Go ahead and show it to Mr. Wilson.

8 MR. WILSON: No objections, Your Honor.

9 THE COURT: All right.

10 BY MR. GRATE:

11 Q: Please, ma'am, is this familiar to you?

12 A: I recall seeing this.

13 Q: Please, ma'am, would you please read what it says?

14 A: It's said for the project manager's ---

15 Q: Excuse, me, please, ma'am, everything from the top.

16 A: Exhibit B, Compensation, payment to the project manager,
17 for the project manager service described in Appendix A, the
18 owner should compensate the project manager as follows: A fee
19 of ten percent of the total project cost which is the sum of
20 design cost plus construction. An initial payment of \$12,500
21 upon execution of this agreement which shall be credited to
22 the owners account in the final invoice. Unless other agreed,
23 payment for services should be made monthly at a rate of \$8500
24 per month due and payable upon presentation of the project
25 manager's invoice; amounts unpaid thirty days after invoice

1 date shall bear interest at the local prevailing rates. For
2 additional services that may arise during the course of the
3 project, the owner shall compensate the project manager at the
4 rate of 125 per an hour.

5 Q: Thank you, ma'am. So, had you seen this before?

6 A: I read some of that, yes.

7 Q: And do -- do you remember composing the Exhibit B that
8 you said you composed, do you remember if you composed it
9 before or after this?

10 A: I did not compose -- I don't remember composing that
11 Exhibit B, I remember composing Exhibit B that was along the
12 contract which was what the board instructed me to do.

13 Q: So, what I'm asking you -- I composed this but I'm asking
14 you did you compose yours after you knew about this or before?

15 A: I composed that before the -- just before the contract
16 was signed that was voted on April.

17 Q: Okay.

18 A: If that was done prior to that then no.

19 Q: Oh, so it was after. Okay. Thank you.

20 Was I -- your attorney Dan Stacy involved with that?

21 A: I'm not sure.

22 Q: Do you remember telling me that you were getting a
23 payment from him?

24 A: I remember the board voting to ask him to add that to the
25 exhibit but I don't know whether or not he actually did. I

1 wasn't involved in that process; I just got the end results of
2 it.

3 Q: Do you remember me coming to the office to sign the
4 contract?

5 A: Yes, I do.

6 Q: Do you -- and I already testified that I waited more than
7 two hours. I'm sure -- there was some time before you came
8 forward with that document -- do you remember that -- a space
9 of time before you ---

10 A: Came forward with the contract?

11 Q: Not the contract per se, just that -- everything else was
12 there, just that document, Exhibit B.

13 A: Uh-huh (affirmative response).

14 Q: And I was told that you were on the phone with the
15 attorney on composing it and I was waiting two hours; do you
16 remember that?

17 A: I don't remember being on the phone with the attorney but
18 I remember composing it as was stated in the board minutes.

19 Q: Okay. So, this -- to compose it this way, you got that
20 information from ---

21 A: The board minutes.

22 Q: From the board minutes?

23 A: Right.

24 Q: So, okay, this was -- this was -- we signed the contract,
25 the 30th of April. So, would it have been April board minutes

1 where you got that information?

2 A: Yes, it would've been the April board meeting that the
3 board went into executive session to discuss your
4 compensation.

5 Q: Oh, so, it wouldn't be in the minutes then.

6 A: The results of the executive session is in the minutes.

7 Q: Are you saying that it's gonna say -- let's see -- okay.
8 Regarding invoices, did you have any, anything to do with
9 that?

10 A: I got the invoices when they were signed off for you to
11 be paid.

12 Q: And then what'd you do after you got them?

13 A: After the proper documentation was submitted for you to
14 be paid, we wrote you a check. You were wrote a check.

15 Q: So, you did -- you did receive proper documentation?

16 A: Yes, it was signed off by Mr. Grate and Ms. Whitfield.

17 Q: Okay. I think that's sufficient; thank you, ma'am.

18 THE COURT: All right. Thank you.

19 Mr. Wilson?

20 MR. WILSON: I'll be brief, Your Honor.

21 CROSS EXAMINATION OF JANICE WIDEMAN BY MR. WILSON:

22 Q: Ms. Wideman, just let me ask a couple of things. In
23 regards to the -- I think he showed you two documents. One is
24 this Memorandum, I think it says, dated December 22 of '09.

25 A: Right.

1 Q: And now where did that originate?

2 A: When they were talking to the architect ---

3 Q: They meaning?

4 A: The board and that -- whoever was in that discussion.

5 Q: Did you draft this document?

6 A: I didn't draft -- I draft the memo.

7 Q: No, this document.

8 A: Yes, I did.

9 Q: You drafted this document?

10 A: Yes, uh-huh (affirmative response).

11 Q: At whose direction did you draft it?

12 A: Ms. Fryar.

13 Q: And was that -- did that document have anything to do
14 with Mr. Grate?

15 A: No, it didn't.

16 Q: Okay.

17 MR. WILSON: I'd just ask that this be marked.

18 DEFENDANT'S EXHIBIT NUMBER SIX

19 MARKED FOR IDENTIFICATION

20 BY MR. WILSON:

21 Q: Now, let me show you the second document that Mr. Grate

22 showed you which he has marked as Exhibit B. It says

23 Compensation. Take a look at that document. Is that the one

24 that he showed you earlier?

25 A: Yes, it is.

1 Q: All right. Now, did you draft that document?

2 A: No, I didn't.

3 Q: Do you know who drafted it?

4 A: No, I don't.

5 Q: All right. Were you present when it was prepared?

6 A: No, I wasn't.

7 Q: Do you have any idea who decided to put those contents in
8 that document?

9 A: No, I don't.

10 Q: All right.

11 MR. WILSON: Your Honor, I would offer this particular
12 document which is his purported Exhibit B.

13 THE COURT: Is that being offered into evidence or are
14 they being ---

15 MR. WILSON: I'm offering into evidence, Your Honor.

16 THE COURT: All right. You have offered One through Six
17 into evidence?

18 MR. WILSON: That is correct, Your Honor.

19 THE COURT: Any objections, Mr. Grate, to either
20 Defendant's Number One, Two, Three and Four, Five and Six
21 being offered into evidence?

22 MR. GRATE: Your Honor, I don't think so but the last two
23 documents he handed, I didn't, I didn't -- I don't have
24 anything marked as Exhibit B. I have a page number and I
25 don't know what the first one was ---

1 THE COURT: If you'd like to come on up here and take a
2 look at Defendant's One through Six; take your time.

3 MR. WILSON: Your Honor, the document which is now marked
4 as Defendant's Exhibit Number Seven, which Mr. Grate
5 originally offered to this witness is designated as Exhibit B,
6 Compensation.

7 THE COURT: All right. So, we have One through Six and
8 then B, is that what you're getting at or you got One through
9 Seven?

10 MR. WILSON: One through Seven.

11 THE COURT: One through Seven. All right. Mr. Grate,
12 take a look at all of those items.

13 MR. GRATE: All right, sir.

14 THE COURT: All right. Any objections to Defendant's
15 One, Two, Three, Four, Five, Six and Seven being offered into
16 evidence? Yes or no?

17 MR. GRATE: One second, please, sir. No, sir.

18 THE COURT: All right. Defendant's One through Seven are
19 into evidence without objection.

20 Thank you, Mr. Grate.

21 MR. GRATE: Thank you, sir.

22 DEFENDANT'S EXHIBITS ONE THROUGH SEVEN

23 ADMITTED INTO EVIDENCE

24 BY MR. WILSON:

25 Q: Ms. Wideman, in regards to the -- how do I want to ask

1 this -- in regards to the -- from your position, I guess, as
2 finance director, do you have any decision-making authority in
3 terms of who signs a contract and how much money goes in there
4 or anything else?

5 A: No, I don't.

6 Q: All right. That's done by the board.

7 A: Right.

8 Q: And you simply were told to put this amount in the
9 contract and that's what you did?

10 A: Right.

11 Q: Okay. And it was stated as a cost-plus, is that the --
12 let me get that for you -- which is marked and I think I
13 already have it up here actually -- let me show you what's
14 marked as Defendant's Exhibit Number Three, which is a copy of
15 the contract with Mr. Grate which is dated April 30th and ask
16 you to take a look at what's marked as Exhibit B,
17 Compensation, and I want you to read that to the jury for me.

18 A: Contractors should be compensated at a fee not to exceed
19 nine percent of the total building costs excluding design,
20 engineering and permitting fees payable as set forth in 3-1 of
21 the contract. Waccamaw EOC will pay contractor an advance
22 payment against future building -- billings of \$10,000 as soon
23 as funds are available to Waccamaw EOC. Invoices must be
24 submitted prior to payment. Final payment will not be made
25 until entire project is complete.

1 Q: Now, is that is the proper term for that language cost-
2 plus contract, would that be a proper term for that or how
3 would you designate it?

4 A: Cost-plus or percentage of construction.

5 Q: Cost-plus or percentage, all right. Let me ask you, as
6 finance director for EOC is cost-plus -- is cost-plus or
7 percentage contracts allowable under the law as you understand
8 it?

9 A: No, it isn't.

10 Q: All right. And at some point in time, did you send me
11 over or send to me a copy of the statute that applies to this
12 particular contract?

13 A: Yes, I did.

14 Q: All right. And do you recall when that was, about when
15 it was?

16 A: June, May/June.

17 Q: Okay, of 2000-and ---

18 A: '10.

19 Q: I don't have any other questions. Thank you, ma'am.

20 THE COURT: Thank you. Anything further, Mr. Grate?

21 MR. GRATE: Yes, Your Honor, please.

22 REDIRECT EXAMINATION OF JANICE WIDEMAN BY MR. GRATE:

23 Q: Ms. Wideman, please, ma'am, you indicated -- how do you
24 classify this contract?

25 A: Cost-plus or percentage of construction.

1 Q: Cost-plus or percentage of construction. Okay, please,
2 ma'am, in the -- was that determined -- is that determined
3 from the regulation?

4 A: Yes.

5 Q: Do you know which regulation?

6 A: It's 45 CFR 74.

7 Q: Okay. If I may, please, ma'am, of course I know 45 CFR
8 74 speaks to certain things but do -- how do you determine
9 that this contract, my contract, is -- how do you determine
10 the nature of my contract -- how did you determine that my
11 contract is cost-plus contract?

12 A: It's a -- it's a percentage of construction. You're paid
13 a fee as a percentage of construction cost.

14 Q: Are you familiar with Exhibit A of my contract?

15 A: Yes.

16 Q: Generally, you're familiar that it's about -- it's
17 dealing with preconstruction as well as construction
18 situation?

19 A: Yes.

20 Q: Okay. So, so, you're saying that the contract, my
21 contract, exclude anything preconstruction; is that what
22 you're saying?

23 A: According to Exhibit B.

24 Q: Do you remember me bringing that issue up to you all in
25 the past?

1 A: I do not recall that.

2 Q: One second, please. Okay. Well, for the reports that I
3 -- the monthly reports that I submitted, did you receive a
4 copy of those?

5 A: I can't -- I don't think I did, not all of them, no.

6 Q: Okay. Thank you. Oh, so, when you signed this -- my
7 contract, witnessed my contract in other words, were you
8 familiar with the CFR 45 you just quoted, 45-74?

9 A: Yes, I was familiar with it.

10 Q: But you do -- you're saying you see a conflict with my
11 contract with respect to that code section?

12 A: Yes, I do.

13 Q: But you were familiar with it but still you signed it?

14 A: I was familiar -- there are different parts of CFR, I was
15 familiar with the CFR you were referring to but not having
16 during a construction phase.

17 Q: Because you haven't done construction before?

18 A: Right.

19 Q: Okay. Thank you, ma'am. Thank you, very much.

20 THE COURT: All right. Thank you.

21 Anything further, Mr. Wilson?

22 MR. WILSON: Nothing further.

23 THE COURT: All right. You may step down.

24 (REPORTER'S NOTE: Witness leaves the witness stand.)

25 THE COURT: Call your next witness.

1 MR. GRATE: Mr. Zacharius Grate, please, sir.

2 THE COURT: This will be the last one we do for the day.

3 CLERK: Please raise your right hand and place your left
4 hand on the Bible.

5 ZACHARIUS GRATE, HAVING BEEN SWORN,

6 TESTIFIED AS FOLLOWS:

7 CLERK: State your name for the Court, please, sir.

8 MR. ZACHARIUS GRATE: Zacharius Grate, Jr.

9 DIRECT EXAMINATION OF ZACHARIUS GRATE, JR. BY MR. GRATE:

10 Q: Thank you, sir, Mr. Grate.

11 A: Yes, sir.

12 Q: You previously were connected with Waccamaw EOC, were you
13 not?

14 A: Former Chairman, yes, sir.

15 Q: Okay. How long you had that position?

16 A: As Chairman?

17 Q: Yes.

18 A: Four or five years.

19 Q: You -- have you done -- excuse me, sir -- Are you
20 familiar with the Head Start process for facilities?

21 A: The process?

22 Q: Yes.

23 A: I'm familiar with the project that we got started so far
24 as doing the process and that type stuff, that wouldn't apply
25 to what I was doing.

1 Q: Oh, well, you remember instructing the executive director
2 to get bids for doing that construction, doing that project?

3 A: I would've actually give the executive director -- to
4 move forward bids only if the board had already directed that;
5 so evidently, the board must've already instructed me to have
6 -- to move forward with bids.

7 MR. GRATE: Please, sir, Your Honor, this is Page 103 of
8 my previously submitted exhibit.

9 THE COURT: All right. Mr. Grate, you keep referring to
10 previously submitted exhibits, you haven't offered anything
11 into evidence, yet.

12 MR. GRATE: Oh ---

13 THE COURT: I just want to make sure you understand that.

14 MR. GRATE: Thank you, sir. Your Honor, hopefully to
15 satisfy that situation, when I refer to previously submitted
16 exhibit, I'm referring to the exhibit that I submitted with my
17 motion for summary judgment.

18 THE COURT: That doesn't satisfy me. This is the trial
19 of the case ---

20 MR. GRATE: Okay.

21 THE COURT: --- and if you want any documents into
22 evidence, you have to make a motion to have them moved into
23 evidence pursuant to the law.

24 MR. GRATE: Okay, Your Honor. I'm trying to do -- okay,
25 please, I move for my -- for my Exhibit A that I submitted

1 with my motion for summary judgment to be submitted into
2 evidence.

3 THE COURT: Any objections?

4 MR. WILSON: Yes, sir, I have to. Your Honor, it
5 contains all kinds of stuff that I can't agree to.

6 THE COURT: I'm going to overrule you at this time. You
7 need to be more specific and you need to lay a foundation for
8 whatever you move to be offered into evidence. Just an
9 overall shotgun effect of basically everything I have is not
10 gonna suffice.

11 MR. GRATE: Okay, Your Honor. Thank you so much. Then,
12 you know, to tell you the truth, I will -- I will wrap it up
13 now. I'll wrap it up now.

14 Thank you, sir. I'm finished.

15 THE COURT: All right. Mr. Wilson?

16 MR. WILSON: I have no questions.

17 THE COURT: All right. Thank you.

18 (REPORTER'S NOTE: Witness leaves the witness stand.)

19 All right. Members of the jury, if you would be back at
20 9:30 in the morning and we'll wrap this thing up shortly
21 thereafter.

22 Again, as I instructed you earlier, don't talk about the
23 case with anybody, not that you would want to but just don't.

24 (REPORTER'S NOTE: The jury is excused for the day.)

25 THE COURT: Is that door closed yet?

1 MR. GRATE: Not yet.

2 Now, it's closed.

3 THE COURT: All right, Mr. Grate, how many more witnesses
4 do you have?

5 MR. GRATE: Sir, that's it.

6 THE COURT: All right. You are resting at this time; is
7 that correct?

8 MR. GRATE: Yes, sir.

9 THE COURT: All right. Thank you very much.

10 Any motions from the Defense?

11 MR. WILSON: Yes, sir. Your Honor, again, and I know we
12 -- I discussed this during the summary judgment motion and I
13 again would rely on the arguments that I made during that
14 summary judgment motion but I'd also like to add that in this
15 case, Mr. Grate has not shown any damages, he hasn't presented
16 any proof of any damages of any type, small or large. And I
17 think that's one of the failures that he has and I don't think
18 that it's fair to let the jury speculate about what his
19 damages may or may not be, you know, and he certainly hasn't
20 presented any evidence of any; that's my first argument.

21 The second argument is is that the -- in regards to this
22 whole situation, I think that the evidence is just abundantly
23 clear that Mr. Grate, that throughout this process that Mr.
24 Grate -- well, let me rephrase that and put it this way, the
25 -- the issue here is which is really making me struggle

1 because the issue here is -- seems to be a legal issue whether
2 or not this contract, whether or not, whether or not this
3 contract is governed by that statute. That's really what I
4 think the crux of it is because if it's governed by that
5 statute ---

6 THE COURT: If it's governed by that statute based on the
7 facts of the case.

8 MR. WILSON: Yes, sir.

9 THE COURT: I'm not saying it's not the law.

10 MR. WILSON: Yes, sir. But I think the facts are -- we
11 all agree on the facts. I don't think there's any dispute
12 about the facts in this case, that there was a sit-down, there
13 was an attempt to make an agreement and we all came to an
14 accord, they entered into this compensation agreement. There
15 is no disagreement about that.

16 THE COURT: Correct.

17 MR. WILSON: The issue now is whether that law, that 45
18 CFR, whether it actually applies to this set of facts.

19 THE COURT: Correct.

20 MR. WILSON: And I think that that's what the issue is
21 but -- so what we're asking the jury to do is to make a legal
22 determination, does this law apply here. And the problem I'm
23 having is is that there is no dispute, at least with the law,
24 Mr. Grate says, well, you know, I don't think it applies to
25 me. I mean, but that's not proof; that's not -- he has the

1 burden of proof. I don't have any burden here as the
2 defendant. He has the burden to prove this. And let me say
3 in addition to that, he has not proven any -- he has not
4 submitted any evidence of a breach. I have been waiting
5 throughout for him to tell me what the breach was that EOC
6 committed.

7 THE COURT: Well, he says that the defendants would not
8 use him, they wouldn't call him for the thirteen months.

9 MR. WILSON: But that wouldn't ---

10 THE COURT: And as far as his damages go, he talks about
11 the three options that he gave them, the \$45,000 to buy it
12 out, et cetera, et cetera. I'm not saying it's a wonderful
13 case and I'm not saying it's a strong case.

14 MR. WILSON: But he was still paying them -- they were
15 still paying him the entire time when he's making this very
16 argument that he -- he's being paid up until August 5th when
17 he got that last \$4500 under this very contract. He was still
18 being paid the entire time. And so how could they be in
19 breach, how could they be in breach and he's still collecting
20 paychecks ---

21 THE COURT: Well, he's saying he's not being paid
22 pursuant to the contract as he sees it.

23 MR. WILSON: Well, I know but he hasn't presented any
24 proof that that occurred; that's my point. Yeah, he's said
25 that but there is no proof that ---

1 THE COURT: Well, his testimony. Once again, I'm not
2 saying it's ---

3 MR. WILSON: I understand.

4 THE COURT: --- super-duper strong by any means, but ---

5 MR. WILSON: And again, then I go back to my argument
6 about the damages. Again, where is the evidence of the
7 damages?

8 THE COURT: That'll give you something to argue to the
9 jury tomorrow morning.

10 MR. WILSON: All right, sir. All right.

11 THE COURT: Are these two students back there fulfilling
12 your 403? I think they'd have a heart attack if I granted
13 this motion.

14 MR. WILSON: They'd be pleased, Your Honor, I promise
15 you.

16 I don't have any other arguments.

17 THE COURT: All right. I'm gonna deny your motions.

18 We'll be back at 9:30 in the morning.

19 Do you have any witnesses you want to call or you ---

20 MR. WILSON: He called just about all my witnesses.

21 THE COURT: All right. Do you have any?

22 MR. WILSON: I may have one but I -- I'll decide first
23 thing in the morning.

24 THE COURT: All right. Thank you.

25 MR. WILSON: And, Judge, just let me ask one other

1 question. If I decide not to call any additional witnesses
2 that have not been called already, where are we with
3 arguments?

4 THE COURT: We'll go right into closings.

5 MR. WILSON: Well, who will go first and last?

6 THE COURT: He goes first, you go second and he goes
7 last.

8 MR. WILSON: Okay, okay.

9 THE COURT: All right. Thank you very much. I'll see
10 you in the morning.

11 MR. WILSON: Thank you, Your Honor.

12 THE COURT: Anything, Mr. Grate?

13 MR. GRATE: Thank you, sir.

14 THE COURT: All right. Thank you.

15 (RECESS)

16 *****OFF THE RECORD*****

17 (On the Record.)

18 JANUARY 11, 2012

19 THE COURT: All right, Mr. Wilson, do you intend to call
20 anymore witnesses?

21 MR. WILSON: Yes, Judge, I do and I would also like to
22 call Mr. Grate to the stand ---

23 THE COURT: Sure.

24 MR. WILSON: --- to ask him just a couple of things about
25 some emails that we shared.

1 THE COURT: Okay. That'll be fine.

2 If you'll go ahead and bring the jury in.

3 (REPORTER'S NOTE: The jury returns to the courtroom.)

4 THE COURT: Good morning.

5 All right. Ladies and gentlemen of the jury, I want to
6 you let you know that the plaintiff has rested. He has
7 finished his case. We're now going to proceed with Mr.
8 Wilson.

9 If you'd call your first witness.

10 MR. WILSON: Thank you very much, Your Honor.

11 Your Honor, I'd call Zacharius Grate.

12 CLERK: Please raise your right hand, place your left
13 hand on the Bible.

14 ZACHARIUS GRATE, JR., HAVING BEEN
15 SWORN, TESTIFIED AS FOLLOWS:

16 CLERK: Have a seat, please, sir. State your name for
17 the Court, please.

18 MR. ZACHARIUS GRATE: Zacharius Grate, Jr.

19 DIRECT EXAMINATION OF ZACHARIUS GRATE, JR. BY MR. WILSON:

20 Q: Mr. Grate, if you would, would you tell us what your
21 relationship was with Waccamaw EOC back during 2009, 2010 and
22 early 2011.

23 A: I was the board chairman.

24 Q: And how long have you been board chairman for Waccamaw
25 EOC?

- 1 A: Approximately five years.
- 2 Q: All right. And how long had you been on the board?
- 3 A: Right at about ten.
- 4 Q: And let me ask you if sometimes during that period of
5 time, the board decided to build a Head Start project?
- 6 A: About three or four years.
- 7 Q: Okay. All right. And do you know what year it was that
8 the board actually decided to start with the project?
- 9 A: '010.
- 10 Q: And where was this -- where was this Head Start project
11 going to be?
- 12 A: In the Choppee community of Georgetown.
- 13 Q: All right. And what kind of facility are we talking
14 about that was going to be built or developed?
- 15 A: A Head Start Center for young kids to come in to.
- 16 Q: Now, let's talk for a minute about Waccamaw EOC. Tell us
17 what Waccamaw EOC does; what is that organization about? What
18 does it do?
- 19 A: Waccamaw actually tends to three or four-year-old kids
20 and teach them the -- learn at an early age.
- 21 Q: Now that's the Head Start portion of the program?
- 22 A: That's the Head Start portion of the program.
- 23 Q: Okay. Now, under Waccamaw EOC is there more than one
24 program in Waccamaw EOC?
- 25 A: Oh, yes, sir. There are other programs that's there also

1 where they actually come in and do housing, individuals who
2 have some housing problems.

3 Q: And then that's called your Weatherization Program?

4 A: That's the Weatherization Program.

5 Q: And all these services that we're speaking of are
6 provided to people who are less fortunate people who are not
7 financially able to handle things themselves?

8 A: Low income -- low income individuals.

9 Q: All right. And let me ask you, in regards to -- you said
10 that you have the Head Start Program. How many kids are in
11 the Head Start Program in general back when you were there?

12 A: I believe it's 774.

13 Q: 774. All right. And is that in just Horry Count or ---

14 A: In the three counties.

15 Q: In three counties. And what are the three counties that,
16 that the Head Start Program under EOC covers?

17 A: Horry, Georgetown and Williamsburg County.

18 Q: Now, and you said that you have a Weatherization Program
19 also and what counties are covered under the Weatherization
20 Program?

21 A: The same, Horry, Georgetown and Williamsburg County.

22 Q: Now, the funding for these programs come from where?

23 A: The federal government.

24 Q: All right. And are you also regulated by a state agency,
25 that being the Office of Economic Opportunity?

1 A: Yes, we are.

2 Q: And that's -- that's under the Governor's Office in the
3 State of South Carolina?

4 A: Yes, sir.

5 Q: All right. Now, let me ask you, in regards to EOC, the
6 program itself, you have a board of directors who operate the
7 program?

8 A: Exactly.

9 Q: And those board of directors are elected?

10 A: Some are elected, others are nominated and some are also
11 accepted by entities of the government, like council ---

12 Q: Like appointed officials ---

13 A: Appointed officials.

14 Q: --- or elected officials ---

15 A: Elected officials.

16 Q: --- to serve on that board or appoint someone to serve on
17 that board?

18 A: Right.

19 Q: All right. And how many members are on that board?

20 A: Fifteen.

21 Q: Fifteen, all right. Now, let's go back now that we
22 understand a little bit about the program itself. When you
23 started to build this program, when you started to build the
24 building or facility at Choppee, at some point in time, you
25 entered into an agreement with Mr. Grate here to do some work

1 for the program?

2 A: Yes, sir.

3 Q: All right. Tell us about that. Tell us how Mr. Grate
4 came to be involved with the Choppee project.

5 A: Well, basically, I think from the very beginning when the
6 project was actually put up for bid, there were numerous
7 entities and people come in and actually bidded on the
8 project. I think we got to know Mr. Grate when he came in
9 with another firm that he was working with and that's how we
10 got to know him at that point.

11 Q: Okay.

12 A: We later on went on and elected -- the board elected a
13 firm, a local firm here and at that point we needed to
14 actually have -- hire a project manager, what was supposed to
15 have been done a little earlier.

16 Q: So, when you -- initially when you were searching, the
17 initial search was for an architectural firm?

18 A: Right.

19 Q: And you ended up hiring a firm called Earthworks?

20 A: Exactly.

21 Q: Out of Myrtle Beach? Are they out of Myrtle Beach?

22 A: I think that's where the -- no, the office is located
23 somewhere on Highway 544.

24 Q: Okay. But you ended up hiring a local firm to do the
25 architectural work?

- 1 A: Exactly.
- 2 Q: And Mr. Grate applied for that position also, did he not?
- 3 A: I think the firm that he was working with applied for it.
- 4 Q: But they didn't get it; Earthworks got it?
- 5 A: They got it.
- 6 Q: And after that, at some point in time, you were looking
7 for a project manager?
- 8 A: Right.
- 9 Q: And at that point, Mr. Grate, applied to be the project
10 manager?
- 11 A: Right. It was advertised and he applied for it.
- 12 Q: All right. And then he got that position?
- 13 A: Right.
- 14 Q: All right. And y'all entered into a contract with him,
15 did you not?
- 16 A: Right.
- 17 Q: And let me show you what's marked as Defendant's Exhibit
18 Number Three. Take a look at that for me, please, sir.
- 19 A: I've seen it.
- 20 Q: Okay. And is that a copy of the contract that you
21 entered into?
- 22 A: Yes, sir.
- 23 Q: Now, I want you to turn to what's called Exhibit B which
24 is in the back portion of that contract and look at it for me.
- 25 A: Okay.

- 1 Q: All right. Now, that Exhibit B that's attached to that
2 contract, is a compensation agreement, is it not?
- 3 A: Right.
- 4 Q: All right. And it spells out how compensation is to be
5 paid to Mr. Grate?
- 6 A: Exactly.
- 7 Q: All right. Now, before I go any further, let me ask you,
8 you've got the same last name. Are you related in any way by
9 blood or marriage to Mr. Grate that you know of?
- 10 A: No, I don't know Mr. Grate.
- 11 Q: All right. All right. And it just happens to be you've
12 got the same last name?
- 13 A: Right.
- 14 Q: In regards to that compensation agreement, when, when
15 that agreement was being discussed by the board and being
16 discussed with Mr. Grate, were you aware of was the board
17 aware to your knowledge that that was an improper contract,
18 that is that that paragraph could not exist in that contract
19 because of federal regulations?
- 20 A: We were not aware.
- 21 Q: You were not aware of that?
- 22 A: No.
- 23 Q: All right. And at some point in time, though, you did
24 become aware of that?
- 25 A: Yes, sir.

1 Q: And when you became aware of that, was that as a result
2 of a memo that you received from your finance director or from
3 the then acting, I guess she was then the actual executive
4 director?

5 A: Once we found out -- we found out from staff and that's
6 when we had to -- we sent it to an attorney to take a look at
7 it.

8 Q: All right. Just one second.

9 Let me show you a memo, actually an email which is dated
10 August the 9th of 2010.

11 A: Okay.

12 Q: And do you recall at some point in time receiving that
13 memo from your staff?

14 A: Yeah at some point, yeah, I did.

15 MR. WILSON: I'll show this to Mr. Grate and I'd ask the
16 Court to allow me to mark this as a defendant's exhibit.

17 THE COURT: Are you introducing it into evidence?

18 MR. WILSON: After he sees it. Yes, sir.

19 THE COURT: All right. Thank you. Any objections, Mr.
20 Grate?

21 MR. GRATE: One second, please, sir?

22 THE COURT: Sure.

23 MR. GRATE: I have a question, if I may.

24 THE COURT: I need to know if you have an objection to
25 that document being introduced into evidence or not.

1 MR. GRATE: Uh ---

2 THE COURT: And if you do have an objection, I need to
3 know why.

4 MR. GRATE: Okay.

5 THE COURT: You can ask questions in regards to the email
6 if you would like after ---

7 MR. GRATE: After ---

8 THE COURT: --- we determine if this goes into evidence
9 or not.

10 MR. GRATE: Okay. I ---

11 THE COURT: Any objections?

12 MR. GRATE: Yes, sir.

13 THE COURT: All right. What is your objection?

14 MR. GRATE: I -- it's -- it has my name in it but I
15 didn't receive it; I don't know anything about it.

16 MR. WILSON: He did not receive it. It's not addressed
17 to him. It was addressed to Mr. Grate.

18 THE COURT: I'm gonna overrule the objection and allow it
19 to be introduced into evidence.

20 MR. WILSON: Thank you, Your Honor.

21 DEFENDANT'S EXHIBIT NUMBER EIGHT

22 ADMITTED INTO EVIDENCE

23 BY MR. WILSON:

24 Q: Now, this is -- what's now marked as Defendant's Exhibit
25 Number Eight in this case is a memo or email from Zacharius

1 Grate to Ralph Wilson and this is dated -- sent Monday, August
2 the 9th, 2010 at 10:58 A.M., subject, contract for Joseph
3 Grate and Steve Strickland. And this was a memo that you
4 received from Beth Fryar from Waccamaw EOC to Zacharius Grate.
5 A carbon copy went to Ms. Janice Wideman, the finance
6 director, sent Monday, August the 9th, 2010 at 10:46 A.M.,
7 subject contract for Joseph Grate and Steve Strickland. And I
8 want you to read this memo to the Court.

9 A: Good morning, Mr. Grate. Janice had brought to my
10 attention ---

11 Q: And that Grate that they're referring to is you not Mr.
12 Joseph Grate.

13 A: Exactly. Janice has brought to my attention concerning
14 the contract executed on April 29th by Ms. Whitfield and
15 yourself and Joseph Grate regarding him being paid percentage
16 of total building costs. I have reviewed 45 CFR, Section
17 74.44 and it does state that the cost-plus-a-percentage-of-
18 cost and percentage of the construction cost method of the
19 contract shall not be used. Also, we made aware of the
20 meeting with you, Joseph Grate and Ralph Wilson last Thursday,
21 August 5th, 2010 to discuss the contract. After the meeting
22 took place, his contract has been tabled numerous times in the
23 board meeting and Janice had previous told you to -- told this
24 contract needed to be looked at and to -- because of her
25 concerns from what she learned at the Head Start conference in

1 Atlanta in June. Therefore, staff is recommending that the
2 contract be amended to be a fixed amount so as not to violate
3 federal regulations. And it says, Thank you, Elizabeth L.
4 Fryar.

5 Q: Okay. And that's August of -- August 9th of 2010?

6 A: Yes.

7 Q: All right. Now, Mr. Grate, let me ask you, after August,
8 2010, after receiving that memo, did you have a series of
9 meetings with Mr. Grate and/or me and Mr. Grate to discuss
10 these contract changes to try to get it to a fixed amount?

11 A: Yes, we did.

12 Q: And do you have any idea how many different meetings
13 there actually were?

14 A: In August and September, two or three.

15 Q: Okay. And again as a result of all those meetings, were
16 we able to get him to agree to move from a fixed one -- from a
17 percentage-cost-plus to a fixed amount?

18 A: Was not able to.

19 Q: All right. And prior to that, did -- prior to that, did
20 EOC attempt to terminate his services at any point in time
21 prior to him filing the lawsuit?

22 A: No, sir.

23 Q: And at all point in time, they continued to honor the
24 contract and work with him up and until he filed the lawsuit?

25 A: Yes, sir.

1 Q: Which brought us here today?

2 A: Yes, sir.

3 Q: I don't have any other questions.

4 THE COURT: All right. Mr. Grate?

5 MR. GRATE: Yes, sir.

6 THE COURT: You may cross examine.

7 MR. GRATE: Thank you, sir.

8 CROSS EXAMINATION OF ZACHARIUS GRATE, JR. BY MR. GRATE:

9 Q: Good morning, sir.

10 A: Good morning.

11 Q: Regarding the termination of my contract, was that ever
12 discussed with me at any time?

13 A: Was it discussed by whom?

14 Q: Anybody that you know of.

15 A: Myself and you and Mr. Wilson discussed it.

16 Q: You discussed terminating my contract?

17 A: No, the contract, you said -- was the contract ever been
18 discussed.

19 Q: The last question he asked you, was that was my contract
20 -- was there any discussion about termination of my contract
21 any time prior to that last email he's talking about or after
22 or any time, concerning termination of my contract; was it
23 ever discussed with me?

24 A: I can't remember anybody discussing terminating the
25 contract.

1 Q: Okay. Let me start at the beginning. Today you
2 testified that you were with -- you were in the position of
3 chairman for five years?

4 A: Approximately five years.

5 Q: I asked you one question yesterday and I asked you how
6 long were you in that position yesterday and you said three
7 years.

8 A: I didn't say that.

9 Q: Okay. You were asked when was work started on the Head
10 Start Center, Head Start Project, this morning you were asked
11 that and you said 2010 or '010 is what you said.

12 A: Okay.

13 Q: What do you mean by when you say when it was started,
14 what you mean by actual beginning of doing the feasibility
15 study or -- which was the beginning or -- what are you talking
16 about when you said when work was started?

17 A: Talking about work itself on the ground.

18 Q: Oh, the construction, okay. You -- do you agree that
19 actual work on the project started many, many months before?

20 A: When you say work, you're talking about the laying the
21 framework for it; what are you talking about?

22 Q: All right. Well, you can forget that question because --
23 so, is it in your opinion that -- what -- to you what is the
24 project?

25 A: It's a Head Start Center for three and four-year-old --

1 for three and four-year-old kids.

2 Q: No, no, the project. When you refer to the project, what
3 do you mean? Actual construction or any work leading up to
4 the construction?

5 A: Well, you've got to tell me more, what you're trying to
6 say here.

7 Q: Okay. Yesterday in my testimony I indicated that there
8 was confusion when the term the project was used. And just
9 now he asked you when did work start on the project and I just
10 asked you -- you said physical work in the field.

11 A: Exactly.

12 Q: Okay. You -- are you -- he just showed you my contract
13 and you said you were familiar with my contract. Are you
14 familiar with Exhibit A of my contract?

15 A: I said I've seen the contract already.

16 Q: Okay. Would you mind looking at Exhibit A, please, sir?

17 A: Okay.

18 Q: Please read it from the beginning.

19 A: Okay. Exhibit A, talking about the scope and services.

20 It says to provide management oversight for the

21 preconstruction phase and for all phases of the construction

22 project including coordinating work, material and equipment

23 ensuring that specifications are being followed and work and

24 procedures on schedule and within budget. Conduct any other

25 work that the Waccamaw Economic Opportunity Council deem

1 necessary for the agency within the remainder of the design
2 and construction process for Choppee Head Start Facility.
3 Develop a cost effective plan and schedule for completion of
4 the project accomplishing by following the logical pattern and
5 utilizing of resources by incorporating schedules from the
6 project architect and the general contractor. Confirm the
7 coordination of work conducted by subcontractors' work, phases
8 and project by ways of coordinating with the general
9 contractor field representative. Monitor the performance of
10 all trade construction, review the architectural and
11 engineering drawings to make sure that the specifications and
12 regulations and being followed. Responsibility for proper
13 administration of construction contract and verify the work
14 performed in accordance with the necessary permitting license
15 and that all permits and license have been issued. Review all
16 reports monitored by reporting any deficits and addresses
17 specified violation of other reported deficiencies. Track and
18 adjust construction schedules and associated costs with
19 achieving the completion of the project with a time budget
20 allocation. Contracts shall weekly reports to the agency
21 giving percentage of completion to date, work schedule for
22 following week, analysis of the funds, examine the dates,
23 estimates for funds to be completed and information requested
24 by the agency. Report monthly at a minimum to Waccamaw EOC
25 Council proper progress and necessary modifications of the

1 plan that seem indicated. The project manager shall provide
2 his service in conjunction with the service of the architect
3 remanding by the owner under the terms described in the
4 association of the AAI document, standard form of agreement
5 between owner and architect as amended and executed by the
6 owner and the architect. The project manager shall not be
7 responsible for actions taken by the architect.

8 Q: Okay. Please, sir, all of those -- please keep that in
9 front of you; I'm gonna ask some questions about that. You
10 got it?

11 A: Uh-huh (affirmative response).

12 Q: Okay. On that page of the -- what you just read, are
13 those paragraphs numbered?

14 A: Yes.

15 Q: How many paragraphs you got there?

16 A: Nine.

17 Q: Nine. Okay. Okay. Do you agree that the elements,
18 design elements, we start off by saying, you know,
19 coordinating all this stuff, doing the coordination and at the
20 very last working in the field, do you agree that those nine
21 elements comprise the project?

22 A: It says the scope of service for the -- for your
23 services.

24 Q: Okay and what's the next -- what's the very next line?

25 A: What do you mean what's the very next line. To provide

1 management -- management oversight.

2 Q: Okay. So, from that, from Number 1 through Number 9, do
3 you not agree that those elements are -- in total, comprise
4 the project? It takes all those elements to make the project?

5 A: Certainly.

6 Q: Okay. But whatever initially you were saying, referring
7 to the construction in the field as the project?

8 A: That's what was asked -- you asked me when the project
9 got started, I said in '010.

10 Q: But Number 1 is part of the project, right?

11 A: Okay.

12 Q: Okay. So, I'm saying all those nine elements comprise
13 the project, right?

14 A: Okay.

15 Q: Those are -- what you just read, my duties, right?

16 A: Those are your duties.

17 Q: Okay. Now, who was the person at Waccamaw EOC that was
18 supposed to interface between myself, my duties and actual
19 work itself?

20 A: I would say it's always -- in my mind, it's the executive
21 director.

22 Q: Okay. You think it's -- you know for sure about that?

23 A: That's her -- that's her job. I don't work there.

24 Q: So, for -- on that list of nine items, okay, what on that
25 list that I actually -- what is on that list that I actually

1 performed?

2 A: That you did?

3 Q: Yes.

4 A: You actually did it?

5 Q: Yes.

6 A: I'm not sure what you did.

7 Q: Okay. You ---

8 A: It wasn't my job to find out what you did. Staff took
9 care of all that.

10 Q: Well, with respect to -- with respect to the project
11 which encompassed everything, did you have anything to do with
12 any of that?

13 A: We had a facilities committee, a board facilities
14 committee who actually came in and actually looked at the --
15 looked at the paperwork once they -- once staff presented to
16 them and they came up with a recommendation and brought it
17 back to the entire board.

18 Q: Okay.

19 A: That's where we fit into that.

20 Q: But I was talking about you specifically.

21 A: I am a part of the facilities committee.

22 Q: Okay. Now, how -- you were asking for how I came to be
23 with this organization, how I came to be with this
24 organization. Would you mind saying that again?

25 A: Well, it was advertised in the newspaper that we needed a

1 project manager. You applied for it and I presumed that you
2 sent in some paperwork to the agency to be looked at.
3 Q: Okay. Before it was advertised in the newspaper -- is it
4 safe to assume that somebody in the organization made the
5 determination that a project manager was needed?
6 A: It's in writing that we need one.
7 Q: Writing from who?
8 A: In the paperwork from the federal government said that
9 you must have a project manager, in-house project manager.
10 Q: When did you become aware of that?
11 A: Once talking to staff.
12 Q: Huh?
13 A: Once talking to staff.
14 Q: Okay. Isn't that -- didn't you become aware of that
15 after you got into some trouble with the federal government
16 because you were proceeding with a contract to do the
17 construction and the federal government put a stop to it and
18 indicated that you must have this person on board first?
19 A: That's not true.
20 Q: All right. So, okay, okay -- Do you remember when or in
21 the contract, when did I come on board?
22 A: April 30th.
23 Q: Okay. You indicated that you -- at some point in time
24 you hired Earthworks Group?
25 A: Yes.

1 Q: Okay. When was the decision first made or notification
2 first given that Earthworks Group was gonna be hired?

3 A: When was it given?

4 Q: Yeah, when did y'all notify Earthworks that they would be
5 hired?

6 A: I don't know. I don't have that information in front of
7 me.

8 Q: Okay. I can help you with that.

9 Your Honor, if I may?

10 THE COURT: If you would show it to Mr. Wilson.

11 MR. WILSON: I have no objections, Your Honor.

12 BY MR. GRATE:

13 Q: Okay. Would you read that from the beginning, please,
14 sir?

15 A: Okay. It's addressed to Mr. Steve Strickland and it
16 says, Dear Mr. Strickland, We would like to take this
17 opportunity to express your application for offering the --
18 offering the purpose for the Choppee Head Start Center, the
19 Board of Directors made a decision at its October 27th, 2009
20 board meeting to award the proposal to your company.
21 Earthworks Group ---

22 Q: What's the date on that, please, sir?

23 A: Excuse me?

24 Q: What's the date on that?

25 A: It says October 27th, 2009 that the board of directors

1 made that decision.

2 Q: What's the date that that was sent?

3 A: You want the date that it was ---

4 Q: At the top, yeah, up top.

5 A: November 2nd, 2009 is the date that the memo is written
6 but the date that it was offered to Earthworks, according to
7 this memo, it says October 27th, 2009.

8 Q: Perfect, thank you, sir.

9 MR. GRATE: I'd like to offer this into evidence, please,
10 sir.

11 MR. WILSON: No objection.

12 THE COURT: Any objections?

13 MR. WILSON: No objections at all.

14 THE COURT: All right. That'll be marked as Plaintiff's
15 Number One in evidence without objection.

16 Give it to the court reporter.

17 PLAINTIFF'S EXHIBIT NUMBER ONE

18 ADMITTED INTO EVIDENCE.

19 BY MR. GRATE:

20 Q: So, Mr. Grate, I previously asked you if a decision --
21 asked if a decision had been made to hire somebody for the
22 architectural aspect of the project ---

23 A: Okay.

24 Q: --- prior to me coming on board. I came on board April
25 of 2010. That document is saying that you made a decision

1 October 2009.

2 A: We did.

3 Q: When I asked you if you were progressing and because you
4 didn't have a project manager, the government shut you down
5 and you had to stop it and you -- just before you said no.

6 A: My answer is still no. That's not true.

7 Q: Well, okay. Do you remember -- do you remember meeting
8 with me prior to my signing the contract?

9 A: Meeting with you where?

10 Q: Well, let's start off with Charleston.

11 A: At our board retreat?

12 Q: Well, let's start off at your office, the first
13 interview.

14 A: I don't remember the first time that we met if that's
15 what you're asking me.

16 Q: Okay. Yesterday, I testified that I interviewed at
17 Waccamaw EOC on the 17th of November, 2009. And I testified
18 that when you asked -- when you told me what you wanted
19 somebody of my position to do, I indicated that I didn't want
20 to talk myself out of job but the architect was supposed to do
21 that for you; do you remember that conversation?

22 A: I remember that being said at the meeting.

23 Q: Okay. And you remember you told me that your procurement
24 regulations said you needed to have a project manager on board
25 which is why you were interviewing me.

1 A: I said that the regs said that we must have someone in-
2 house as a project manager.

3 Q: Okay. But that meeting was November 17th of 2009.

4 A: Don't know the date of the meeting.

5 Q: But I know. I know. I testified to that yesterday.

6 Okay, now, that's a date later than the October date that you
7 mentioned where you had already indicated to this firm that
8 you wanted to hire him?

9 A: Exactly.

10 Q: Okay. So, you were -- but the regs said you're supposed
11 to have the project manager in place first.

12 A: As I said earlier, that we hired -- we hired the project
13 manager, the project manager was already hired when -- the
14 architect was already hired, we hired, we should've had
15 already had a project manager on board, if that's what you're
16 getting at.

17 Q: Right. So, you were incorrect on hiring him first?

18 A: No, it was not incorrect. It didn't say when you had to
19 hire him; it says that you must have one on board.

20 Q: So what you're saying by that when you say must have it
21 on board, you mean before you can proceed further?

22 A: That we needed one -- that the project said that we do
23 need a project manager, that's what I'm saying.

24 Q: And y'all discussed that in the board meetings?

25 A: Sure.

1 Q: Okay. Okay. I'll move along. Oh, you indicated that
2 at the time the contract was signed you were unaware of the
3 CFR concerning contracts.

4 A: The percentage?

5 Q: Yes.

6 A: Was unaware.

7 Q: Okay. You gave some testimony about what -- about the
8 profile of WEOC, what it does, was federal funds the only
9 funds you were looking at to perform this project?

10 A: We had a grant and we were looking at borrowing the
11 additional monies to go with it.

12 Q: From who?

13 A: From a lending source.

14 Q: What lending source?

15 A: Well, we applied at numerous lending source.

16 Q: And did you get any feedback from any of them?

17 A: Well, staff would have to tell you of the feedback but it
18 wasn't awarded. We hadn't -- we didn't -- we haven't gotten
19 one.

20 Q: Okay. How much money were you talking about?

21 A: \$500,000, I believe.

22 Q: So you were looking -- this grant meant you had to have
23 some matching funds to ---

24 A: We already had matching -- we already had the funds.

25 Q: But you had to have another -- was the grant for the

1 entire -- was the grant going to be able -- allow you to do
2 the entire project?

3 A: No, it would not.

4 Q: You had to get other funds?

5 A: Exactly.

6 Q: So, what percentage of other funds were you looking at?

7 A: \$500,000.

8 Q: What percentage of -- total package of a hundred percent,
9 what percentage of this is 500,000?

10 A: What do you mean what percentage of \$500,000?

11 Q: No, no, no, no. What was the total cost for the project?

12 A: I can't remember the total cost of the project that we
13 have already -- once we had bid it out. There's a bid
14 procedure that went through and they had already had it set.
15 I can't remember exactly what it was.

16 Q: When you submitted ---

17 A: About \$900,000, I think.

18 Q: Excuse me. When you submitted your feasibility study,
19 the first step in the Head Start -- in this Head Start
20 sequence, ballpark figure, how much was that?

21 A: I didn't -- I didn't submit anything. Staff does all
22 that. I don't work there.

23 Q: No. You don't know what the budget was for the project?

24 A: The budget work for the project?

25 Q: The budget for the project.

1 A: We had around a million dollars.

2 Q: Okay. So, if you were getting 500,000 from another
3 source, then that's about fifty percent?

4 A: Fifty percent, that was half of it.

5 Q: Okay. Okay. Are you familiar with the Head Start
6 process for facilities?

7 A: When you say familiar with the construction part of it,
8 no.

9 Q: Are you familiar with any part of it?

10 A: Tell me what you're asking me. I don't understand what
11 you're asking me.

12 Q: Okay. When you submitted this grant, you submitted this
13 application for the grant, to construct the building -- Head
14 Start has a procedure where you got to through eight steps to,
15 you know, do it. You got to first feasibility study all the
16 way through number seven construction. Are you familiar with
17 the steps involved?

18 A: I'm gonna say again, staff does all that and that's, you
19 know, that's not what we do. All that's done by staff.

20 Q: Okay. Well, for you, are you familiar with it?

21 A: I've heard -- I've heard of it.

22 Q: Okay. You mentioned being in meetings with me at Mr.
23 Wilson's office and talking about the project and contact and
24 all those kinds of things. Do you remember me asking -- do
25 you remember in the discussion we had concerning the contract

1 about -- do you remember me asking about what had been done
2 till the date we were -- what had been done along the way with
3 the project? I wasn't involved, so what has been done?

4 A: I don't ---

5 Q: You don't remember?

6 A: No, I don't -- I don't know what you're talking about.

7 Q: Okay. Did you sign the contract for the -- the AIA
8 contract for the architect -- with the architect?

9 A: Once the board had given approval for something to be
10 signed and they had given me the authority to sign it, I sign
11 it.

12 Q: Okay. Who is the representative from Waccamaw EOC,
13 representative meaning who the architect firm was gonna be --
14 you know, you interface with the architect firm, whoever that
15 representative is gonna interface with the architect firm, who
16 was that person, the agency's representative?

17 A: It should be the executive director.

18 Q: All right. You say should be but -- you don't remember
19 indicating on the contract that you are the agency's
20 representative?

21 A: If it's a -- I sign all contracts ---

22 Q: No.

23 A: --- as the board -- as the chairman of the board, our
24 bylaw says that the chairman must sign all contracts.

25 Q: Okay. So, you are indicated as the representative?

1 Okay.

2 A: I sign all contracts.

3 Q: Okay. At the place where the contract is signed it asks
4 for the agency's representative. If you signed it there, that
5 means you're the agency's representative; is that right?

6 A: If there's a contract involved.

7 Q: Is there a contract involved with Waccamaw EOC and the
8 design firm?

9 A: It is.

10 Q: Did you sign it?

11 A: I did.

12 Q: Okay. Therefore, now, if -- you already indicated that
13 you don't know of any work that I was doing in the process.
14 All the preconstruction items that you read -- that you read
15 already in Exhibit A of my contract. Exhibit A called for
16 review, review of the architect's submission. So since I
17 wasn't doing it, who did that?

18 A: You're at the -- if you're at the office doing work, I
19 don't know, I'm not there in the daytime.

20 Q: Oh, no.

21 A: I don't know what you're doing.

22 Q: In our one meeting with Mr. Wilson, I had a concern as to
23 whether or not those reviews were happening or not. You
24 indicated that they were happening, that they did happen,
25 actually.

1 A: What review are you talking about?

2 Q: The process is when the architectural firm prepared
3 drawings or made -- when the architectural firm prepared the
4 drawings, they go -- they're supposed to submit the work to
5 WEOC. I was supposed to be the person there reviewing what
6 they submitted. I'm saying I wasn't there. So did they
7 submit anything?

8 A: I don't know whether they submitted anything or not. If
9 they submitted it, it would go down to the main office.

10 Q: So, you wouldn't know if ---

11 A: It wouldn't come to me.

12 Q: Do you know if anybody was in a position, anybody there
13 had taken on the duties of project management?

14 A: You were our project manager.

15 Q: But I wasn't there because the work didn't come to me.

16 A: You were being paid?

17 Q: No, I was not. You know -- do you have to approve
18 payments there?

19 A: According to what amount it is.

20 Q: Okay. Did you sign checks there?

21 A: My name was on all checks.

22 Q: Okay. Did you sign checks -- so then do you see
23 invoices?

24 A: No, not unless -- not unless they ask me to see, no, I
25 don't see them.

1 Q: Well, how do you approve a payment if you don't see an
2 invoice?

3 A: That's why we got an executive director, we trust our
4 executive director.

5 Q: All right. So, is it the procedure where the executive
6 director approved the invoice and then you do the signing of
7 the checks?

8 A: No. My name is -- it's a -- stamped to the check; it's
9 already there. All they got to do is stamp my name to it.

10 Q: Who, who execute the stamping of your name?

11 A: The executive director and finance director.

12 Q: Okay. At that time, who was the executive director.

13 A: Which time are you talking about?

14 Q: The time when the drawings should've come -- any
15 submissions should've come from the architects to your office.

16 A: It had to've been either Ms. Fryar or our interim
17 director, Ms. Whitfield.

18 Q: Well, do you know when Ms. Whitfield took on the ---

19 A: I don't remember the date, no, I don't.

20 Q: Okay. Do you know that Ms. Whitfield signed the contract
21 with me?

22 A: I see it right here.

23 Q: Okay. Okay. You know the date is ---

24 A: April 30th.

25 Q: Okay. So, you don't recall -- so you've got Ms.

1 Whitfield in the position of the executive director?

2 A: She's the interim.

3 Q: Why would you have an interim?

4 A: We don't have a -- the executive director was not there.

5 Q: Okay. So, that means that the person in the position of
6 executive director at the time I'm talking about would've been
7 Ms. Whitfield?

8 A: It is.

9 Q: So, she would've been the one that stamped your name on
10 the checks?

11 A: It would be our finance director.

12 Q: So, now, who does it because you just said the executive
13 director?

14 A: It's approved by Ms. Whitfield.

15 Q: Okay.

16 A: Janice would actually be the one who actually do all of
17 the check writing, stamping and making sure that's done
18 because she is the finance director.

19 Q: Okay. At what point do you come into the picture, then
20 if you don't have to sign it?

21 A: All they got to do is stamp my name to it; it's already
22 there.

23 Q: I know but earlier you said you signed everything.

24 A: I said I sign all contracts, contracts.

25 Q: Okay.

1 THE COURT: Mr. Grate, you got ten more minutes.

2 MR. GRATE: Okay.

3 BY MR. GRATE:

4 Q: Regarding the funds you were seeking, the fifty percent
5 funds you were seeking to help you complete the project. Did
6 you receive the funds?

7 A: I just found -- no, we have not received -- at the time I
8 was there, we did not receive it. I don't know whether they
9 received it as of now; I don't know.

10 Q: During the time you were there, when you didn't receive
11 it, do you know why you didn't receive it?

12 A: Well, we didn't get no reason on why we didn't receive
13 it.

14 Q: You mean, you applied at a bank?

15 A: I didn't apply for anything; the staff does all that.

16 Q: Somebody applied at the Bank of America, right?

17 A: Yes.

18 Q: Okay, is it -- do you think that a bank could refuse you
19 a loan and not tell you why?

20 A: I've seen it happen before.

21 MR. GRATE: I'm finished, Your Honor; thank you, sir.

22 THE COURT: Thank you.

23 Mr. Wilson?

24 MR. WILSON: I just have a couple of questions.

25 THE COURT: We'll give you ten minutes as well.

1 MR. WILSON: I won't need but two or three actually.

2 REDIRECT EXAMINATION OF ZACHARIUS GRATE, JR. BY MR. WILSON:

3 Q: Mr. Grate, let me ask you, Mr. Joseph Grate asked you
4 about Earthworks contract and that you had a contract with
5 them and you did have a contract with them, did you not?

6 A: Right.

7 Q: That is EOC did. And that contract also had a percentage
8 clause in it, did it not?

9 A: It did.

10 Q: And did you meet with Earthworks to rectify that?

11 A: Yes, we did.

12 Q: And was it rectified?

13 A: Yes, they did.

14 Q: And are they still on the project?

15 A: Yes, sir.

16 MR. WILSON: No other questions.

17 THE COURT: Thank you. Mr. Grate? Five minutes.

18 REXCROSS EXAMINATION OF ZACHARIUS GRATE, JR. BY MR. GRATE:

19 Q: What is Earthworks doing on the project right now?

20 A: They're the architects of the project.

21 Q: What are they doing, though?

22 A: I don't know. I'm not there. I don't know what they're
23 doing. I know they are the architects for the project, so
24 until the project is complete, they got to be there.

25 Q: Well, what stage is the project right now?

1 A: I know the foundation is there and ---
2 Q: And? Are they working on it?
3 A: No, it's not being worked on at this time.
4 Q: How long have they -- have they not been working on it?
5 A: I don't know.
6 Q: When did the project start?
7 A: When did it start?
8 Q: Yes.
9 A: I don't know the date, the exact date.
10 Q: What month?
11 A: I don't know the exact date.
12 Q: No, I don't want the date, do you know when ---
13 A: Don't know the month.
14 Q: Was it December?
15 A: I don't know. I don't know the date that it started.
16 Q: You have an approximate length of time from the start
17 till now, how many months?
18 A: No, I don't. I don't know.
19 MR. GRATE: All right. Thank you, Your Honor.
20 THE COURT: All right. You may step down, Mr. Grate.
21 Thank you.
22 A: Thank you.
23 (REPORTER'S NOTE: Witness leaves the witness stand.)
24 MR. WILSON: Your Honor, my next witness is Mr. Joseph
25 Grate.

1 THE COURT: All right.

2 CLERK: Please raise your right hand and place your left
3 hand on the Bible.

4 JOSEPH N. GRATE, HAVING BEEN SWORN,
5 TESTIFIED AS FOLLOWS:

6 CLERK: Have a seat. State your name for the Court,
7 please, sir.

8 MR. GRATE: Joseph N. Grate.

9 DIRECT EXAMINATION OF JOSEPH N. GRATE BY MR. WILSON:

10 Q: Mr. Grate, we talked a little bit when you were on direct
11 about the meetings that you had with me; is that correct?

12 A: Yes.

13 Q: And you said that it was December before you knew about
14 this whole thing and about -- December before you knew that
15 there was a problem with your contract or that we discussed
16 it; isn't that what you said?

17 A: What is the question, please, sir?

18 Q: Well, I'm asking -- that's my question. Did you -- was
19 your testimony that it was December of 2010 before you knew
20 that there was a problem with your contract regarding the
21 percentage or cost-plus?

22 A: What I testified to is that I received a copy of that
23 particular CFR from you on December 6th, 2010.

24 Q: My question to you now then is, when were you first aware
25 -- when were you first told by myself or by EOC that there was

1 an issue with the price in the contract because it was a cost-
2 plus and it violated the law?

3 A: I was first -- it was first mentioned to me in -- you can
4 -- if you don't mind refresh my memory about whatever date you
5 have there.

6 Q: Well, let me help you, let me show you. Take a look at
7 these emails.

8 A: Thank you, sir.

9 Q: And you'll see that a number of them are from you to me.

10 A: Okay.

11 Q: Just take your time and look over them for a minute so
12 that you can familiarize yourself with them before we go
13 further.

14 A: Okay. There's only two emails -- oh, let's see. Okay.

15 Q: All right. Now, let's take them one by one. If you'll
16 hand them back to then, I will go with you one by one so we
17 can talk about them and then we can have them marked as
18 exhibits for the record.

19 Now, let me show you this particular document which it's
20 from Mr. Joseph Grate to Ralph Wilson which is sent Thursday,
21 December 2nd, 2010. Take a look at that. Tell me whether or
22 not that is an email that you sent to me?

23 A: It is.

24 Q: Okay. And may I have it back, please, sir? And the
25 email says, Mr. Wilson, I am available to meet with you on

1 December the 6th, 2010 at 11 A.M., does it not?

2 A: Okay, okay.

3 Q: Okay. And if you would, read to the jury what the
4 subject says, where it says subject.

5 A: Subject: Reference follow-up meeting of 10/11/2010
6 regarding Exhibit B ---

7 Q: Go ahead.

8 A: --- specifically the fee indication.

9 Q: All right. So, that -- your response to me was in
10 response to something that occurred at a meeting that we had
11 back in -- on October of 2010 to discuss Section B of your
12 contract.

13 A: Correct.

14 Q: Is that correct? Okay. So, as early as October of 2010,
15 there's no question we were discussing it at that point, were
16 we not?

17 A: Yes.

18 Q: All right. And now, let me show you another email which
19 is from Ralph Wilson to Joseph Grate, sent Thursday, December
20 2nd, 2010, to you. Take a look at that.

21 A: Okay.

22 Q: Do you remember that email?

23 A: I -- let me see. Yes, sir.

24 Q: Okay. All right. And is that an email from me to you?

25 A: Yes, sir.

1 Q: All right. And is there a response on there from me to
2 you or from you to me?

3 A: I -- is it -- I would like to -- yes there's a response.

4 Q: Okay. All right. I want you to read the first part of
5 it for us and then we're gonna get to the response.

6 A: Okay.

7 Q: I want you to just read to the jury what the email says.
8 Read -- start with the date and the time.

9 A: Okay. Sent Thursday, December 2nd, 2010, 9:58 and 59
10 seconds.

11 Q: Sent by whom?

12 A: From Ralph Wilson to Joseph.

13 Q: To you?

14 A: Right.

15 Q: And is that your correct email address at the top?

16 A: It is.

17 Q: Okay. Go ahead.

18 A: Subject: Reference follow-up from meeting of 10/11/2010
19 regarding Exhibit B specifically the fee indication.

20 Q: Okay.

21 A: Mr. Grate, I have discussed your email of October 19th
22 with the WEOC board. The board has authorized me to meet with
23 you to discuss a possible resolution of this impasse. I would
24 like to meet with you next week, Monday, between 11:00 A.M.
25 and 12 -- 11:00 A.M. and 12:00 or 2:30 P.M. to 4:30 P.M. I

1 will be out of the office Tuesday but Wednesday afternoon 2:00
2 P.M. to 4:30 P.M. is also available. If these times are not
3 suitable, give me some alternate times. Please let me hear
4 from you soon. Ralph J. Wilson.

5 Q: Okay. Go ahead.

6 A: Okay. The response says, From Joseph, that's me.

7 Q: All right. Now, what's the date of that response that
8 you're referring to?

9 A: Oh, no, this is incorrect because it says Tuesday,
10 October 19th. So, that wouldn't be a response to December
11 2nd.

12 Q: That was an email that you'd sent me back on October
13 19th; is that correct? It says from Joseph Grate, does it
14 not, to Ralph Wilson?

15 A: Yes, but I'm saying earlier you asked me if there was a
16 response to this email on this sheet. I just saw an email
17 here at the bottom, I didn't look at the date.

18 Q: Okay.

19 A: The email that I just read is from December 2nd, 2010.

20 Q: Okay.

21 A: What is at the bottom of the sheet is October 19th, 2010.

22 Q: All right.

23 A: Therefore, as opposed to my email being a response to
24 your email, your email is a response to my email.

25 Q: Okay. Be that as it may, October -- read the October 19

1 ---

2 A: Okay.

3 Q: There was an email from you to me on October 19th; is
4 that not correct?

5 A: Yes.

6 Q: All right. Read -- just like you did the last one, read
7 the top and read who it was sent from and to and just read the
8 email.

9 A: Okay. From Joseph, that's me, to Wilhelmina Whitfield.

10 Q: Who is the executive director for -- interim executive
11 director for EOC at the time?

12 A: And CC Zacharius Grate and R. Wilson.

13 Q: Okay. Read the email.

14 A: Tuesday, October 19th, 2010, 12:15 A.M. And the subject
15 is follow up from meeting of 10/11/2010 regarding Exhibit B,
16 specifically the fee indication. Attention W -- Attention
17 Waccamaw EOC Incorporated. I have considered the situation
18 and I've decided to hold fast to the fee as indicated pending
19 your submission of documentation of the mentioned regulation.
20 Meanwhile, I remain firm in my conviction of the
21 inappropriateness of the wording of that exhibit as I have
22 stated in a previous submission. The subject exhibit is your
23 creation and I -- there's some more to it, another page. It's
24 not finished.

25 Q: That's all you have there? Okay. But that was the

1 response that you sent back to me?

2 A: No, sir. It's not response. This is page two of three.

3 Q: Okay. Well, read the rest of it.

4 A: There's no more. That's the only one that -- you have it
5 there some place.

6 Q: All right. So, now, let me ask you this. In regards to
7 that email, so in October ---

8 A: Yes.

9 Q: So there's no question in October 19th you sent me a
10 response, right, to a meeting that we had earlier even before
11 that?

12 A: Yes.

13 Q: Is that correct?

14 A: Yes.

15 Q: And at that point, you knew about this issue with this
16 clause in the contract, you knew it was improper and you were
17 demanding that we give you a copy of the statute to show it to
18 you, right?

19 A: Not right.

20 Q: Okay. Well, what was your reason? You said I'm gonna
21 hold fast until you give me documentation. What does that
22 mean?

23 A: That means that you were saying that there was a problem.
24 I asked you if you were gonna give me some citation at least
25 or something to let me see what it is, you said no, you were

1 not gonna give me any citation or anything. So, I didn't have
2 anything. That's why I said I would hold fast to the
3 situation pending your submission of the documentation of the
4 mentioned regulation.

5 Q: All right. Then you said we had a meeting December 6th;
6 is that correct?

7 A: You mean with reference to this?

8 Q: Yes, to this issue, that's all we're talking about.

9 A: Oh, the issue, yes.

10 Q: The issue of your compensation ---

11 A: The issue ---

12 Q: --- this paragraph.

13 A: De ---

14 Q: Go ahead.

15 A: December 6th is when you gave me a copy of the
16 regulation.

17 Q: All right. And after you received a copy of the
18 regulation, now, you said in the November that you were
19 waiting on verification, you wanted some documentation of the
20 statute. You got it, you said in December, correct?

21 A: Correct.

22 Q: But you still filed this lawsuit? Right?

23 A: That doesn't include everything. There was some
24 transaction between the 6th and the 20th or there should have
25 been which led to me filing the lawsuit.

1 Q: Well, what happened between the 6th and 20th? I met with
2 you on the 6th, you said, you got the verification that you
3 were asking for and then after that, you filed a lawsuit. So,
4 what is the -- what is the -- what happened in between that
5 time?

6 A: Okay. In between that time, what was supposed to happen
7 ---

8 Q: I'm not asking what was supposed to happen; I'm asking
9 you what happened. You said something happened in between
10 that time.

11 A: Yes, sir.

12 Q: My question is what happened in between that time from
13 when you sent me that email saying that once you got the
14 verification that you might change your mind until you got the
15 verification on December 6th?

16 A: Okay. I understand, sir; thank you. On the 6th of
17 December, I got the verification and because you, sir, did not
18 follow up with what you say you was gonna do, which was the
19 presentation to the board and get back with me, you left me
20 hanging with nothing. I heard nothing from you so I filed the
21 lawsuit.

22 Q: Sir, if you look at your -- the October, in October, pull
23 your email back and look at the October 19th email which
24 specifically tells you that we went to the board to discuss
25 the issue and the board authorized me to meet with you to

1 discuss it with you. Do you have that email there?

2 A: October 19th?

3 Q: Yes.

4 A: I have part of it. You wouldn't give me the second part
5 that's in your hand.

6 Q: Second part of what?

7 A: Page three of this to complete the email.

8 Q: What I'm asking you and I just want you to answer my
9 questions, what I'm asking you is, did you submit to me a
10 proposal that you wanted to have the board consider. I got
11 back to you on October 19th and told you that the board
12 considered that proposal and authorized me to meet with you to
13 discuss it.

14 A: I don't understand what you're -- I'll try to see what --
15 I don't understand what you're talking about.

16 Q: Let me have the email and I'll show it to you.

17 A: Okay.

18 Q: Let's look at the -- right at the top of the page. From
19 Ralph Wilson to Joseph Grate sent December 2nd, 2010, 9:58
20 A.M., subject, follow-up from meeting of October 11th
21 regarding Exhibit B specifically the fee indication. Mr.
22 Grate, I have discussed your email of October of 19th with the
23 EOC board. The board has authorized me to meet with you to
24 discuss a possible resolution of this impasse. I would like
25 to meet with you next week, Monday between 11:00 A.M. and

1 12:00 or 2:30 P.M. till 4:30 P.M. I will be out of the office
2 Tuesday but Wednesday afternoon 2:00 P.M. till 4:30 P.M. is
3 also available. If these times are not suitable, give me some
4 alternate times. Please let me hear from you soon. Ralph
5 Wilson.

6 No question about the fact that I sent you this email and
7 that you knew that we were trying to resolve this issue. No
8 question about that, is there?

9 A: The question is what happens after that. Did I meet with
10 you?

11 MR. WILSON: Your Honor, I'd ask that these documents be
12 marked as exhibits, the two documents that I just -- the
13 emails that he has identified.

14 MR. GRATE: I'd like to object, Your Honor.

15 THE COURT: On what grounds?

16 MR. GRATE: On ground that they're not complete.

17 THE COURT: All right, Mr. Wilson, why don't you go ahead
18 and ---

19 MR. WILSON: But he can offer any addition to them that
20 he wants. This is all that I need and for my purposes I just
21 wanted to bring out the fact that we were having these
22 meetings.

23 THE COURT: All right. Overrule the objection; I will
24 allow it.

25 MR. WILSON: Thank you, Your Honor.

1 THE COURT: That'll be, what, Defendant's Nine.

2 DEFENDANT'S EXHIBIT NUMBER NINE

3 ADMITTED INTO EVIDENCE

4 BY MR. WILSON:

5 Q: Now, Mr. Grate, let me ask you as far back -- and let me
6 show you this. Take a look at that document.

7 A: Okay.

8 Q: And I'll give you second.

9 A: Okay.

10 Q: Take a look at both of those documents and tell me if you
11 recognize either or both of them.

12 A: I recognize both of them.

13 Q: Okay. And who drafted those documents?

14 A: I did.

15 Q: All right. And your signature is at the bottom of both
16 of those documents? Is that correct?

17 A: That's correct.

18 Q: And what is the date on the bottom of those documents?

19 A: On the bottom of each of these is December 6.

20 Q: December 6 of what year?

21 A: Of 2010.

22 Q: 2010.

23 MR. WILSON: Your Honor, I would now offer these two
24 particular documents.

25 THE COURT: Any objections?

1 MR. GRATE: No, Your Honor.

2 THE COURT: Defendant's Number Ten in evidence without
3 objection.

4 DEFENDANT'S EXHIBIT NUMBER TEN

5 ADMITTED INTO EVIDENCE

6 BY MR. WILSON:

7 Q: Now, Mr. Grate, in -- on what's now been marked as
8 Defendant's Exhibit Number Ten, on December 6th, you sent a
9 invoice to Waccamaw EOC for a meeting that you say you had
10 with me, correct?

11 A: Let me look at it. That's correct.

12 Q: All right. And the purpose of that meeting was to do
13 what? And it's written on your form.

14 A: Regarding the project manager contract.

15 Q: Regarding the project manager contract.

16 A: Et cetera.

17 Q: Et cetera.

18 A: Right.

19 Q: Okay. Now, I want to go back to this which is the second
20 page of this Exhibit Ten which says invoice at the top and
21 it's also dated December 6th. And it has on there two meeting
22 dates where you met with met with me, correct?

23 A: Correct.

24 Q: And what are the two meeting dates that you billed EOC
25 for having met with me?

- 1 A: 10/11/2010 and 12/6/2010.
- 2 Q: Okay. So, October 12th -- is that right? October 12th?
- 3 A: Yeah, October 11th.
- 4 Q: October the 11th of 2010 you met with me and you billed
- 5 them for having that -- for meeting with me and then again on
- 6 December 6th.
- 7 A: Right.
- 8 Q: Okay. So, there was communication going on between us
- 9 the entire time; was there not?
- 10 A: On the -- on those two dates, there was communication.
- 11 Q: All right. And on October 19th, when you, when you had
- 12 me submit to the board a proposal, correct?
- 13 A: What's the question?
- 14 Q: Well, I'm asking you, on October 19th you submitted to
- 15 me, you gave to me a proposal that you wanted the board to
- 16 consider, which was considered by the board.
- 17 A: I don't understand that. I don't know what you mean.
- 18 Q: In your email -- in your email -- in this email here from
- 19 Ralph Wilson to Joseph Grate, which is now marked as
- 20 Defendant's Exhibit Number Nine, just read the con -- read the
- 21 content of that exhibit.
- 22 A: Okay. From Ralph Wilson to Joseph, that's me, December
- 23 2nd, 2010. Reference, follow up from meeting, 10/11/2010
- 24 regarding Exhibit B, specifically the fee indication. Mr.
- 25 Grate, I have discussed your email of October 19th with the

1 WEOC board. The board has authorized me to meet with you to
2 discuss a possible resolution to this impasse. I would like
3 to meet with you next week Monday between 11:00 A.M. and 12:00
4 or 2:30 P.M. and 4:30 P.M. I will be out of the office
5 Tuesday but Wednesday afternoon 2:00 P.M. till 4:30 P.M. is
6 also available. If these times are not suitable, give me
7 some alternate times. Please let me hear from you soon.

8 Q: Okay. Now, did -- now, and that original meeting you had
9 with me you said was October the 11th; is that correct?

10 A: I didn't say that.

11 Q: Well, I'm asking you, based on your emails is that when
12 you met with me or based on your voucher?

13 A: I wouldn't say that's the original meeting, no. I met
14 with you on that date but I wouldn't say that's the original
15 meeting.

16 Q: Take a look at what you've got marked as Exhibit Number
17 Ten.

18 A: I see it.

19 Q: Turn to the second page.

20 A: I got it.

21 Q: Is that your handwriting?

22 A: It is.

23 Q: Did you submit that to EOC as a bill?

24 A: I did.

25 Q: All right. And it shows you met with me on October the

1 11th?

2 A: It does.

3 Q: Okay. And here is another bill which is dated October --
4 which is October 12th showing that you met with me at my
5 office. Let me show you that. Is that your handwriting?

6 A: Yes.

7 Q: And what does it say? Does it show that you met with me
8 on October the 12th, the very next day?

9 A: Yes.

10 Q: All right. And what were we meeting about according to
11 that document?

12 A: Regarding contract.

13 Q: All right. So, we met on the 11th, we met again on the
14 12th, correct?

15 A: Correct.

16 Q: All right. Now, Mr. Grate, just let me ask you, you've
17 been involved in a number of lawsuits before, have you not?

18 MR. GRATE: I object, Your Honor.

19 THE COURT: On what grounds?

20 MR. GRATE: I don't see it as relevant to this case.

21 THE COURT: You want to respond to that, Mr. Wilson?

22 MR. WILSON: Yes, sir. It's very relevant. It shows his
23 motive for having us be here and be involved in this
24 litigation.

25 THE COURT: I'm gonna sustain the objection. We can go

1 somewhere else.

2 BY MR. WILSON:

3 Q: Let me ask you this, EOC met with you on -- or at least
4 you with me on multiple occasions to try to resolve this and
5 it was your decision not to resolve it; isn't that a fair
6 statement?

7 A: That's not a fair statement.

8 Q: That's not a fair statement?

9 A: It's not a fair statement.

10 Q: Did EOC not offer to have you just substitute the dollar
11 amount for the nine percent; isn't that what they offered you?

12 A: Yes.

13 Q: All right. And you refused that?

14 A: Yes.

15 Q: And the reason you refused that is because if you have a
16 percentage then you can get the price up as much as you want,
17 right?

18 A: Wrong.

19 Q: Wrong? Why is that wrong?

20 A: Because it's not correct.

21 Q: Okay. Well, I'm saying you would do it; I'm saying you
22 could. If you wanted to get the price up higher, that nine
23 percent could go from nine percent of a million to nine
24 percent of a million and a half or nine percent of two
25 million, could it not?

1 A: My name is Joseph Grate, I don't -- that's not my
2 constitution; I'm not like that.

3 Q: You wouldn't do that?

4 A: I wouldn't do that.

5 Q: All right. I don't have any other questions, Mr. Grate.

6 THE COURT: Thank you. Would you like to briefly reply
7 to the jury?

8 MR. GRATE: Yes, I would.

9 REPLY TESTIMONY BY JOSEPH N. GRATE:

10 MR. GRATE: There's one exhibit, Nine, I think the date
11 is October 19th, it's a email; it's page two of three. What
12 he had me to read was page two. There's some additional
13 information on page three they didn't want to allow me to read
14 that he didn't want to introduce. So, what he submitted is
15 not the whole truth.

16 Also, if I could get to my stuff, I can probably find
17 that second page.

18 THE COURT: All right. Go ahead, sir.

19 MR. GRATE: Thank you.

20 Okay. The email in question is October -- Tuesday,
21 October 19th 2010. It's from me, Joseph, to Wilhelmina
22 Whitfield, Zacharius Grate and R. Wilson and it's -- the
23 subject is follow-up to meeting of 10/11/2010 regarding
24 Exhibit B specifically the fee indication. Attention Waccamaw
25 EOC, Incorporated: I have considered the situation and have

1 decided to hold fast to the fee as indicated pending your
2 submission of documentation of the mentioned regulation.
3 Meanwhile, I remain firm in my conviction of the
4 inappropriateness of the wording of that exhibit. As I -- as
5 I have stated in a previous submission, the subject exhibit is
6 your creation and I called your attention to this malady
7 several months ago but there was no response from you. I can
8 assist you in making the needed adjustment, however, that very
9 exhibit mandate that any such assistance would be categorized
10 as additional services. Also, you have not responded to a
11 previously submitted invoice for additional services submitted
12 around seventy-five days ago on October 11th, 2010. It was
13 stated that the board refused to pay the invoice but the
14 reason was -- but the reason for said refusal was not
15 indicated. I will await your response regarding the exhibit.
16 The subject thereof as I have been doing for the past five
17 months. Any response addressing the previously submitted
18 invoice would be welcome also. Signed -- I mean, typed in
19 Joseph N. Grate.

20 THE COURT: All right.

21 MR. GRATE: Okay. So, in response to -- let me read this
22 email. From Ralph Wilson to Joseph, December 2nd, 2010 and
23 the subject is follow up from meeting of 10/11/2010 regarding
24 Exhibit B, specifically the fee indication. Mr. Grate, I have
25 discussed your email of October 19th with the WEOC board. The

1 board had authorized me to meet with you to discuss a possible
2 resolution to this impasse. I would like to meet with you
3 next week Monday between 11:00 A.M. and 12:00 or 2:30 P.M. and
4 4:30 P.M. I will be out of the office Tuesday but Wednesday
5 afternoon 2:30 P.M. till 4:40 P.M. is also available. If
6 these times are not suitable, give me some alternate times.
7 Please let me hear from you soon. That's signed -- like I
8 said, email from Mr. Wilson to myself December 2nd, 2010.

9 Okay. My response to that was from Joseph to Ralph
10 Wilson, sent Thursday, December 2nd, 2010 at 11:30 A.M.
11 reference follow-up from meeting from 10/11/2010 regarding
12 Exhibit B, specifically the fee indication. Mr. Wilson, I am
13 available to meet with you Monday, December 6th at 11:00 A.M.,
14 Joseph.

15 Okay, response to that email from, okay, response to that
16 email from Mr. Wilson. From Ralph Wilson to Joseph, Thursday,
17 December 2nd, 2010 at 4:41 P.M. Follow up to meeting of
18 10/11/2010 regarding Exhibit B, specifically the fee
19 indication. Mr. Grate, thank you for your speedy reply. It
20 is confirmed. We will meet at my office at 11:00 A.M. Monday,
21 December 6th to resolve the contract issues.

22 Response from Joseph to Ralph Wilson, Thursday, December
23 2nd, 2010, at 5:06 P.M., reference follow up from meeting of
24 10/11/2010 regarding Exhibit B, specifically the fee
25 indication. Mr. Wilson, see you then, Joseph.

1 Okay. And, Your Honor, I would like to enter all of this
2 into exhibit.

3 MR. WILSON: I have no objections, Your Honor.

4 THE COURT: All right.

5 MR. WILSON: In fact, they're already in.

6 THE COURT: We'll mark them as Plaintiff's Number Two
7 into evidence without objection.

8 PLAINTIFF'S EXHIBIT NUMBER TWO

9 ADMITTED INTO EVIDENCE.

10 THE COURT: Anything further, Mr. Grate?

11 MR. GRATE: Let me see. Nothing I can think of right
12 now, Your Honor.

13 THE COURT: All right. You may have a seat.

14 MR. GRATE: Nothing I can think of right now, Your Honor.

15 THE COURT: All right. You may have a seat.

16 MR. GRATE: Thank you, sir.

17 MR. WILSON: I need to ask him one question.

18 THE COURT: Follow up, real quick.

19 MR. WILSON: Just one thing.

20 REDIRECT EXAMINATION OF JOSEPH N. GRATE BY MR. WILSON:

21 Q: Mr. Grate, take a look at that for me and tell me if you
22 recall receiving that document?

23 A: I do.

24 Q: Okay. And did you actually receive this?

25 A: Oh, yes.

1 MR. WILSON: And Your Honor, I'd just ask that this be
2 marked as an exhibit and I'll be through.

3 THE COURT: Are you offering it into evidence?

4 MR. WILSON: Yes, sir, I am.

5 THE COURT: All right. Any objections, Mr. Grate?

6 MR. GRATE: No, sir.

7 THE COURT: Is that Defendant's Eleven?

8 MR. WILSON: Yes, sir.

9 THE COURT: --- into evidence without objection.

10 DEFENDANT'S EXHIBIT NUMBER ELEVEN

11 ADMITTED INTO EVIDENCE

12 BY MR. WILSON:

13 Q: And Mr. Grate, just let me ask you, in regards to this
14 document, that's a letter from me to you and tell the jury
15 what the date of that letter is.

16 A: The date of February 7th, 2011.

17 Q: Okay. And what is the content of that letter?

18 A: You want me to read it.

19 Q: Yes, sir, please.

20 A: Okay. Served by Certified and First Class Mail to Mr.
21 Joseph N. Grate and references -- notice of termination of
22 contract. Dear Mr. Grate, Please be advised, Waccamaw EOC --
23 Waccamaw Economic Opportunity Council, Incorporated elected to
24 terminate the contract signed with your company on April 30th,
25 2010 pursuant to Paragraph Five of the contract, the thirty-

1 day notice period takes effect immediately. If you should
2 have any questions or concerns, please respond to my office in
3 writing. With kindest regards, I am, Ralph J. Wilson. And
4 copied to Mr. Zacharius Grate, Board Chairman, WEOC -- and one
5 to WEOC, Incorporated.

6 Q: Okay. All right. And the date of this letter was dated
7 February 7th of 2011; is that correct?

8 A: That's correct.

9 Q: And you filed your lawsuit in December of 2010?

10 A: That's correct.

11 Q: All right. No other questions.

12 THE COURT: All right. You may have seat. Thank you.

13 (REPORTER'S NOTE: Witness leaves the witness stand.)

14 THE COURT: Do you have any other witnesses?

15 MR. WILSON: I have no other witnesses, Your Honor.

16 THE COURT: All right.

17 MR. WILSON: We would rest.

18 THE COURT: Thank you very much.

19 Members of the jury, we're gonna take up some matters of
20 law. If you would take a twenty-minute break, the Bailiff
21 will take care of you. Do not discuss the case and we'll come
22 back and finish.

23 (REPORTER'S NOTE: The jury retires to the jury room.)

24 THE COURT: Let me know when that door is closed.

25 MR. GRATE: It's closed.

1 THE COURT: All right. Any motions, Mr. Grate?

2 MR. GRATE: No, sir.

3 THE COURT: All right. Mr. Wilson, anything from you,
4 sir?

5 MR. WILSON: Yes, sir. Your Honor, I mean, I would
6 obviously renew my motion that I made at the end of the
7 Plaintiff's case for a directed verdict. I just think that
8 one, there is absolutely no proof, any, of any damages.

9 Secondly, I don't think there's any evidence of any
10 breach on the part of EOC that's been submitted to the jury
11 for which a reasonable jury could determine that in fact EOC
12 breached its duty under this contract. And so for those
13 reasons, I would ask the Court to grant a directed verdict.

14 THE COURT: I'm going to deny your motions and we're
15 gonna give it to the jury.

16 For the sake of jury charges, I'm gonna give a brief
17 introduction, charge duties of judge and jury, preponderance
18 of the evidence, corporation as a person, brief definition of
19 a contract, written contract, breach of contract, intention of
20 parties, reasonableness of construction, construction against
21 drafting party, ambiguity, existing law as part of every
22 contract, good faith and fair dealings, South Carolina Code
23 Section 11-35-40(3) and (4), 34 CFR Section 74.44(c) and in
24 the alternative 48 CFR Section 16.306(a) and 16.301-2(a),
25 counterclaims, damages, actual damages and close.

1 Any objections from the Plaintiff?

2 MR. GRATE: No, sir.

3 THE COURT: Mr. Wilson?

4 MR. WILSON: None.

5 THE COURT: All right. I'm gonna hand the two of you the
6 verdict form, if you would like to take a look at it and make
7 sure it's in order.

8 Everything in order?

9 MR. WILSON: Yes, sir.

10 THE COURT: All right. Thank you.

11 All right, Mr. Grate, on your closing argument, you will
12 go first, I'm gonna give you forty-five minutes maximum. The
13 Defense will also have forty-five minutes and then you will
14 have a maximum of ten minutes to reply only.

15 MR. GRATE: All right, sir.

16 THE COURT: All right. Let's take a fifteen-minute break
17 and then we'll come back and wrap it up.

18 (RECESS)

19 *****OFF THE RECORD*****

20 (On the Record.)

21 THE COURT: Let's go ahead and bring in the jury.

22 (REPORTER'S NOTE: The jury returns to the courtroom.)

23 THE COURT: All right. Members of the jury, at this
24 time, we're going to proceed with the closing arguments. The
25 Plaintiff will go first. He'll be limited to forty-five

1 minutes. The Defendant will go next and he'll be limited to
2 forty-five minutes and then the Plaintiff will end and he'll
3 be limited to ten minutes. After that, I'll charge you on the
4 law and then we'll turn it over to you to decide and finish
5 this case.

6 All right. Plaintiff, you're recognized for your closing
7 statement. You have until 12:35.

8 MR. GRATE: Your Honor ---

9 THE COURT: Yes, sir.

10 MR. GRATE: Is it okay if I do it from here.

11 THE COURT: Yes, sir.

12 MR. GRATE: Okay. Thank you, sir.

13 CLOSING STATEMENT BY MR. GRATE:

14 MR. GRATE: Members of the jury, thank you very much --
15 We're here because I was ---

16 BAILIFF: Pull that microphone closer to you.

17 MR. GRATE: We're here today because I was hired, I was
18 contracted by Waccamaw EOC for the purpose of helping them
19 with a facility. The purpose was to help them with everything
20 from pre-construction through construction. I indicated to
21 them that, you know, I would do everything correct, keep them
22 out of trouble. They indicated to me that that's what they
23 wanted. So, we moved forward. At the time they had an in-
24 house attorney working for them and they had an additional
25 attorney who handled the contract for myself. At that time

1 Ralph Wilson was not working with them. I was hired with the
2 approval of the board.

3 Waccamaw EOC had received a grant from the government to
4 construct the facility. The grant was for approximately
5 \$500,000. The stipulation was that they had to get the
6 remainder of the money from some other source. They had
7 indicated to the government an approximate figure of
8 \$1,000,000 for the project. Waccamaw EOC was involved with
9 trying to secure approximately \$500,000 to add to the
10 government's grant to construct the project.

11 At some point, Waccamaw EOC contracted with a contractor
12 who put himself across as being an architect in addition to a
13 contractor. Waccamaw EOC decided to use that firm to
14 construct their building. The firm was to do the design of
15 the building as well as construction of the building. The
16 process is called design-build. Waccamaw EOC, an interim
17 person, that person specifically Ms. Janice Wideman, submitted
18 a document to the Waccamaw EOC people indicating that it was
19 against the law, South Carolina procurement code to award a
20 design-build contract. This happened prior to April of 2010.
21 Actually, this happened in October of 2009. I -- so, at some
22 point, Waccamaw EOC become aware of the fact that it was
23 illegal for them to proceed without having a project manager
24 on board. The project manager was supposed to be in place
25 first.

1 At that point, they -- I was contacted November 7th, I
2 was contacted about the project, about becoming the project
3 manager. I interviewed with them the 17th of November, 2009.
4 I was told that they wanted me on board the first of December,
5 2009. I didn't hear anything from them again until about the
6 23rd of December, 2009. From then I didn't hear anything, I
7 just waited and then the -- eventually, I heard something
8 February. They advertised the project because even the
9 approach that they were using to hire a project manager was
10 incorrect. They -- at first approached me directly but the
11 project needed public input. You need to advertise to the
12 public. So, I applied, other people applied too. I
13 interviewed and in my application process, I indicated that if
14 you were to hire me, I would first give you a report. Analyze
15 and give you a report that would analyze your whole situation
16 to let you know where you are. Help you to determine where
17 you want to go and how to get there. That's the basis upon
18 which I was hired.

19 I received notification of hire on the 24th of February,
20 2010, on the 25th of February, 2010, I submitted my report
21 some forty-four pages, I think it was. When I submitted that
22 report, it was told to me you need to go -- they were at --
23 the board was at a retreat in Charleston. I asked them to get
24 it to the board. They submitted -- they sent it to the board
25 but they said it would be better for you to go and present it

1 in person. I indicated that shouldn't be necessary because my
2 report is very detailed. Anyhow, a call was made to the board
3 people there. They said they wanted me to come. I went
4 there, I made my presentation. At that point, they determined
5 well, if this -- when I made my presentation, I showed them a
6 lot of what was incorrect already.

7 Specifically, the firm they hired to do -- they was gonna
8 do design-build construction. That firm, number one, was not
9 qualified as a architectural firm. Number two, it was not
10 qualified as a general contractor firm. I indicated all that
11 in detail. I had copies of the license and everything. So,
12 they said, well, we need to bring this person in to get some
13 explanation.

14 Within a week, we brought the firm into the Waccamaw EOC
15 office. I was there. They had me to conduct a meeting; I
16 went through everything. They confirm, no, the person who had
17 been putting himself off as being an architect was not an
18 architect. The person who was putting himself across as being
19 a contractor capable under state law to construct the building
20 was not capable under state law to construct the building.
21 The building was supposed to -- was estimated a \$1,000,000 and
22 his license was good for \$750,000. State law says anybody
23 put themself out as being a general contractor for unlimited
24 building when their license is not up to that level or anybody
25 puts themselves across as being an architect when they don't

1 have an architectural license was violating the law. I
2 indicated all of that in my forty-some page report. But I
3 could see that they still wanted to go with this firm, they
4 had already notified them that they would go with them. In
5 the course of time, I gave all the information I could give,
6 gave them my recommendation but they still -- I think one
7 person in particular wanted to go with that firm. And so they
8 went along with that firm.

9 It was indicated in a session here that I was mad because
10 I didn't get the project. That's not the case. When I came
11 on board, I indicated that I had multiple state licenses
12 particularly Georgia state license for architecture, South
13 Carolina, North Carolina, Minnesota. Also, national
14 certifications to -- certified to practice architecture in the
15 fifty states, United States, as well as all of Canada and all
16 of U.S. territories. It's ridiculous to think that I was mad
17 because I didn't get the project.

18 Okay. My concern was to provide my services, which I
19 think are very, very good to that community because I think
20 they needed it. I think I was the best person under the
21 circumstances to be able to provide the services that was
22 needed.

23 Okay, so now, after I was hired, kept generating all this
24 paper -- generating all this paperwork, meeting with the firm
25 that they wanted to do the project concerning the contract and

1 other things. As far as the contract, I had the firm to come
2 in at -- first, I met with the board -- I mean, the staff and
3 showed them everything that was incorrect with the contract,
4 the contract for architectural services. I don't care who was
5 gonna do it but certain things needed to be changed. I did
6 that line by line, the complete contract. Worked with that
7 agency, they wanted that firm that I said wasn't qualified but
8 I worked with them with that firm and helped them to get the
9 contract situated. And then when it was done -- it took some
10 time, a lot of work. Ms. Whitfield worked with me on that.
11 We had to do the program. They didn't have a program to start
12 off with but yet they were saying they had designed the
13 building which was ridiculous. But anyhow, we got that done,
14 it took quite a bit of time, we got that done. Then, of
15 course the person from that firm signed the contract and it
16 was just waiting for the contract to be executed for Mr.
17 Zacharius Grate to sign it and it would've been a contract and
18 we could've proceeded with the architectural services. My
19 services would've kicked in interfacing with them to make sure
20 they did what they were supposed to do, according to all the
21 rules, all the laws and which would've been determined by them
22 submitting documentation to WEOC to myself. I would review
23 them, send them back to them for them to make corrections,
24 back and forth, throughout the process. That is a five-step
25 process.

1 Then on the sixth step, which is seven step, step seven
2 of the, of the architectural firm contract, as well as of the
3 Head Start procedure, then I would -- then the construction
4 should've started. At that point, my job was gonna be to be
5 in the field or go to the field and interface between the
6 contractor, the architect and WEOC. None of that happened. I
7 did the program and none of that happened but I didn't just
8 sit there and wait for anything to happen. I kept
9 corresponding with WEOC, email, go by the office, whatever,
10 but I never got any response.

11 Meantime, WEOC got into some more problems and in the
12 meantime the attorney who was on board and connected with my
13 contract disappeared. I don't know what happened with him and
14 WEOC. The attorney that was on the board of -- I won't say
15 the board -- employed by WEOC like in-house, left. And WEOC
16 battled with government, the State for a long time. And then
17 eventually, eventually, something happened wherein Mr. Ralph
18 Wilson came on board to try to help them to try to get out of
19 that problem but -- let me back up a minute. Like I say, I
20 mentioned that WEOC, excuse me, WEOC had received, yeah, fifty
21 percent or roughly fifty percent from the government and they
22 needed to raise fifty percent otherwise. To date, every
23 attempt at raising all the money fell through. It fell
24 through because of the situation with WEOC, the whole public
25 know what was going on with WEOC and the all the fighting and

1 crazy stuff, so nobody would lend them the rest of the money.

2 In the meantime, the issue of this clause about my -- in
3 my contract, this Exhibit B, at some point that came up much
4 later when in my testimony and in the defendant's testimony we
5 talked about a date of October 19th, that timeframe, and I
6 indicated in everything that I received a copy of that
7 document December the 6th of 2010. And waited for some
8 feedback from Mr. Wilson which I didn't receive and the 20th
9 of December of 2010 is when I filed the lawsuit. So and then
10 about two months later, February 7th, 2011, I got a letter of
11 termination from WEOC.

12 Now, in the meantime -- oh, and Mr. Wilson indicated and
13 also Mr. Zacharius Grate indicated I was being paid by WEOC.
14 Now, the payment was for travel and when you get those
15 documents, please read all the documents starting from the top
16 because when -- yesterday when I was given documents saying
17 that I was paid, clearly they were travel documents that
18 indicated mileage and dates. If you look at the -- read the
19 whole thing please because you look at the dates, a lot of
20 dates is prior to the signing of the contract. I was eager
21 beaver to get in there and work for those people from the day
22 which was February 24th when they told me I had the job,
23 without a contract, I did a lot of stuff and that's what the
24 mileage stuff is for.

25 Okay. Now, other stuff where you see a charge for

1 contract, in one of the emails you're gonna get, it's gonna
2 tell you because of the way you drafted this Exhibit B, you
3 dropped certain things out of the contract out of Exhibit A.
4 So, if I'm gonna now be going to Mr. Wilson to help him with a
5 contract for the design firm, that's additional services,
6 that's not part of my contract anymore because you dropped it
7 out of Exhibit B. So, when you look at Exhibit B and it says
8 excluding these things, then I'm billing as additional
9 services and it'll say on my billing probably additional
10 service for meeting with Mr. Wilson. Now when he talked about
11 me meeting with him to discuss contract it wasn't always my
12 contract if it didn't specifically say it because I met with
13 him to discuss the contract of the design firm which I have
14 done with the board, like I said, line for line, also brought
15 the design firm in and went line for line and we interfaced
16 back and forth with that. After I had done that, some several
17 months, more than five months earlier, then when I met with
18 Mr. Wilson like August of 2010, I had already done all that
19 work before. That's why I'm billing them because now this is
20 additional services. So don't -- please don't be misled that
21 I was being paid for my services, no. If I got paid for
22 anything, that's for additional services. The services that I
23 was hired to perform never got performed, if so nobody who
24 testified so far could say if they were performed or by whom.
25 So, specifically, when Ms. Whitfield testified that she was

1 the interim or whatever executive director, she doesn't know
2 who was supposed to interface with me concerning the project,
3 she doesn't know who. Up till this morning, Mr. Zacharius
4 Grate doesn't know who was supposed to -- he said that the
5 executive director which would've been at the time would've
6 been Ms. Whitfield. They don't know who was supposed to be
7 interfacing with me, so nobody did anything. Even though I'm
8 sending them email all the time -- oh so much more than what
9 was introduced here, a whole bunch of email, all the time,
10 telling them this is the situation. Not just about -- not
11 just about what I was dealing with but telling them that look
12 if -- when you start construction you try to proceed like
13 this, you're gonna get into a lot of trouble. You know, so
14 eventually, they did get into a lot trouble. That's why they
15 indicated that the project was shut down.

16 Mr. Zacharius Grate doesn't know when it was started. It
17 was started around the first of January of 2011. It was shut
18 down within about thirty days by the government. I had warned
19 him about all this stuff. Now, and I warned him, I said, you
20 know, once it's shut down or even if you're trying to deal
21 with me the way you are on my contract, you run into problems
22 with the contractor once it's being built, it's gonna cost
23 you. All I wanted because -- no, I don't come here crying the
24 blues because I'm not an attorney, no. I'm not an attorney
25 and I'm not crying the blues; I ain't looking for no sympathy

1 but I'm very good at what I do. And so even to anything the
2 law is concerning my profession, I know those. The law
3 concerning the construction profession, I know -- I'm aware of
4 them to the point where I can keep somebody out of trouble so
5 they don't have to come in here.

6 But anyhow, I was trying to tell them, they would not
7 listen and so now they are where they are. The job is shut
8 down -- it's gonna be shut down, on lock down for a long time
9 but it's costing us because the contractor knows that, you
10 know, there are laws out there that says that if there's any
11 problem and the fault of the this agency, they got to pay.
12 They're gonna be paying and so it's gonna cost us now a whole
13 lot more than it would've cost us. Now, my main thing for
14 getting into it, getting involved with this project is that,
15 you know, that the end user, the children, they were supposed
16 to be in that place September of 2010. They won't be in there
17 September 2012. They won't be there. So, you know, we are
18 losing as taxpayers but they're losing so much; it's a lot of
19 loss.

20 Also, another thing, at one point this morning, I think
21 Mr. Zacharius Grate testified about his role and about him
22 signing the contracts but now when it come down to -- at one
23 point he did say he signed the checks, I think, but then when
24 it come down to signing other things, there's a rubber stamp
25 in the WEOC office. I don't understand about that. There's a

1 lot of confusion over there; I don't understand. But anyhow,
2 and -- Ms. Janice Wideman testified yesterday that when I
3 asked her about the CFR -- 45 CFR 74, and she testified that
4 she got it from somebody in the office, some staff person and
5 so that staff person was not here for us to ask but the point
6 is there's a -- Ms. Janice Wideman got it from somebody and
7 she -- and she testified yesterday that she's the one that
8 rewrote that Exhibit B of my contract even though she'd
9 indicated to me she was waiting for the attorney to do it.
10 And they had an attorney on board, too, who was involved with
11 the contract, not on the board, Mr. Dan Stacy was the attorney
12 at the time. By now anyhow, yesterday, she indicated that she
13 doesn't know a whole lot about the procurement and at first
14 she didn't know about 35 -- Title 11, Chapter 35 of the South
15 Carolina Procurement Ordinance and then when I handed it to
16 her, then she remembered some things.

17 Now, with respect to that ordinance, in the afternoon
18 when I was on the stand, Mr. Wilson had a copy and certain
19 things -- everything he sent -- he introduced certain things
20 are highlighted but Title 11, Chapter 35 of the South Carolina
21 Procurement Ordinance, yeah, he highlighted some stuff but I
22 would not understand, agree or admit to what he was saying
23 because I know in -- further on in the back, there's a whole
24 section concerning architecture, engineering and construction
25 procurement. And like I indicated yesterday, every state, the

1 federal government, Horry County, Georgetown County, I'm
2 pretty sure Williamsburg County, all jurisdiction, they have
3 procurement ordinance but they all have a section dealing with
4 -- specific section for architectural services. So, even --
5 even like it was indicated that this 45 CFR is the law that
6 they have to follow for their procurement, it was indicated
7 that they didn't know -- they do have it in their ordinance,
8 the agency do have it in their ordinance but the point is
9 this, I wasn't selling them pencils, I wasn't doing
10 janitorial, mine is specifically architectural. The State --
11 and when you get that document, that's the thickest document
12 you're gonna get, South Carolina procurement ordinance, don't
13 just settle for what's on top. If you look in the back,
14 you're gonna find a whole section concerning architectural
15 procurement, architectural engineering and construction
16 procurement.

17 So, oh, yeah, and also when I was making my presentation
18 -- if I didn't know, I didn't know, no big deal, but I
19 indicated certain things about what I did -- verbally, I
20 talked about 41 USC which is the federal acquisition
21 regulation. That sets the standard for any acquisition in the
22 federal government. I don't care what it is. But then they
23 gonna have a section on architecture. And I also indicated 48
24 CFR 36 which deals specifically -- that's the CFR. It deals
25 specifically with what we are dealing with and it supersedes

1 what was presented here as being the law which is 45 CFR -- it
2 supersedes that law. And so it's in my presentation, the
3 information I gave to the judge but I don't know if you'll get
4 to see that stuff. So, but anyhow, it gave it in my testimony
5 and for some reason they want to stick to this same thing
6 about 45 CFR 74, which does not pertain to architecture but
7 you'll see a distinction when you get to Title 11, Chapter 35.
8 If you'll look for the -- disregard, disregard this
9 highlighted area and just look for yourself, you will see.
10 And all the documentation, if you read it for yourself, you
11 will see what I'm telling you is the way it is.

12 Okay, so, in my situation when I testified yesterday when
13 I sent them a document in around July and I laid out three
14 options of what they could do, you know, continue with the
15 project, you know, and you know, we got to get something on
16 paper how we gonna go, we gonna continue, we're not gonna just
17 drag around. This is what it's gonna cost you to pay up
18 front. And three different options, they chose -- that's when
19 they first contacted me to try to resolve something but they
20 -- but they, you know, to -- at that point it wasn't mentioned
21 about any problem with the fee, just to try to resolve
22 something and I didn't meet with them to try to resolve
23 something, couldn't -- but like I said not until the 6th of
24 December did I get that document and I insisted then, I
25 insisted coming in here, I will insist fifty years from now,

1 that's not correct. I mean, you've got too many architects
2 out here, every building you see, federal building, government
3 building, it's impossible to say it's gonna cost you \$30 to do
4 that building, that's totally impossible, totally ridiculous.
5 So, I mean, for them to stick to that is -- I don't know. But
6 anyhow ---

7 Oh, so, because they hadn't paid me even though way back
8 in July I asked for 48,000 and give -- buy my contract out and
9 let me go about my business, you go about your business, they
10 didn't do the three options. So, now, in July, August,
11 September, October, November, December -- December 20th is
12 when I filed the lawsuit and I asked for \$68,000. That's a
13 bargain, you know. Then -- the project, another thing,
14 initially, my first meeting with them, I saved them over 140-
15 some thousand dollars, my first meeting because of stuff that
16 I found that was gonna be incorrect in the building that was
17 gonna cost them. So, if it's a 60, if it's 100, if it's a
18 million dollar building which was gonna more than a million
19 dollars, too, much more now too, if I was asking ten percent,
20 you know, you know how much that is -- but I dropped it to
21 nine percent, and because you know, we negotiated and I said
22 okay because I'm looking at the end users, I said okay. I did
23 it for nine percent but they just couldn't pay me, they
24 wouldn't do anything. So, essentially, I was hired, not
25 allowed to work but I couldn't quit because if I quit then I

1 would be breaching the contract; so I had to stay but I
2 couldn't go anyplace else because I'm committed to them. So,
3 what am I gonna do? So I filed a suit and asked for \$68,000
4 in December, December 20th of 2010 and because I did that,
5 they sought to cure the whole situation by coming back two
6 months later and give me a termination letter. I don't know
7 how you -- I don't know how you secure anything -- if you let
8 the horse out of the barn, then you're gonna lock the door --
9 I don't know what the equity is in that situation. So, I
10 think for them to send me a termination later two months after
11 I file a lawsuit is -- I don't think that's -- is to no avail,
12 I don't think.

13 Anyhow, here's my situation, I'm -- oh, so, now all this
14 time, I'm there, I can't move, they won't let me go and -- but
15 I have bills too like everybody else. I'm paying my bills and
16 I paid them and paid them until I couldn't pay them anymore.
17 And then by the grace of -- you know some good people got me
18 here because I didn't even have money to file the lawsuit.
19 Some good attorneys would talk with me, two or three different
20 firms would talk with me and, you know, and there's only -- I
21 can't -- there's only so much that I can accept like that if I
22 don't have any money and there's only so much that they give
23 like that because they got to work and make money too. I
24 would like to return to them and say more -- say more than
25 just thank you for what you've done. But that's pretty much

1 where I am. I'm, you know, I just -- everything that I've had
2 is gone behind this situation. And initially -- in my
3 situation like I said, got different licenses -- in my
4 situation, I've never been caught in a -- what you call this
5 -- this economic situation before because I've always
6 traveled, you know, I work in South Carolina, upstate, I work
7 in Georgia, I work in North Carolina, I work in Hawaii, I work
8 in Seattle, I work in Japan, I did work for Alaska, I did work
9 for -- I work, I go but I got stuck here to the point where I
10 couldn't buy a postage stamp behind this stuff. So, you know,
11 then to add insult to injury, they're saying countersue, I owe
12 them money. For what?

13 Please, I rest my case. I think y'all very much for your
14 attention. Thank you so much.

15 THE COURT: All right. Mr. Wilson?

16 MR. WILSON: Thank you very much, Your Honor.

17 CLOSING STATEMENT BY MR. WILSON:

18 MR. WILSON: Mr. Foreman, ladies and gentlemen, I know
19 that yesterday I told you that this probably wouldn't be a
20 very long trial and it's proven not to be. We've just about
21 finished and, you know, if there's any part of the trial
22 that's probably not worth a whole lot is probably when the
23 lawyers get up and start talking or when you start hearing
24 from -- in summation because what we're telling you, what he
25 told you and what I'm telling now is just my opinion of what I

1 think that the law and the evidence and the facts show. And,
2 you know, the real decision here is yours, not mine, not Mr.
3 Grate's. We're here and it's your job to determine where the
4 truth lies in this matter and what the outcome of this matter
5 should be.

6 But let me say one thing that I think that's really,
7 really important. I think that whenever jurors come to jury
8 service, you know, and you show up and you don't really have a
9 choice, you're required to be here so it's not like you get a
10 choice. But it is an honorable service because disputes like
11 this cannot be resolved by the parties and only you as an
12 impartial fact finder can come in and make the decision
13 because obviously, as you see, in this case for months there
14 was wrangling back and forth and we could not resolve it. So,
15 now, you have to resolve it and that's fine and that's what
16 the law requires. And every person, Mr. Grate, like every
17 other person and Waccamaw EOC like every other individual,
18 because corporations are considered individuals, have the
19 absolute right to come to this court and present their case no
20 matter what we think of it, no matter how weak it might be, no
21 matter how strong it might be, no matter whether we like the
22 content of it or don't; they have that right and that's why
23 we're here today.

24 But let me start out by saying to you folks that the
25 burden, because that's the important thing here, who has the

1 job to prove anything in this case because that should be the
2 first question. Whose responsibility is it to come in to
3 prove something in this case? It is Mr. Grate's
4 responsibility. The reason that it's his responsibility is
5 because he filed the lawsuit. When you file it, you undertake
6 the responsibility to come in and to prove your case. The law
7 requires in civil cases that you must be able to prove what
8 you say by what we call a preponderance or greater weight of
9 the evidence. Okay. And if you had a scale then and if all
10 things were equal you'd have to tilt that scale enough to
11 convince these twelve people on this jury that your side is
12 the correct side and that they should rule in your favor. If
13 the plaintiff fails to do that, which is his burden, and His
14 Honor will instruct you as to the law and to what -- and as to
15 what the rules are. And if I say something that is
16 inconsistent with anything he says, please disregard what I
17 say. I wouldn't intentionally mislead you but sometimes
18 lawyers, when we're trying to explain things, we may not use
19 the exact same wording that the judge might use in his charge
20 to you but he will tell you what the law is. And I caution
21 you that you are to listen to him as to what he says the law
22 is and I'm telling you what my opinion of the law is as a
23 lawyer.

24 The burden of proof is on the plaintiff, Mr. Grate is the
25 plaintiff. It's his job to come in here and present evidence

1 and witnesses and testimony which convince you by a
2 preponderance of the evidence that he is correct. And let me
3 start out by saying to you that right away, where is the
4 breach because that's what he's alleging. He's alleging that
5 there was a breach of contract by Waccamaw EOC, that somehow
6 Waccamaw EOC did something to violate, to break, to breach
7 this contract. What did they do? I haven't heard anything
8 yet that they did to break this contract. This contract was
9 going right on up until December 6th. He was getting paid.
10 In August, which is I think the last time that he got \$4,590,
11 if I make no mistake, in August. It wasn't until this issue
12 came up, which it came up in August, which is when the problem
13 started. This issue came up in August. You have the memo and
14 I'm gonna go over it with you in just a minute. There was
15 this memo from the finance director saying, hey, look, you
16 guys can't do this. If this contract is illegal, you cannot
17 do it. You've got two choices then. You can either violate
18 the federal law and take your chances with the federal
19 government and with the federal authorities or you can try to
20 reconstitute or redo the contract, modify the contract; those
21 are your only real choices. If EOC kept the contract as is,
22 it's in clear violation of the federal law.

23 And we've read this, I know, and I don't want to just
24 stand here and repeat stuff over and over again and I don't
25 want to insult your intelligence, I know that we've gone over

1 this but just for the purposes, I need to -- and this is a
2 copy of the statute. This is not something EOC made up, this
3 is a copy of the law itself. You're gonna have this in your
4 jury room with you. It's the procurement procedures. You
5 will see that there's nothing in here that says architects are
6 exempt.

7 First of all, but the big thing is he wasn't acting as an
8 architect for EOC. He was never hired as an architect. So,
9 even if that were the issue, which it is not, it wouldn't
10 apply to him because he was never hired as an architect. In
11 fact, they refused to hire him as an architect; they hired
12 Earthworks, the other company. He was hired as a project
13 manager. His sole job was to go around the site and make sure
14 that people were doing what they do, make sure the subs were
15 there when they were supposed to be there, make sure the plans
16 were the way there were supposed to be, the site was the way
17 it was supposed to be, that was what his job was. He was not
18 hired as an architect. He spent the first twenty minutes of
19 his argument telling you about what his architectural duties
20 were. He was not an architect. Why he thinks he was an
21 architect, I don't know. He was never hired, ladies and
22 gentlemen, as an architect and it didn't matter anyway because
23 this applies to architects as well. And the language -- the
24 type of procuring instruments used, and they give examples,
25 they tell you what you can do and what you can't do in the

1 statute. What you can do, example, fixed price contracts,
2 which is what we tried to talk to him about and you heard me
3 ask him on the stand, didn't we offer just to change the nine
4 percent plus cost to just a dollar amount, put it in the
5 contract. Oh, no, he didn't want to have that. Well, the
6 reason he ain't gonna have that is why? Because nine percent
7 all of a sudden becomes fifteen percent or twenty percent or
8 thirty percent or whatever it is and there's no control which
9 is what part of the problem with government is today. There
10 are no controls. So, if you have a cost-plus or percentage,
11 then it's in the best interest of the person, the plaintiff,
12 and I'm not saying Mr. Grate would've done this, but it's
13 certainly possible other people would've done it which is why
14 there is that law saying, look, you can't have this because it
15 allows the contractor, the architect, the project manager,
16 whoever is involved in the project to jack up the cost. So,
17 instead of a building costing one million, it ends up costing
18 one-and-a-half million because now he's got fifty percent more
19 profit. You can't allow that to happen.

20 This rule says the type of procuring instrument used can
21 be fixed-price contracts, cost-reimbursable contracts,
22 purchase orders and incentive contracts shall be determined by
23 the recipient but shall be appropriate for the particular
24 procurement and for promoting the best interest of the program
25 or project involved. The cost-plus-a-percentage-of-cost or

1 percentage of construction cost methods of contracting shall
2 not be used. It doesn't say may, it doesn't say probably;
3 shall not be used. That's as clear a law as you could
4 possibly ever have.

5 Now, what he -- let me talk for a minute about the
6 breach. Again, there was no breach. We were working with him
7 talking with him, negotiating with him, everything was fine
8 until August when this issue arose. They paid him in August.
9 They paid him on August the 5th, they paid him that \$4500, 45
10 -- 4,590-some dollars, they paid him that. When this issue
11 started in August -- and do you remember that we had the memo
12 from the finance director on August the 9th, that's when this
13 started. That's when these issues started to crop up. And we
14 sat down with him and we said, look, you can't do this. We
15 can't have this kind of contract. We need to sit down and
16 come up with a dollar figure to go in the place of the
17 percentage, that's all we ask, everybody be happy, everybody
18 go home. No, not gonna do it. First, he said, that ain't the
19 law. Then he says, well, show me the law. Well, then when we
20 showed him the law, he said, well, I still don't care; I'm
21 still not doing it. He was going to come to court regardless
22 of whatever else happened. And when I was growing up, my
23 momma used to say, you can lead a horse to water but you can't
24 make him drink. And we made everything -- EOC made everything
25 available to him to work this out if he wanted to work it out.

1 The other thing is, if you'll recall, when Mr. Grate, the
2 other Mr. Grate was testifying, I asked him about Earthworks,
3 the other -- the architectural firm who actually got the
4 contract for the architectural work which happened several
5 months before Mr. Grate was ever retained. They had the same
6 percentage-cost in their contract. What did they do? They
7 came in and they sat down, changed it to a dollar figure. Not
8 a big deal if you're -- and if his motives were pure, why not?
9 If all you're really trying to get is your honest fee, what's
10 the problem?

11 Mr. Grate told you, said, you know, I'm not angry that I
12 didn't get this architectural contract. But if you listen to
13 him when he started out, the first half of his presentation,
14 maybe even the first two-thirds of it was all about the
15 architectural firm and what they didn't know and how they
16 weren't smart like him and how they couldn't provide the kind
17 of services like he provided and that -- how he told EOC they
18 shouldn't hire them and how he didn't like what they presented
19 and how he didn't like what they did which ain't none of his
20 business. EOC had the right to hire any architectural firm
21 they desired. They chose Earthworks. If there was a mistake
22 made, it was probably in hiring him as project manager because
23 he came in with sour grapes because he didn't get the first
24 contract and from then on, it was on. His sole thing was to
25 complain about Earthworks and what they didn't do and what

1 they couldn't do and how he could do it better but that wasn't
2 his job. That was the board's decision. Whether I like it or
3 don't like it, doesn't really matter. The board had the right
4 to make that choice.

5 The other thing is, they had paid him -- EOC has paid him
6 \$14,500 of taxpayers' money. What happened to it? What did
7 he do to earn \$14,500? According to him -- I'm not even
8 talking about what EOC says -- according to him -- I asked him
9 what did you do -- when he's on the stand and he's testifying,
10 what did you do to earn that \$14,500. He still hasn't told me
11 anything he did.

12 And let me say this, Mr. Grate was -- the architectural
13 firm was hired in, I think, October or November of 2009. Mr.
14 Grate's contract didn't begin with EOC until April 30th of
15 2010, five or six months later. And he keeps talking about,
16 oh, you know, preconstruction, I should've been involved with
17 preconstruction. Well, it was going on for five months before
18 he ever got involved. He wasn't hired until April, April 30th
19 of 2010 is when he was hired. The architectural people had
20 been working since before November. So how could he possibly
21 be involved and be upset about what they did, he wasn't even
22 contracted yet. He didn't get his contract until April 30th.

23 If you noticed, EOC did not terminate Mr. Grate -- did
24 not terminate Mr. Grate or his services until February 7th,
25 2011 which is almost two months after he filed his lawsuit.

1 At that point, they sent him a letter, which you will have,
2 which simply says, Please be advised Waccamaw Economic
3 Opportunity Council, Inc. elected to terminate the contract
4 signed with your company on April 30th, 2010. Paragraph --
5 pursuant to Paragraph Five of the contract, the thirty-day
6 notice period takes effect immediately. There is a clause in
7 the contract which says that either party can terminate the
8 contract upon thirty days notice. Paragraph Five of the
9 contract says early termination of contract, Waccamaw and the
10 contractor, which would be Mr. Grate, each shall have the
11 right upon thirty days written notice to terminate this
12 contract and thereafter Waccamaw shall have no obligation to
13 pay for services provided by the contractor except up to the
14 effective date of the termination of the contract. Waccamaw
15 EOC worked with Mr. Grate, continued to work with Mr. Grate,
16 did everything it could do to work this out with Mr. Grate
17 until after he filed the lawsuit. Then they decided, look,
18 you got to cut your losses at some point; they terminated the
19 contract.

20 Mr. Grate has the burden of proof. Mr. Grate has not
21 proven a breach of contract. But even if he did, which he has
22 not, the law forbids the contract itself so you can't have it.
23 So it wouldn't matter because the law says you can't have a
24 contract where it -- well, in this particular case, it clearly
25 says you can't have a contract where there is a cost-plus or

1 percentage of cost as the form of payment; you can't do it.
2 It doesn't matter whether I like it or it doesn't matter
3 whether Mr. Grate likes it. It doesn't matter who doesn't
4 like it, it's the law and we're all obligated to follow the
5 law. The only option would've been to force EOC to say, okay,
6 well, you got to violate the law; we don't care. You still
7 got to violate the law because you got to do it anyway. So,
8 now, we just go from one court to another because now, you've
9 got a federal issue because now you're in violation of federal
10 law. You can't do it and Mr. Grate understood that. He
11 didn't want to resolve it and that's his right and that's why
12 we're here.

13 Folks, the \$14,000 that Mr. Grate had been paid way
14 overpaid him for anything that he did from April till December
15 when he filed this lawsuit. Because I don't know of anything
16 that he did from April 30th till December when he filed this
17 lawsuit but I know that he got \$14,500 during that period of
18 time without question. He has admitted that so that's not
19 even an issue that he got that money for that time period.

20 What we're asking -- Waccamaw EOC as the defendant is
21 simply asking this court to find for the defendant, that there
22 was no breach of contract, that we don't owe him any
23 additional money beyond the 14,000 that he's already got. And
24 honestly, he should pay back the 14,000.

25 And lastly, folks, I know that Mr. Grate is not an

1 attorney and he is representing himself, which is fine, that's
2 the law, you're allowed to do that if you want to. I ask you
3 not to hold that against us, against Waccamaw EOC, the fact
4 that he chose to represent himself; it's his decision. And I
5 know that sometimes when the lawyer is going against a non-
6 lawyer, it looks like, well you're trying to beat up on him.
7 Well, we're not trying to beat up on him and what you will see
8 is that we tried to work through this thing throughout this
9 entire process with Mr. Grate. From August on, our whole
10 effort was to work it out with him; he was not going to have
11 any of it, he just wasn't gonna have it.

12 So, I ask you to find for the defendant in this
13 particular case. Thank you so much.

14 THE COURT: Thank you.

15 Mr. Grate, you have ten minutes.

16 MR. GRATE: Thank you, sir.

17 CLOSING STATEMENT BY MR. GRATE:

18 MR. GRATE: I hope I can do this in ten minutes. Thank
19 you very much again. Please, I agree with him, don't give me
20 any sympathy because I'm not an attorney; I don't want that.
21 If I have enough time, I will get into that a little bit later
22 but I got to rush this thing so what I want -- I'm like each
23 of you, I was hired by somebody. If you were hired by
24 somebody, I think there are at least three expectations. When
25 you get to the job there's work for you to do; you must work,

1 if you don't work, then you could be fired; and the other
2 expectation is that you would be paid for your work. Now, if
3 none of those things are happening, you're gonna get fired.
4 But if you're there and you don't get paid, then your option
5 is to quit and go some place where you can be of service.
6 Okay. In my case, all those things pretty much existed. I
7 didn't have the option of leaving like that. I tried to get
8 out of it; they wouldn't, they wouldn't kill the contract, you
9 know, I couldn't leave empty-handed. They wouldn't terminate
10 the contract. Okay. When they did, send a letter two month
11 after I filed the lawsuit, I don't know what sense that make
12 but -- I'll get to that in a minute. He said I didn't want to
13 resolve the contract, I wanted to come here. That's
14 ridiculous. That's doesn't make any kind of sense. If that
15 make sense to you, okay. But he said the one -- they -- the
16 termination to cut their losses; what losses? They were not
17 paying me. I already told you if you read the documentation,
18 it's gonna show if it's for additional services it's not a
19 part of the contract. Once they were not paying me and they
20 wanted me to go to Mr. Wilson's office, that's money that's
21 outside of the contract. They wrote it out themselves, not
22 me.

23 When he said the architectural firm was hired in October
24 and I didn't have a contract until April and preconstruction
25 was going on, that's totally a lie because actually when I met

1 with him in August to go over the contract for the firm -- in
2 other words, up till August, the firm wasn't hired yet. They
3 hired the firm sometime after August. So, prior to that time,
4 there was no preconstruction going on. I was trying to get
5 them to get into that to do everything; they didn't do it.

6 Okay. They said I didn't prove the breach. They say I
7 didn't do anything. I think by them saying I didn't do
8 anything, in itself prove breach because I'm there to work.
9 If they didn't do anything -- in other words, it was incumbent
10 upon them to do something. They have an obligation to not
11 hinder me from performing the contract. They have an
12 obligation to cooperate with me to perform the contract,
13 that's law. And so I don't have the expertise and not excuse
14 to give you all that, I gave a lot of my information to the
15 judge and you probably won't get to see it, I don't know.

16 With respect to the CFR, he's talking about the 45 CFR, I
17 rebut that, it was 48 CFR, Section 16.303. Concerning cost-
18 plus, he's saying the percentage would keep going up; no, it's
19 not true. My contract was cost-plus-a-fixed-fee which is
20 covered under 48 CFR 16.303 -- 306, you will have that
21 documentation but you'll notice some things are highlighted,
22 he won't have everything that's complete. I didn't have the
23 expertise to be able to submit everything, no excuse but --
24 what else?

25 When he talk about payment to me in August, please, like

1 I indicated before, that's for additional services. That's
2 not part of the contract. They didn't pay me. If they were
3 paying me, I would've still been there.

4 Fixed price -- my contract, like I say is a fixed price -
5 - cost-plus-fixed-fee, it's not a like an escalating -- the
6 government specifically in 48 CFR -- no, 41 USC Section 254(b)
7 allowed for that kind of a contract, for the kind of a
8 situation that we were involved with.

9 Specifically 48 CFR, Section 36.101 indicate that -- this
10 particular section 48 CFR 36.101 take precedence over any
11 other regulation in the whole body of CFR. So, all this --
12 all of this information is in the information I gave to the
13 judge. Like I said, you might not be able see. I didn't
14 know; too bad.

15 Oh, they said I wasn't providing architectural services
16 and I was talking about my credentials. Where you go -- when
17 you look in the procurement of Title 11, Chapter 35, keep
18 looking in the back until you get to the architectural
19 section. It's gonna say architectural and engineering
20 services and some construction. I didn't say I was providing
21 architectural services. Related services, it addressed that
22 in the documentation, in the stuff -- the thickest one you
23 gonna get, South Carolina Procurement Codes, the information
24 is there.

25 So, my position is this, they breached the contract by

1 not performing. They hindered me from performing and they
2 didn't perform. To me, that's a breach. Not to me, that's
3 what the law says but I -- I didn't give you that information.
4 Like I say, it's in the doc -- it's in the information I gave
5 to the judge but I don't know if you'll get to see that or
6 not.

7 I think my time might be up. Thank you so much.

8 THE COURT: Thank you.

9 CHARGE OF THE COURT:

10 Members of the jury, at this time, it is my duty to
11 instruct you on the law applicable to this case and in that
12 regard it is your duty to accept and apply the law as I now
13 state it to you. Furthermore, it is your exclusive duty to
14 decide all the issues of fact in this case and to determine
15 the effect, value, weight and truth of the evidence presented.
16 The parties have the right to expect that you will carefully
17 consider and evaluate the evidence and apply the law of this
18 case to it so that in the end, the parties will have received
19 a fair and impartial trial.

20 During this trial, you and I have separate duties to
21 perform. As the trial judge, it is my responsibility to
22 preside over this trial and to rule upon the admissibility of
23 the evidence offered during the trial. In that regard, you
24 are to consider only the evidence before you. Thus you are to
25 consider only the testimony which has been presented from the

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1 witness stand together with any exhibits admitted into the
2 record of this case.

3 Furthermore, I have the additional duty to charge you on
4 the law applicable to this case and in that regard it is your
5 duty to accept and apply the law as I now state it to you.
6 Furthermore, if you have any preconceived ideas as to what the
7 law is, or what you think the law ought to be, and it does not
8 agree with what I tell you the law is, then you are obligated
9 under your oath to abandon these preconceptions and accept the
10 law as I now state it to you.

11 In this trial, you are the sole and exclusive judge of
12 the facts. Do not infer that I have any opinion about the
13 facts in this case from anything I have said or done during
14 the course of this trial. In this regard, the law simply does
15 not permit me to have an opinion about the facts. As jurors,
16 it is your duty alone to determine the effect, value, weight
17 and truth of the evidence presented during the course of this
18 trial.

19 Furthermore, it is your job as jurors to determine the
20 credibility and believability of the witnesses who have
21 testified in this case. In determining the believability of
22 witnesses who have testified in this case, you may believe one
23 witness over many or many over one. You may believe a part of
24 the testimony of a witness or reject the remaining part. You
25 may believe the testimony of a witness in its entirety or

1 reject it in full. You may consider whether the witness has
2 an interest in the result of the trial; whether the witness is
3 prejudiced toward either party; the opportunity for the
4 witness to have seen the matters and things about which the
5 witness may testify; and the way the witness acts on the
6 witness stand.

7 The burden of proof in this case is by a preponderance of
8 the evidence. A preponderance of the evidence simply means
9 the greater weight of the evidence. In other words, it is
10 evidence that, as a whole, shows that the facts sought to be
11 proved is more likely true than not true.

12 This can be illustrated by imagining a set of scales.
13 When the case begins, the scales are even. After all of the
14 evidence has been presented, if the scales remain even or if
15 they tipped even slightly in favor of the defendant, then the
16 plaintiff has failed to meet the burden of proof and would not
17 be entitled to recover in this case. If on the other hand,
18 the scales tip even slightly in favor of the plaintiff, the
19 plaintiff will have met the burden of proof and you should
20 return a verdict for the plaintiff. The preponderance of the
21 evidence is not determined by the number of witnesses.
22 Instead, it must be determined by the greater weight of all
23 the evidence.

24 Furthermore, in our courts, no distinction is made
25 between corporations and individuals. A corporation is a

1 person in the eye of the law. A corporation is entitled to
2 the same fair and impartial consideration and to justice by
3 the same legal standards as an individual.

4 A contract is an agreement entered into by two or more
5 parties in which each party agrees to perform or not to
6 perform certain acts. It may be shown by words, written or
7 oral, or by conduct. However, a contract is more than the
8 mere exchange of promises. For the agreement to be considered
9 a contract, the parties must have intended to enter into a
10 contract and must have reached a mutual understanding of the
11 terms of that contract. This is sometimes called a meeting
12 of the minds. The parties must intend to be mutually bound by
13 the agreement.

14 When the contract is in writing, you must determine the
15 intentions of the parties primarily from the contents of the
16 written document itself. The intention of the parties must be
17 determined from the entire agreement and not from any
18 particular clause or provision. When the written contract is
19 clear, its meaning must be determined by the contents of the
20 document alone.

21 If the circumstances warrant, terms which do not
22 contradict the written language of the contract may be implied
23 in order to carry out the intentions of the parties.

24 Next, the plaintiff must show by a preponderance or a
25 greater weight of the evidence that the defendant

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1 unjustifiably breached the contract. The word breach means
2 the failure, without legal excuse, to perform any promise that
3 forms the whole or a part of the contract. This includes the
4 refusal of a party to recognize the existence of a contract or
5 the doing of something inconsistent with the existence of the
6 contract. A party breaches a contract when that party does
7 not perform as agreed under the contract by failing to carry
8 out a term, promise or condition of the contract.

9 In interpreting contracts, you must determine the
10 intention of the parties and put those intentions into effect.
11 In doing so, this must -- this must -- you must consider only
12 the outward expression of the parties. You cannot consider
13 any undisclosed or secret intention of the parties.

14 Contracts should be liberally construed to carry out the
15 intentions of the parties. It is the substance of the
16 agreement, not the form, which must control the construction
17 of the contract. When you are interpreting a contract, you
18 are not limited to the literal meaning of any term of the
19 contract if you decide that the literal meaning would defeat
20 the parties' true intentions. The contract is to be
21 considered by you at its subject matter, nature and purpose.
22 When you have determined the general purpose of the contract,
23 you should look at the language of the contract in light of
24 its purpose.

25 If a term of the contract could be given two meanings,

1 and one of those meanings would make the contract unusual and
2 extraordinary while the other would make the contract
3 reasonable and fair, you must construe the term to make the
4 contract reasonable and fair.

5 When a term of a contract can be given more than one
6 meaning, you should use the meaning least favorable to the
7 party who prepared the contract.

8 Where the language of the contract has more than one
9 meaning, you may consider the circumstances surrounding the
10 making of the contract to help you determine the real
11 intentions of the parties. However, you may not use these
12 circumstances to give the contract a meaning which is not
13 apparent on its face.

14 Every contract is subject to all of the state laws which
15 can be applied to the contract. In other words, the law
16 becomes a part of the contract whether the contract states so
17 or not. This is because everyone is presumed to know the law.

18 There exists in every contract -- contract an unspoken,
19 but legally enforceable, promise of good faith and fair
20 dealing.

21 South Carolina Code Section 11-35-40(3) and (4) states as
22 follows: Where a procurement involves the expenditure of
23 federal assistance, grant or contract funds, the governmental
24 body also shall comply with federal laws, including authorized
25 regulations, and are mandatorily -- that are mandatorily

1 applicable. Notwithstanding where federal assistance, grant
2 or contract funds are used in a procurement by a governmental
3 body as defined in Section 11-35-310(18) of this code
4 including any requirements that are more restrictive than
5 federal requirements but must be followed except to the extent
6 such action would render the governmental body ineligible to
7 receive federal funds whose receipt is conditioned on
8 compliance with mandatorily applicable federal law. In those
9 circumstances, the solicitation must identify and explain the
10 impact of such federal laws on the procurement process,
11 including any required deviation from this code.

12 The acquisition of a facility of capital improvement by a
13 foundation or nonprofit organization on behalf of or for the
14 use of any state agency or institution of higher learning
15 which involves the use of public funds and the acquisition,
16 financing, construction or current or subsequent leasing of
17 the facility or capital improvement is subject to the
18 provisions of this code in the same manner as a governmental
19 body. The definition and application of the terms acquisition
20 financing, construction and leasing are governed by generally
21 accepted accounting principles.

22 34 CFR 74.44 states as follows: The type of procuring
23 instruments used, for example, fixed price contracts, cost
24 reimbursable contracts, purchase orders and incentive
25 contracts shall be determined by the recipient but must be

1 appropriate for the particular procurement and for promoting
2 the best interest of the program or project involved. The
3 cost-plus-a-percentage-of-cost or percentage of construction
4 cost methods of contracting must not be used.

5 In the alternative, 48 CFR Section 16.306 states as
6 follows: A cost-plus-fixed-fee contract is a cost
7 reimbursement contract that provides for payment to the
8 contractor of a negotiated fee that is fixed at the inception
9 of the contract. The fixed fee does not vary with actual cost
10 but may be adjusted as a result of changes in the work to be
11 performed under the contract. This type contract permits
12 contracting for efforts that might otherwise present too great
13 a risk to contractors but it provides the contractor only a
14 minimum incentive to control costs.

15 A cost-plus-fixed-fee contract is suitable for use when
16 the conditions of 16.301-2 are present.

17 16.301-2 states: The contracting officer shall use cost
18 reimbursement contracts only when circumstances do not allow
19 the agency to define its requirements sufficiently to allow
20 for a fixed-price type contract or uncertainties involved in
21 contract performance do not permit cost to be estimated with
22 sufficient accuracy to use any type of fixed-price contract.
23 For example, the contract is for the performance of research
24 or preliminary exploration or study and the level of effort
25 required is unknown or the contract is for the development and

1 test, and using a cost-plus incentive fee contract is not
2 practical.

3 In this case, the defendant has brought a counterclaim
4 against the plaintiff. This means that the defendant not only
5 denied that it breached the contract but also says that the
6 plaintiff breached the contract and that the defendant should
7 be compensated by the plaintiff. The defendant has the burden
8 of proving the counterclaim by the preponderance or a greater
9 weight of the evidence.

10 If you decide that the defendant has not met the burden
11 of proving the plaintiff breached the contract but that the
12 plaintiff has proven that the defendant breached the contract,
13 you should return a verdict including damages for the
14 plaintiff.

15 However, if you find that the plaintiff has failed to
16 meet the burden of proving that the defendant breached the
17 contract but that the defendant has proven that the plaintiff
18 breached the contract, you should return a verdict including
19 damages for the defendant.

20 If you find that neither party has met the burden of
21 proving the other party breached the contract, you should
22 return a verdict for the defendant.

23 Finally the plaintiff must prove by a preponderance or a
24 greater weight of the evidence that the plaintiff suffered
25 damages which were approximately caused by the defendant's

1 breach of contract. The plaintiff must prove damages by the
2 preponderance or a greater weight of the evidence. This does
3 not mean that the plaintiff must prove damages to mathematical
4 certainty or produce evidence of the exact amount of damages
5 suffered. However, the amount of damages cannot be left to
6 guess work or speculation. Instead, the evidence presented by
7 the plaintiff must be enough to allow you to determine the
8 amount of damages with reasonable certainty and accuracy.

9 Damages for breach of contract are those that may fairly
10 and reasonably may consider to arise naturally from the breach
11 of the contract itself or those that may be reasonably
12 supposed to have been in the minds of the parties at the time
13 the contract was made.

14 The plaintiff may not recover damages for breach of
15 contract unless the plaintiff shows that is has performed its
16 part of the contract, or at least was able, ready and willing
17 to perform at the appropriate time.

18 Actual damages are damages to compensate the plaintiff
19 and put it, as closely as possible, in the same position it
20 was in before the breach of the contract. In other words,
21 actual damages are the actual losses and expenses which the
22 plaintiff has suffered because the defendant breached the
23 contract. Generally, actual damages are the out-of-pocket
24 costs actually paid by the plaintiff as a result of the breach
25 of the contract and the gain above the costs that would have

1 been realized if the contract had been performed.

2 Ladies and gentlemen, I'm not drawing near the end of my
3 charge and I want you to clearly understand that you are not
4 partisans or advocates for the plaintiff or the defendant.
5 You do not serve as jurors to reward your friends or punish
6 your enemies. In this regard, you have been selected by the
7 parties to be fair and impartial jurors. It is your duty by
8 your joint deliberations to determine the truth in this case.
9 Then, to the facts, which you determine to be true, you should
10 take and apply the law which has been given to you by this
11 court and thus arrive at a verdict which speaks the truth in
12 this case. In fact, the word verdict, which has a Latin
13 derivative, means a true saying. Thus when you have
14 accomplished these responsibilities, you will have satisfied
15 your oath as jurors and you will have discharged your duty to
16 this court in this case.

17 Ms. Clerk, would you hand the form -- the verdict form,
18 please.

19 Now, Mr. Foreman, I have handed you the verdict form.
20 When you arrive at a verdict in this case, you will write your
21 verdict on the form and sign it and date it.

22 The verdict that you render in this case must be the
23 verdict of each and every juror. It must be your unanimous
24 verdict. All twelve jurors must agree on the verdict which
25 you authorized the foreman to write for the jury.

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1 Mr. Foreman and members of the jury, I want you to
2 further understand that the order in which the choices of
3 verdict appear on the verdict form are not suggestive of any
4 verdict on the part of this court. The verdict in this case
5 is to be determined by you, the jury, and not this court.
6 Furthermore, ladies and gentlemen, please understand that even
7 though I have given the verdict form to the foreman, it is not
8 his verdict alone, it is the verdict of all twelve of you and
9 I emphasize again that it must be a unanimous verdict.

10 In a moment you will retire to the jury room. However, I
11 would ask that you do not begin your deliberations until you
12 are told to do so. The law requires that I now consult with
13 the attorneys about this charge. After I have done so, the
14 bailiff will bring in the items of evidence and instruct you
15 to begin your deliberations. Also, should you have any
16 questions during your deliberations you must put them in the
17 writing and send them to me by way of the bailiff. The court
18 bailiff will be placed immediately outside the jury room door
19 to provide security and assistance for you during your
20 deliberations. Once you have reached your verdict, please
21 knock on the jury room door and ask the bailiff to advise the
22 court that you have reached a verdict and we will return you
23 to the courtroom as promptly as possible.

24 Thank you. You may now retired to the jury room but do
25 not begin your deliberations until you are told to do so.

1 (REPORTER'S NOTE: The jury retires to the jury room. 1:00
2 P.M.)

3 THE COURT: Any objections from the plaintiff as to the
4 charge given?

5 MR. GRATE: No, Your Honor.

6 THE COURT: Any objections from the defendant?

7 MR. WILSON: No objections or additions, Your Honor.

8 THE COURT: Thank you. If the two of you look at the
9 items of evidence and make sure they're in order. Let me know
10 if they are and we'll send them back and bring out the
11 alternate and begin.

12 (REPORTER'S NOTE: Parties agree on exhibits to be submitted
13 to jury.)

14 THE COURT: All right, Mr. Wilson, is everything in
15 order?

16 MR. WILSON: Yes, sir. Thank you.

17 THE COURT: Thank you.

18 How about you, Mr. Grate? Are all of the items in
19 evidence in order?

20 MR. GRATE: Yes, sir.

21 THE COURT: Ms. Clerk, if you'll go ahead and send in the
22 items of evidence, bring out the alternate and tell them to
23 begin.

24 CLERK: Yes, sir.

25 (REPORTER'S NOTE: Deliberations begin 1:06 P.M.)

1 THE COURT: All right, Mr. Alternate. I want to explain
2 to you that you performed your duties to this court in this
3 case. Your job is to be a backup driver, like a NASCAR race
4 if one of those drivers gets the flu, somebody in their family
5 gets hurt or ill or dies and they have to leave, you would be
6 the one to jump in their seat and serve as a juror. So, so
7 far, we have all twelve people that are safe and sound and
8 they're back there working, so you've completed your job. I
9 want to thank you for your service, you will be paid, not a
10 whole lot, don't complain to me if you don't like the check
11 that you get but we're gonna feed you as well. So if you want
12 to stick around and get your food, you're free to go after
13 that and call in after six tonight to see if you're needed
14 further.

15 JUROR 413: Okay. Thank you very much.

16 THE COURT: Thank you very much.

17 All right. We'll be at ease until something happens.

18 *****OFF THE RECORD*****

19 (On the Record.)

20 THE COURT: Bring in the jury.

21 (REPORTER'S NOTE: The jury returns to the courtroom. 2:25
22 P.M.)

23 THE COURT: Mr. Bell, have y'all reached a verdict?

24 MR. BELL: Yes, Your Honor, we have.

25 THE COURT: Thank you. If you'd hand it to the bailiff.

1 I find the verdict form in order.

2 If you would publish it, Ms. Clerk.

3 CLERK: Yes, sir.

4 VERDICT OF THE JURY:

5 State of South Carolina, County of Horry, in the Court of
6 Common Pleas, Case Number 2010-CP-26-11754, Joseph N. Grate,
7 plaintiff, versus Waccamaw EOC, Inc., defendant.

8 Verdict: Number 1, with regard to the plaintiff's breach
9 of contract complaint against the defendant, we find for the
10 defendant.

11 Number 2, with regard to the defendant's breach of
12 contract counterclaim against the plaintiff, we find for the
13 defendant.

14 We award the defendant \$2,090 in actual damages.

15 Thomas A. Bell, foreperson, January the 11th, 2012.

16 Mr. Foreman, ladies and gentlemen of the jury, is this
17 your verdict? If so, please signify by raising your right
18 hands.

19 (REPORTER'S NOTE: Jury unanimously indicates by raising right
20 hands.)

21 CLERK: Thank you.

22 THE COURT: Thank you. Is there need for further polling
23 from the plaintiff?

24 MR. GRATE: No, sir.

25 THE COURT: Anything further from the defendant?

1 MR. WILSON: Nothing further, Your Honor.

2 THE COURT: All right. Thank you very much. Members of
3 the jury, I want to thank you for your service. I want to
4 tell you up front that you're done. You are finished for the
5 week. You do not have to call in, you do not have to come
6 back. I want to tell you furthermore that by being here, you
7 have earned a three-year exemption from further jury service
8 in this court. And I want to tell you also, you will be paid
9 but you will not be happy with what you're being paid. I
10 didn't authorize it, I'm not signing the check but I sincerely
11 want to thank you on behalf of these parties. I want to thank
12 you on behalf of the state and I hope you have a good
13 remaining week and you are dismissed. Everybody else remain
14 seated.

15 (REPORTER'S NOTE: Jury excused and leaves the courtroom.)

16 THE COURT: Any motions from the plaintiff?

17 MR. GRATE: No, Your Honor.

18 THE COURT: Any motions from the defendant?

19 MR. WILSON: Nothing further, Your Honor.

20 THE COURT: I want to thank all of you for being here.
21 You've done -- all of you have done a good job. You've all
22 been polite and respectful, listened to the court and tried
23 your case appropriately. I thank you and we are hereby
24 adjourned for the week.

25 MR. WILSON: Thank you very much, Your Honor.

Ralph Wilson

From: "Zacharius Grate" <zachariusgrate@yahoo.com>
To: "Ralph Wilson" <rwilson@ralphwilsonlaw.com>; <munziki@yahoo.com>; <kat_ksh@yahoo.com>
"Kennedy Johnson" <quedogg3@aol.com>; "Wade Sessions" <sessionsvanessa@yahoo.com>;
<johnbattiste16@yahoo.com>
Sent: Monday, August 09, 2010 10:58 AM
Subject: Fw: Contracts for Joseph Grate & Steve Strickland

----- Forwarded Message -----

From: Beth Fryar <beth.fryar@weoc.org>
To: Zacharius Grate <zachariusgrate@yahoo.com>
Cc: Janice Wideman <janice.wideman@weoc.org>
Sent: Mon, August 9, 2010 10:46:44 AM
Subject: Contracts for Joseph Grate & Steve Strickland

Good morning Mr. Grate. Janice has brought to my attention her concerns of the contract that was executed on April 29th by Ms. Whitfield and yourself with Joseph Grate regarding him being paid a % of total building cost. I have reviewed 45CFR, Section 74.44 and it does state that "The cost-plus-a-percentage-of-cost" or "percentage of construction cost" methods of contracting shall not be used. "

Also, we were made aware of a meeting with you, Joseph Grate and Ralph Wilson last Thursday, August 5, 2010 to discuss his contract after the meeting took place. His contract has been tabled numerous times at the Board meetings and Janice had previously told you his contract needed to be looked into because of her concerns from what she learned at the Head Start Conference in Atlanta in June. Therefore, staff is recommending that his contract be amended to be for a fixed amount so as not to violate Federal Regulations.

Thank you,
Elizabeth L. Fryar, CPA
Executive Director
beth.fryar@weoc.org
(843)234-4100, ext. 223
(843)234-4111 (fax)



RALPH J. WILSON
ATTORNEY AT LAW, P.A.



Ralph J. Wilson, Sr.
Ralph J. Wilson, Jr.

February 7, 2011

Sent via **CERTIFIED** and **First Class** mail to:

Mr. Joseph N. Grate
Hachi NO SU, Inc.
P.O. Box 1294
Pawley's Island, S.C. 29585

Re: **30 Day Notice of Termination of Contract**

Dear Mr. Grate:

Please be advised, Waccamaw Economic Opportunity Council, Inc. elected to **TERMINATE** the contract signed with your company on April 30, 2010. Pursuant to paragraph five (5) of the contract, the thirty (30) day notice period takes effect immediately.

If you should have any questions or concerns, please respond to my office in writing.

With kindest regards, I am

Sincerely,

Ralph J. Wilson

RJW/amg

cc: Mr. Zacharius Grate, Board Chair, WEOC, Inc.

U.S. Postal Service	
CERTIFIED MAIL RECEIPT	
(Domestic Mail Only; No Insurance Coverage Provided)	
For delivery information visit our website at www.usps.com	
OFFICIAL USE	
Postage	\$ 0.44
Certified Fee	2.80
Return Receipt Fee (Endorsement Required)	2.30
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	\$ 5.54
Sent To: Joseph Grate	
Street, Apt. No., or PO Box No. PO Box 1294	
City, State, ZIP+4 Pawleys Island, SC 29585	

7010 0290 0000 4163 6707

Postmark Here
FEB - 7 2011
CONWAY SC 29526



RALPH J. WILSON
ATTORNEY AT LAW, P.A.
1411 FIRST AVENUE
POST OFFICE BOX 1827
CONWAY, SOUTH CAROLINA 29528

TELEPHONE (843) 381-0765

FACSIMILE (843) 381-0767

August 23, 2012

Sent via mail only to:

Mr. Joseph N. Grate
P.O. Box 1294
Pawley's Island, S.C. 29585

Re: Exhibits For Record On Appeal

Waccamaw EOC, Inc. Respondent, v. Joseph N. Grate, Appellant
Case Number 2012209227

Dear Mr. Grate:

My office is in receipt of your letter dated August 16, 2012 regarding the above-referenced matter. Pursuant to Respondent's Designation of Matter To Be Included In the Record On Appeal served upon you on July 19, 2012, Respondent respectfully requests the Transcript of Proceedings, pages 86-92; 94; 111-112; 124; 131; 144-145; 161-166; 188; 206; and 211-212 along with Defendant's Exhibits 1, 3, 7, 8, and 11 from the trial in the Court of Common Pleas be included in the Record On Appeal. Enclosed please find a copy of the Designation of Matter To Be Included In the Record On Appeal along with a copy of Defendant's Exhibits and the above-listed pages from the Transcript of Proceedings. Please take notice, you have the original Transcript of Proceedings and Defendant's Exhibits should be included with the original copy.

According to Rule 210(c), the Record On Appeal should not include matter which was not presented to the lower court or tribunal. Additionally, Rule 209 states in part, a party shall not include any matter in his Designation which is not relevant to the appeal. Please be advised, Respondent objects to several matters in Appellant's Designation of Matters to be Included in the Record of Appeal as the matters were not presented to the trial judge and the matters are irrelevant to the issues presented in the appeal. Specifically, Respondent objects to the following Designations by Appellant being included in the Record on Appeal:

- #5 Proof of service for Amended Complaint, January 11, 2011;
- #6 Plaintiff's Request For Production of Documents December 31, 2010;
- #7 Defendant's Answer To Plaintiff's First Set of Interrogatories, January 28, 2011;
- #8 Defendant's Responses to Requests for Production of Documents May 10, 2011;
- #9 Appellant's Motion To Compel Production of Documents;
- #10 Judgment regarding Motion To Compel Production of Documents;
- #11 Appellant's Motion To Compel Discovery;
- #12 Motion For Summary Judgment, April 15, 2011;

426

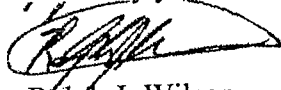
- #13 Affidavit in Support of Motion For Summary Judgement;
- #14 Exhibit A, Motion For Summary Judgment, April 13, 2011;
- #16 Affidavit in Opposing Defendant's Motion For Summary Judgment;
- #17 Defendant's Response to Plaintiff's Second Request For Production of Documents; May 6, 2011;
- #18 Defendant's Motion To Compel Discovery, August 29, 2011;
- #19 Defendant's Response To Request For Production of Documents January 4, 2012; and
- #21 Plaintiff's Request For Production of Documents April 13, 2011.

Thus, Respondent respectfully requests the above-numbered items be omitted from the Record of Appeal as the matters were not presented to the trial judge and are not relevant to the appeal.

If you have any questions or concerns, please do not hesitate to contact my office.

With kind regards, I am

Sincerely yours,



Ralph J. Wilson
Attorney At Law

RJW/abk
Enclosures

cc: James L. Pasley, Jr., Executive Director of WEOC, Inc.

August 24, 2012

RE: Exhibits for Record on Appeal

Joseph N. Grate v. Waccamaw EOC, Inc; Case Number 2012209227

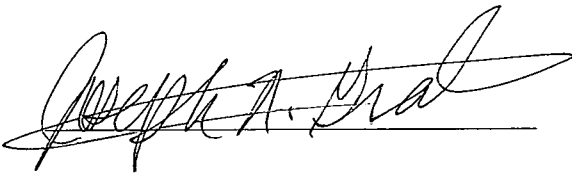
ATTN: Ralph J. Wilson, Esq.

Time is short so this has to be likewise. I am left to make assumptions regarding your Exhibits; therefore, please be advised, your pages 1-3; are in the record at pages 102-103; your Contract Pages are at pages 86-95; your page following Contract Pages is at page 424; the notice of contract termination is at page 425; the Transcript is located at page 176.

Given that this is based upon my assumptions, I will also include your letter regarding this matter, under the Defendants Exhibits section; however I really do not have time to cc: Mr. Pasley, at this time...also, I am short on patience with y'all.

Regarding your **objection**, I cannot help you. Finally, if Mr. Pasley does not know what the deal is by now, I cannot help him neither; except maybe he can avail himself of the very documents to which you have objection.

Sincerely,

A handwritten signature in black ink, appearing to read "Joseph N. Grate", written over a horizontal line.

Joseph N. Grate
P.O. Box 1294
Pawley's Island, S.C. 29585
(843) 742-0696

**CERTIFICATE OF COUNSEL IN
SUBMISSION OF THE RECORD ON APPEAL**

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

William H. Seals, Jr., Circuit Court Judge

Case Tracking No. 2012209227

Joseph N. Grate,

Appellant,

v.

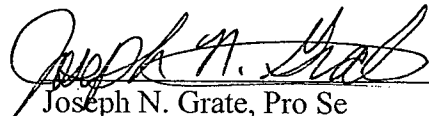
Waccamaw EOC, Inc.,

Respondent.

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

August 29 , 2012



Joseph N. Grate, Pro Se
Post Office Box 1294
Pawley's Island, S.C. 29585
(843) 742 - 0696

BRIEF OF APPELLANT

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

William H. Seals, Jr., Circuit Court Judge

Case Tracking No. 2012209227

Joseph N. Grate

Appellant,

v.

Waccamaw EOC, Inc.,

Respondent.

INITIAL BRIEF OF APPELLANT

June 18, 2012.

Joseph N. Grate, Pro Se
Post Office Box 1294
Pawley's Island, S.C. 29585
(843) 742 - 0696

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<u>George A. Fuller Co. v. United States</u> , 69 F. Supp., 409 (Ct. Cl. 1947)	2

I. STATEMENT OF ISSUES ON APPEAL

1. DID THE JURY ERR IN FINDING FOR RESPONDENT, GIVEN THE GLARING EVIDENCE OF RESPONDANCE'S TOTAL FAILURE AND NEGLECT, REGARDING THE CONTRACT?
2. SHOULD NOT THE JURY HAVE FOUNDED FOR APPELLANT, GIVEN THE ABUNDANCE OF CONCISE EVIDENCE SUPPORTING APPELLLLANT'S POSITION?

II. STATEMENT OF THE CASE.

1. This Breach of Contract action was commenced: December 20, 2010;
2. The Defense responded by denying the complaint and counter sued for breach of contract, including allegation of unclean hands.
3. A jury trial was held January 10 & 11, 2012, and it found for the defense and awarded a \$2,090.00 actual damages judgment.
4. The amount involved on appeal is as it was at the trial, which was \$ 68,000 plus all cost and other damages as the Court find Equitable; to include computation for elevation to the current Tribunal.
5. The appeal is from the jury verdict, 1-12-2010 (1-12-2012).
6. The notice of appeal was served: March 7, 2012.
7. Appellant's Motions for Summary Judgment and to Compel Discovery: June 8, 2011, should illuminate the questions involved and may have some affect on this appeal.

III. ARGUMENT

1. RESPONDENT FAILED TO SUBSTANTIATE ITS BREACH OF CONTRACT COUNTERCLAIM; THEREFORE THE JURY VERDICT WAS IN ERROR.

Appellant is contesting the breach the contract verdict. Appellant was committed to the contract. He was ready, available and was proactive towards the accomplishment of the contracted elements. To that end, Appellant acted alone; totally without any input or feedback from Respondent; Respondent's position clearly and totally prevented Appellant's performance. Consequently, Respondent pushed forward with the Choppee Head Start Center, in total disregard for Appellant's initial input and ended up with a Government shut down of the Construction within two month of its start.

Borough of Ridley, 506 A 2nd 862 (Pa. 1986)

George A. Fuller Co. v United States, 69 F. Supp., 409 (Ct. Cl. 1947)

2. RESPONDENT BREACHED THE CONTRACT AND APPELLANT SHOULD BE COMPENSATED. THE JURY VERDICT WAS IN ERROR.

Contractually, Respondent had a duty to participate towards the performance of the contract. The very act of not doing anything at all towards the performance, constitute a hindrance of the performance thereto but Given that Appellant was ready and available to perform his contractual obligations, even while under extreme, adverse circumstances, he should be compensated at the contracted rate.

CEM v. United States, 59 Fed Cl. 168 (2003)

IV. SEPARATE STATEMENT OF FACTS

Respondent refused to permit discovery of invoices of Ralph Wilson, Sr. and of The Sasser Law Firm of Montgomery, Alabama, which sheds a curious yet revealing light upon Respondent's Counsel and the path leading to the commencement of this action and to the present skirmish. Respondent was totally ignorant of contractual matters; although, it had at its disposal several attorneys: Emma Britton its General Council, Dan Stacey as Attorney for the Choppee Head Start Center, Richard Smith on Respondent's Board of Directors and Ralph Wilson Sr. who brought in The Sasser Law Firm, in a suspicious manner. The discovery of the invoices would have highlighted the unclean hands in this whole situation; in this case, Ralph Wilson's and possible could have allowed for the opening of a clean avenue towards understanding the contractual issues involved.

During this litigation process, Respondent introduced the contention of unclean hands. Those invoices would have assisted in the identification of the body to which those hands were attached; moreover, it would have exposed the identity of the fox in the chicken house and this matter would have taken an entirely different tack.

Competent legal counsel would have benefited all, especially the end users: The Choppee Head Start Center. The invoices would have shown that the ultimate beneficiary was the Sasser Law Firm of Alabama, a non South Carolina Bar Entity, facilitated in this capacity by Ralph Wilson. Ralph Wilson bridged the gap between the Sasser Law Firm of Alabama and Respondent which does not appear to be legal or maybe at least unethical.

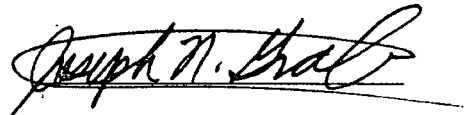
Had this information been discovered, it could have also been used to supplement Appellant's prior complaint to LLR and to the Attorney General's office regarding Ralph Wilson and the Sasser Law Firm of Alabama. An investigation by these entities would have discovered the suspicious advent of the Sasser Law Firm and that, ironically, the Sasser Law Firm, although not a legal S.C. entity, did benefit Respondent although at a substantial cost; whereas Ralph Wilson only benefited Ralph Wilson's bank account. As for the relevancy of that to the current matter, seemingly Ralph Wilson and unclean hands would have been dealt with appropriately and competent Counsel could have appraised Respondent of the issues thus this litigation could have been avoided.

V. Conclusion

Respondent failed its duty an obligation to perform. The availability of funds to compensate Appellant was not an issue. Appellant should be compensated at the contracted rate of 9% of the estimated \$1,300,000.00 Project Cost but not less than \$68,000.00 in actual damages plus other damages as allowable by the courts; also to include an amount as the court sees fit to award for the psychological strife, trauma and physical losses endured during this arduous journey to this point, with the current Tribunal.

Respectfully submitted,

June 18, 2012

A handwritten signature in black ink, appearing to read "Joseph N. Grate", with a long horizontal flourish extending to the right.

Joseph N. Grate, Pro Se
Post Office Box 1294
Pawley's Island, S.C. 295
(843) 742 - 0696

APPELLANT'S REPLY BRIEF

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

William H. Seals, Jr., Circuit Court Judge

Case Tracking No. 2012209227

Joseph N. Grate

Appellant,

v.

Waccamaw EOC, Inc.,

Respondent.

REPLY BRIEF OF APPELLANT

July 30, 2012

Joseph N. Grate, Pro Se
Post Office Box 1294
Pawley's Island, S.C. 29585
(843) 742 - 0696

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48 CFR Subpart 16.1 (b)	4
48 CFR 16.306 (a), (b) (1) (i)	4

Facts relating to the contract with the focus on Exhibit B

Originally, Exhibit A and B were drafted by Appellant and Attorney Dan Stacey.

Appellant signed it but after one month Respondent still had not signed.

That led to a meeting between Respondent and Appellant and the Fee was negotiated to 9%. After that point it was just a matter of that information being forwarded to Dan Stacey, for the Final Draft of the contract.

After much delay concerning the contract, Appellant was finally notified that the contract was ready to be signed. Appellant went to Respondent's office to execute the contract.

Upon arrival, Janice Wideman indicated that she was in contact with the Attorney's Office and was waiting for the Final Draft of Exhibit B to be faxed to her. After

Appellant waited more than two hours, Janice Wideman presented Exhibit B of the contract and the contract was executed; one month after Appellant's original signing.

At the trial, it was revealed that Janice Wideman drafted the Exhibit B, at issue; hence the mass confusion. She was also the source of the confusion concerning 45 CFR however, a competent Attorney would have been able to advise Respondent regarding Procurement matters as they pertain to Architectural Related Services, after having had his attention called to it; and not blindly holding on for dear life to something that was passed on to him from Janice Wideman, who received it from someone whose procurement acumen is lacking at best. Appellant presented Ralph Wilson with sufficient verifiable information such that much of Respondent's problems (including some future ones) and this litigation could have been avoided.

As for That Exhibit, Appellant indicated his position within days of execution of the contract but there was no reply from Respondent.

As drafted, it is in conflict with Exhibit A but to date Respondent's Attorney remains blinded regarding this issue and has never responded to Appellant's presentment thereto.

For this contract, Project Management encompasses the tasks of Contract Administrator and Construction Manager; all of which comes under the umbrella of Architectural Related Services. Typically, these are integral Elements of Architectural Services. They also are encompassed in the A.I.A Document A-101, the Contract between Respondent and Earthworks, the designer of the Choppee Head Start Center.

The Project Manager was hired to provide Respondent with an independent perspective of the venture.

Exhibit A of the contract outlined Appellant's responsibilities. However, those elements were entirely contingent upon Respondent's performance of its implied responsibilities.

Respondent completely abdicated its responsibilities by doing absolutely nothing.

Appellant repeatedly wrote to the assumed contact persons of Respondent's Organization but there was never a reply from anyone in that organization. It was not until during the trial that Appellant discovered that no one at the Organization knew who was in the position of contact person between Appellant and Respondent. At one point there had been communication but that was discontinued with the departure of Executive Director, Fryar, who was removed because she was a Competent Professional and she understood the process.

Seemingly, everything concerning Costs and Fees is a matter of permanent confusion for respondent and there seem to be a strong desire to remain in that condition. They have exhibited this in their habit of removing or eliminating from around them, those people

who possess the knowledge of properly directing them while at the same time, drawing to themselves those who only have the knowledge and abilities to help them to remain in their state of ignorance and confusion. They removed Executive Fryar; they gravitated towards Ralph Wilson and Earthworks (Steve Strickland).

I. RESPONSE TO RESPONDENT'S ARGUMENT - I.

APPELLANT'S INITIAL BRIEF IS IN COMPLIANCE with SCAC RULE 208

II. RESPONSE TO RESPONDENT'S ARGUMENT - II.

APPELLANT DID NOT BREACH THE CONTRACT.

There have never been any directives from Respondent to Appellant. Therefore, it is impossible for Appellant to have refused any directives. Appellant has never neglected to perform on any aspect of the contract to which he had access. Respondent has not permitted any such access; access was completely blocked by Respondent's lack of action. Given these absences it is legally impossible for breach by Appellant to have occurred.

Regarding 45 CFR § 74.44 (c) Appellant did not need to know anything about that CFR but Respondent should have known that it is a part of its procurement regulations; nevertheless, it does not apply with the type of contract at issue. Any mistake made regarding this regulation has to be owned by Respondent and its Attorney.

The contract at issue is not, by definition, a cost- plus-a-percentage-of-cost contract.

Janice Wideman and Ralph Wilson relentlessly repeating it does not make it so.

The Fee arrangement is in compliance with State and Federal Regulations. This situation was explained to Ralph Wilson on several occasions. He indicated that he would appraise the Respondent of Appellant's Position and inform Appellant accordingly. Evidently that did not occur.

The elements of Exhibit A clearly defines Architectural Related Services; in particular, Services as defined at 48 CFR Subpart 16.1 (b).

The State of South Carolina also addresses the issue of Architectural Related Services. S.C. Code § 11-35-2910. (1) ; (4)

This contract type is appropriate for the services involved. 10 USC § 2306 (d) ; 41 U.S.C. 254(b); (A); (B) and (C) ; 48 CFR § 36.601-4 (a) ;(1); (2) and (3) and SC Code § 11-35-2910 (4) are applicable, exclusively, irrespective of Janice Wideman's and Ralph Wilson's insistence to the contrary.

III. RESPONSE TO RESPONDENT'S ARGUMENT – III.

APPELLANT PROVIDED PROOF THAT RESPONDENT BREACHED THE CONTRACT.

Exhibit A of the contract outlined Appellant's responsibilities. However, those elements were entirely contingent upon Respondent's performance of its implied responsibilities.

Respondent completely abdicated its responsibilities by doing absolutely nothing.

Appellant repeatedly wrote to the assumed contact persons of Respondent's Organization but there was never a reply from anyone in that organization, concerning the issue presented. It was not until during the trial that Appellant discovered that no one at the Organization knew who was in the position of contact person between Appellant and

Respondent. At one point there had been communication but that was discontinued with the departure of Executive Director, Fryar.

The submitted documentation clearly indicates Appellant's push towards the execution of the contract as well as Respondent's total lack of action.

When Respondent moved forward with the Project, it contracted with Earthworks for the Design of the Project and with a Contractor to Construct the Facility. Appellant was not notified of nor involved with either contract. However, Appellant had advised Respondent against contracting Earthworks for design of the project. Additionally, and obviously to no avail, Appellant appraised Ralph Wilson of the situation; at one session spending about two hours with him, specifically dealing with the elements of the A.I.A. Document, A-101; the American Institute of Architect's document used for the contract between an Owner and an Architect for Architectural Design Services.

Eventually, construction commenced on the Facility. Well within sixty days of its commencement, the Federal Government stopped work on the Project due to Respondent neglecting to secure Matching Funds for the Project, as required. At the Trial date, work was still stopped on the Project. This situation could have been avoided but it is not a life safety matter. On the other hand, the Government attempts to provide for Life Safety, in this instance, by Legislating how and by whom buildings are designed and constructed. In this instance Ralph Wilson aided in circumventing the process, thereby introducing unnecessary risk to Life. Additionally, when work on the Choppee Head Start Center, under the initial contract that Ralph Wilson precipitated, is concluded, the project will not be issued a Certificate of Occupancy (C.O.) and will remain unoccupied until corrective

measures are taken. If somehow a C.O. is issued, the Facility still will not be Code Compliant.

When work on the Choppee Head Start Center, under the initial contract, is concluded, the project will not be issued a Certificate of Occupancy and will remain unoccupied until corrective measures are taken.

Earthworks accepted the contract on Respondent's confused terms regarding Fees; the fact is, Earthworks was not a legitimate Architectural entity and would not have been in any State in the U.S. Additionally, Steve Strickland was not an Architect in any State in the U.S. This information was made known to Respondent and to Ralph Wilson.

V. Conclusion

From inception of the Project, to date, Respondent remains clueless of the process.

It is evident in Minutes. They had no clue regarding hiring an Architect or a Contractor nor did they know anything about the starting point for acquiring the Facility.

Appellant tried to provide assistance in all matters concerned in the process.

Respondent failure to cooperate with Appellant is problematic for them.

That failure to cooperate led to them contracting with Earthworks for the design of the Facility, which is a problem.

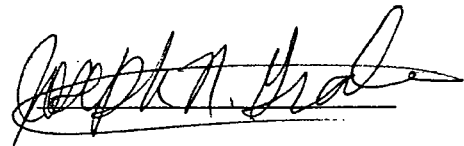
That failure to cooperate also led to them contracting for construction of the facility; yet another problem. Construction was terminated, through no fault of the Contractor; therefore, it cost Respondent for delaying the construction activities. In this case it was incumbent upon Respondent to have complied with the procedures leading up to the point of Contracting for construction of the Facility. Once again, they would not listen and

would not cooperate; no matter the amount of effort Appellant expended. Appellant tried, repeatedly; Respondent followed suit and resisted, repeatedly. In both instances: Contracting for Project Management and for Facility Construction, The Spearin Doctrine is applicable; Respondent is responsible for knowing what is involved with its Contract Documents. Any claim not to have known is not legally acceptable. In this circumstance, the information was available for all contracting issues it encountered, as indicated in Appellant submitted qualifications for the Project Management Position.

In the final analysis, Respondent will have to go back to the drawing board, in order to eventually have a useable product. Appellant tried, unsuccessfully, to apprise them of that potential. For the current situation, Respondent breached the contract by having been non-cooperative. Appellant did not breach the contract and the Jury's finding represents a very serious error.

Respectfully submitted,

July 30, 2012

A handwritten signature in black ink, appearing to read "Joseph N. Grate", written over a horizontal line.

Joseph N. Grate, Pro Se

Post Office Box 1294

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(843) 742 - 0696

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

William H. Seals, Jr., Circuit Court Judge

Case Tracking No. 2012209227

Joseph N. Grate

Appellant,

v.

Waccamaw EOC, Inc.,

Respondent.

FINAL BRIEF OF APPELLANT

September 14, 2012

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I. STATEMENT OF ISSUES ON APPEAL

1. DID THE JURY ERR IN FINDING FOR RESPONDENT, GIVEN THE GLARING EVIDENCE OF RESPONDANCE'S TOTAL FAILURE AND NEGLECT, REGARDING THE CONTRACT?
2. SHOULD NOT THE JURY HAVE FOUNDED FOR APPELLANT, GIVEN THE ABUNDANCE OF CONCISE EVIDENCE SUPPORTING APPELLLLANT'S POSITION?

II. STATEMENT OF THE CASE.

1. This Breach of Contract action was commenced: December 20, 2010;
2. The Defense responded by denying the complaint and counter sued for breach of contract, including allegation of unclean hands.
3. A jury trial was held January 10 & 11, 2012, and it found for the defense and awarded a \$2,090.00 actual damages judgment.
4. The amount involved on appeal is as it was at the trial, which was \$ 68,000 plus all cost and other damages as the Court find Equitable; to include computation for elevation to the current Tribunal.
5. The appeal is from the jury verdict, 1-12-2010 (1-12-2012).
6. The notice of appeal was served: March 7, 2012.
7. Appellant's Motions for Summary Judgment and to Compel Discovery: June 8, 2011, should illuminate the questions involved and may have some affect on this appeal.

III. ARGUMENT

1. RESPONDENT FAILED TO SUBSTANTIATE ITS BREACH OF CONTRACT COUNTERCLAIM; THEREFORE THE JURY VERDICT WAS IN ERROR.

Appellant is contesting the breach the contract verdict. Appellant was committed to the contract. He was ready, available and was proactive towards the accomplishment of the contracted elements. (R. pp. 215- 247; - pp. 329-349) To that end, Appellant acted alone; totally without any input or feedback from Respondent; Respondent's position clearly and totally prevented Appellant's performance. (R. p. 369, lines 10-25; - p. 370, lines 1-19; - p. 308, lines 14-23) Consequently, Respondent pushed forward with the Choppee Head Start Center, in total disregard for Appellant's initial input and ended up with a Government shut down of the Construction within two month of its start. (R. pp. 350 - 351; - p. 289, lines 17 - 25; - p. 290, lines 1 - 14; - p. 385, lines 22 - 25; p. 387, lines 1 - 19)

Borough of Ridley, 506 A 2nd 862 (Pa. 1986)

George A. Fuller Co. v United States, 69 F. Supp., 409 (Ct. Cl. 1947)

2. RESPONDENT BREACHED THE CONTRACT AND APPELLANT SHOULD BE COMPENSATED. THE JURY VERDICT WAS IN ERROR.

Contractually, Respondent had a duty to participate towards the performance of the contract. (R. p. 47, paragraph III). The very act of not doing anything at all towards the performance, constitute a hindrance of the performance thereto but given that Appellant was ready and available to perform his contractual obligations, even while under extreme, adverse circumstances, he should be compensated at the contracted rate. (R. p. 49, last 2 paragraphs; - p. 50, lines 1 - 9 ; - pp. 53 - 57).

IV. SEPARATE STATEMENT OF FACTS

Respondent refused to permit discovery of invoices of Ralph Wilson, Sr. and of The Sasser Law Firm of Montgomery, Alabama, which sheds a curious yet revealing light upon Respondent's Counsel and the path leading to the commencement of this action and to the present skirmish. (R. p. 48, Item V; - p. 21, Item 3; - p. 22 ; - p. 170, lines 10-17) Respondent was totally ignorant of contractual matters; although, it had at its disposal several attorneys: Emma Britton its General Council, Dan Stacey as Attorney for the Choppee Head Start Center, Richard Smith on Respondent's Board of Directors and Ralph Wilson Sr. who brought in The Sasser Law Firm, in a suspicious manner. (R. p. 110, lines 3-15, last paragraph; - p. 147, lines 9 - 27; - p. 162, last 2 paragraphs; -p. 163, paragraphs 1, 2 & 3; - p. 164, last 3 paragraphs; - pp. 167 -168; - p. 169, line 8; - p. 170, lines 11-34) The discovery of the invoices would have highlighted the unclean hands in this whole situation; in this case, Ralph Wilson's and possible could have allowed for the opening of a clean avenue towards understanding the contractual issues involved. (R. pp. 39 - 44; - p 170, lines 10 - 17; - p 173, lines 7 - 17; - p. 178, lines 20 - 25; - p. 179, lines 17 25)

During this litigation process, Respondent introduced the contention of unclean hands. (R. p. 18, line18; - p. 56, lines 1-13) Those invoices would have assisted in the identification of the body to which those hands were attached; moreover, it would have exposed the identity of the fox in the chicken house and this matter would have taken an entirely different tack. (R. p. 171, last paragraph; - p. 171, lines 11-25; - p. 246, lines 6 - 11; - p. 21, item 3.; -p. 22)

Competent legal counsel would have benefited all, especially the end users: The Choppee Head Start Center. (R. p. 282, lines 10 – 25; - pp. 283 – 284; - p. 285, lines 1 - 9) The invoices would have shown that the ultimate beneficiary was the Sasser Law Firm of Alabama, a non South Carolina Bar Entity, facilitated in this capacity by Ralph Wilson. Ralph Wilson bridged the gap between the Sasser Law Firm of Alabama and Respondent which does not appear to be legal or maybe at least unethical. (R. p. 170, line 11 -34; – p. 171, paragraph 8; – p. 51 item XII; – p. 48 item V)

Had this information been discovered, it could have also been used to supplement Appellant's prior complaint to LLR and to the Attorney General's office regarding Ralph Wilson and the Sasser Law Firm of Alabama. An investigation by these entities would have discovered the suspicious advent of the Sasser Law Firm and that, ironically, the Sasser Law Firm, although not a legal S.C. entity, did benefit Respondent although at a substantial cost; whereas Ralph Wilson only benefited Ralph Wilson's bank account. As for the relevancy of that to the current matter, seemingly Ralph Wilson and unclean hands would have been dealt with appropriately and competent Counsel could have appraised Respondent of the issues thus this litigation could have been avoided. (R. p. 18, line 18; - p. 21, item 3; - p. 22; - p. 25, item 18; - p. 31; - p. 39 ; - p. 40, paragraph 2; - p. page 48, paragraph V; - p. 50, item IX; - p. 51, item XI; - p. 55, items 9 & 11; - pp. 56 -57)

FACTS RELATING TO THE CONTRACT WITH THE FOCUS ON EXHIBIT B

Originally, Exhibit A and B were drafted by Appellant and Attorney Dan Stacey. (R. pp. 138 – 139; – pp. 141-142) Appellant signed it but after one month Respondent still had

not signed. That led to a meeting between Respondent and Appellant and the Fee was negotiated to 9 %. After that point it was just a matter of that information being forwarded to Dan Stacey, for the Final Draft of the contract. (R. pp. 70 – 72; - p. 117)

After much delay concerning the contract, Appellant was finally notified that the contract was ready to be signed. (R. pp. 115 – 116) Appellant went to Respondent's office to execute the contract. Upon arrival, Janice Wideman indicated that she was in contact with the Attorney's Office and was waiting for the Final Draft of Exhibit B to be faxed to her. After Appellant waited more than two hours, Janice Wideman presented Exhibit B of the contract and the contract was executed; one month after Appellant's original signing. (R. p. 140)

At the trial, it was revealed that Janice Wideman drafted the Exhibit B, at issue; hence the mass confusion. (R. p. 297, lines 7 – 25; - p. 298) She was also the source of the confusion concerning 45 CFR however, a competent Attorney would have been able to advise Respondent regarding Procurement matters as they pertain to Architectural Related Services, after having had his attention called to it; and not blindly holding on for dear life to something that was passed on to him from Janice Wideman, who received it from someone whose procurement acumen is lacking at best. (R. pp. 97 – 101; - p. 309, lines 6 - 12) Appellant presented Ralph Wilson with sufficient verifiable information such that much of Respondent's problems (including some future ones) and this litigation could have been avoided. (R. pp. 280 - 284)

As for That Exhibit, Appellant indicated his position within days of execution of the contract but there was no reply from Respondent. (R. pp. 119 – 131; - p. 140 - 142)

As drafted, it is in conflict with Exhibit A but to date Respondent's Attorney remains blinded regarding this issue and has never responded to Appellant's presentment thereto. (R. pp. 120 – 124)

For this contract, Project Management encompasses the tasks of Contract Administrator and Construction Manager; all of which comes under the umbrella of Architectural Related Services. Typically, these are integral Elements of Architectural Services. (R. pp. 120 – 124). They also are encompassed in the A.I.A Document A-101, the Contract between Respondent and Earthworks, the designer of the Choppee Head Start Center. (R. p. 70, @ 4.2)

The Project Manager was hired to provide Respondent with an independent perspective of the venture. (R. p. 65, last paragraph; - p. 156, last 4 lines; - p. 166, last paragraph; - p. 167, lines 1 – 10; - p. 168; - p. 169, lines 7 – 8; - p. 170, lines 11 – 24; - p. 171, paragraph 5)

Exhibit A of the contract outlined Appellant's responsibilities. However, those elements were entirely contingent upon Respondent's performance of its implied responsibilities. Respondent completely abdicated its responsibilities by doing absolutely nothing. (R. p. 170, lines 22 – 24; - p. 173, lines 5 – 6; - p. 175, last 2 lines)

Appellant repeatedly wrote to the assumed contact persons of Respondent's Organization but there was never a reply from anyone in that organization. It was not until during the trial that Appellant discovered that no one at the Organization knew who was in the position of contact person between Appellant and Respondent. (R. p. 334, lines 1 – 23; - p. 380, lines 1 – 15; - p. 385, line 25) At one point there had been communication but that was discontinued with the departure of Executive Director, Fryar, who was removed

because she was a Competent Professional and she understood the process. (R. p. 147, first paragraph; - pp. 156-157; - p. 67; - pp.106 -109; - pp. 110-118)

Seemingly, everything concerning Costs and Fees is a matter of permanent confusion for respondent and there seem to be a strong desire to remain in that condition. (R. p. 64, paragraph 5; - p. 104, paragraph3)They have exhibited this in their habit of removing or eliminating from around them, those people who possess the knowledge of properly directing them while at the same time, drawing to themselves those who only have the knowledge and abilities to help them to remain in their state of ignorance and confusion. (R. p. 182, lines 11-25; - pp. 283 - 285) They removed Executive Fryar; they gravitated towards Ralph Wilson and Earthworks (Steve Strickland). (R. p. 26; item VI; -P. 27, lines 1 – 8; - p. 48, item 8; - p. 51, item XII, item XIII; - pp. 80 – 81; - p. 84; - p. 86; - p.90; - p. 92; - p. 93, item B (2); - p. 94 item 8; -p. 150, last paragraph; - pp. 151 – 152; - p. 153, first paragraph; - p. 173, lines 7 - 17)

I. RESPONSE TO RESPONDENT'S ARGUMENT - I.

APPELLANT'S INITIAL BRIEF IS IN COMPLIANCE with SCAC RULE 208

II. RESPONSE TO RESPONDENT'S ARGUMENT – II.

APPELLANT DID NOT BREACH THE CONTRACT.

There have never been any directives from Respondent to Appellant. (R. pp. 206 - 293)

Therefore, it is impossible for Appellant to have refused any directives. Appellant has never neglected to perform on any aspect of the contract to which he had access.

Respondent has not permitted any such access; access was completely blocked by

Respondent's lack of action. Given these absences it is legally impossible for breach by Appellant to have occurred. (R. pp. 176 - 204)

Regarding 45 CFR § 74.44 (c) Appellant did not need to know anything about that CFR but Respondent should have known that it is a part of its procurement regulations; nevertheless, it does not apply with the type of contract at issue. (R. pp. 119 – 130; - p. 152; - p. 153, lines 1 - 24) Any mistake made regarding this regulation has to be owned by Respondent and its Attorney. (R. pp. 98 -99; - p. 293, lines 23 -25; -p. 294, lines 17 - 20) The contract at issue is not, by definition, a cost; - plus-a-percentage-of-cost contract. (R. p. 49, last paragraph) Janice Wideman and Ralph Wilson relentlessly repeating it does not make it so.

The Fee arrangement is in compliance with State and Federal Regulations. (R. p. 49, last paragraph; - p. 50, lines 1-10 - p. 70, @ 4.2 - p. 71) This situation was explained to Ralph Wilson on several occasions. He indicated that he would appraise the Respondent of Appellant's Position and inform Appellant accordingly. Evidently that did not occur. The elements of Exhibit A clearly defines Architectural Related Services; in particular, Services as defined at 48 CFR Subpart 16.1 (b).

The State of South Carolina also addresses the issue of Architectural Related Services. S.C. Code § 11-35-2910. (1); (4)

This contract type is appropriate for the services involved. 10 USC § 2306 (d) ; 41 U.S.C. 254(b); (A); (B) and (C); 48 CFR § 36.601-4 (a);(1); (2) and (3) and SC Code § 11-35-2910 (4) are applicable, exclusively; irrespective of Janice Wideman's and Ralph Wilson's insistence to the contrary. (R. pp. 408 - 419)

III. RESPONSE TO RESPONDENT'S ARGUMENT – III.

APPELLANT PROVIDED PROOF THAT RESPONDENT BREACHED THE CONTRACT.

Exhibit A of the contract outlined Appellant's responsibilities. However, those elements were entirely contingent upon Respondent's performance of its implied responsibilities. Respondent completely abdicated its responsibilities by doing absolutely nothing.

Appellant repeatedly wrote to the assumed contact persons of Respondent's Organization but there was never a reply from anyone in that organization, concerning the issue presented. (R. p. 369, lines 10 – 25; –p. 390, lines 1 – 19) It was not until during the trial that Appellant discovered that no one at the Organization knew who was in the position of contact person between Appellant and Respondent. (R. p. 298, lines 8 – 13; –p. 310, lines 5 – 18; –p. 318, lines 19 –25; – p. 19, lines 1 – 3; – p. 286, lines 4 - 14) At one point there had been communication but that was discontinued with the departure of Executive Director, Fryar.

The submitted documentation clearly indicates Appellant's push towards the execution of the contract as well as Respondent's total lack of action. (R. p. 67; –p. 96, third paragraph – to end of page; – pp. 104 – 105; –p. 107; –pp. 110 – 112; –p. 114; – pp.116 - 117; – pp. 120-122; –pp. 126 – 128; – p. 130)

When Respondent moved forward with the Project, it contracted with Earthworks for the Design of the Project and with a Contractor to Construct the Facility. (R. p. 55, lines 1 - 14) Appellant was not notified of nor involved with either contract. However, Appellant had advised Respondent against contracting Earthworks for design of the project. (R. pp. 74 – 77; – pp. 80 – 82 ; - p. 90 ; - p. 92; – pp. 94 – 95 ; - p. 108; – p. 112) Additionally, and obviously to no avail, Appellant appraised Ralph Wilson of the situation; at one session spending about two hours with him, specifically dealing with the elements of the A.I.A. Document, A-101; the American Institute of Architect's document used for the

contract between an Owner and an Architect for Architectural Design Services. (R. p. 131)

Eventually, construction commenced on the Facility. Well within sixty days of its commencement, the Federal Government stopped work on the Project due to Respondent neglecting to secure Matching Funds for the Project, as required. At the Trial date, work was still stopped on the Project. (R. p. 289, lines 17 – 25; –p. 290, lines 1 – 14) This situation could have been avoided but it is not a life safety matter. (R. p. 112; – p. 116; – pp. 118 - 119 ; - p. 64 lines 1 – 4) On the other hand, the Government attempts to provide for Life Safety, in this instance, by Legislating how and by whom buildings are designed and constructed. (R. p. 74, paragraph 2; – pp. 80 - 81) In this instance Ralph Wilson aided in circumventing the process, thereby introducing unnecessary risk to Life. Additionally, when work on the Choppee Head Start Center, under the initial contract that Ralph Wilson precipitated, is concluded, the project will not be issued a Certificate of Occupancy (C.O.) and will remain unoccupied until corrective measures are taken. If somehow a C.O. is issued, the Facility still will not be Code Compliant. Earthworks accepted the contract on Respondent's confused terms regarding Fees; the fact is, Earthworks was not a legitimate Architectural entity and would not have been in any State in the U.S. Additionally, Steve Strickland was not an Architect in any State in the U.S. This information was made known to Respondent and to Ralph Wilson. (R. p. 69; - pp. 73 -75; - pp. 80 – 81; - p. 84; – p. 86)

V. Conclusion

From inception of the Project, to date, Respondent remains clueless of the process. It is evident in Minutes. They had no clue regarding hiring an Architect or a Contractor

nor did they know anything about the starting point for acquiring the Facility. (R. p. 147, first paragraph; -p. 160; - p. 181, lines 1 – 14) Appellant tried to provide assistance in all matters concerned in the process. (R. pp. 59 – 64; - pp. 67 – 96; - pp. 104 – 107; - pp. 110 - 114; - p. 116; - p. 118 ; - pp. 120 -124; - p. 162, last 2 paragraphs)

Respondent failure to cooperate with Appellant is problematic for them. (R. p. 386, lines 10 – 25) That failure to cooperate led to them contracting with Earthworks for the design of the Facility; which is a problem. (R. pp. 73 – 75; - pp. 80 - 81; - p. 84; - pp. 92 – 96; - p. 107; - p. 110; - p. 112; - p. 150, last paragraph; - p. 151; -- p. 153, first paragraph; - pp. 155 – 158; - p. 164, paragraph 3; - p. 165, lines 10 -15) That failure to cooperate also led to them contracting for construction of the facility; yet another problem.

Construction was terminated, through no fault of the Contractor; therefore, it cost Respondent for delaying the construction activities. (R. p. 278, lines 8 – 12) In this case it was incumbent upon Respondent to have complied with the procedures leading up to the point of Contracting for construction of the Facility. . (R. pp. 122-124) Once again, they would not listen and would not cooperate; no matter the amount of effort Appellant expended. (R. pp. 53 -57; - pp. 58 64; - pp. 68 - 96; - pp. 104 – 105; - p. 107; - pp. 110 – 112; - p. 114; - p. 116; - p. 118; - pp. 119 - 131) Appellant tried, repeatedly;

Respondent followed suit and resisted, repeatedly. I both instances: Contracting for Project Management and for Facility Construction, The Spearin Doctrine is applicable; Respondent is responsible for knowing what is involved with its Contract Documents.

Any claim not to have known is not legally acceptable. In this circumstance, the information was available for all contracting issues it encountered, as indicated in

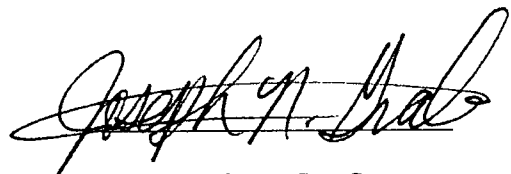
Appellant submitted qualifications for the Project Management Position. (R. pp. 59 – 63;
- p. 64, lines 1 - 4)

In the final analysis, Respondent will have to go back to the drawing board, in order to eventually have a useable product. Appellant tried, unsuccessfully, to apprise them of that potential. (R. pp. 63 – 64; - p. 64, lines 1 – 8; - p. 66; – p. 96) For the current situation, Respondent breached the contract by having been non-cooperative. Appellant did not breach the contract and the Jury's finding represents a very serious error.

Respondent failed its duty an obligation to perform. The availability of funds to compensate Appellant was not an issue. (R. p. 198, lines 14 - 15) Appellant should be compensated at the contracted rate of 9% of the estimated \$1,300,000.00 Project Cost but not less than \$68,000.00 in actual damages plus other damages as allowable by the courts; also to include an amount as the court sees fit to award for the psychological strife, trauma and physical losses endured during this arduous journey to this point, with the current Tribunal.

Respectfully submitted,

September 14, 2012

A handwritten signature in black ink, appearing to read "Joseph N. Grate", written over a horizontal line.

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**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

Joseph N. Grate, Appellant,

v.

Waccamaw EOC, Inc., Respondent.

Appellate Case No. 2012-209227

Appeal From Horry County
William H. Seals, Jr., Circuit Court Judge

Unpublished Opinion No. 2013-UP-247
Submitted May 1, 2013 – Filed June 12, 2013

AFFIRMED

Joseph N. Grate, of Pawleys Island, pro se.

Ralph J. Wilson, Sr., of Ralph J. Wilson, Attorney at
Law, P.A., of Conway, for Respondent.

PER CURIAM: Affirmed pursuant to Rule 220(b), SCACR, and the following authorities: *Ulmer v. Ulmer*, 369 S.C. 486, 490, 632 S.E.2d 858, 861 (2006) ("An appellate court will not consider issues on appeal which have not been preserved for appellate review."); *Peay v. Ross*, 292 S.C. 535, 537, 357 S.E.2d 482, 484 (Ct. App. 1987) ("Since the insufficiency of the evidence was not properly raised at trial, [this court] cannot review the judgment on that ground."); *Lites v. Taylor*, 284

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SC Court of Appeals

S.C. 316, 318, 326 S.E.2d 173, 175 (Ct. App. 1985) ("The failure of a [party] to move for a directed verdict at trial precludes a challenge on appeal to the sufficiency of the evidence.").

AFFIRMED.¹

HUFF, WILLIAMS, and KONDUROS, JJ., concur.

¹ We decide this case without oral argument pursuant to Rule 215, SCACR.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

William H. Seals, Jr., Circuit Court Judge

Unpublished Opinion No. 2013-UP-247 (S.C. Ct. App. filed June 12, 2013)

Joseph N. Grate,

Petitioner,

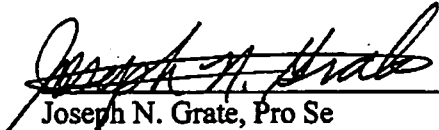
v.

Waccamaw E. O. C. Inc,

Respondent.

PETITION FOR REHEARING

June 24, 2013


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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

William H. Seals, Jr., Circuit Court Judge

Unpublished Opinion No. 2013-UP-247 (S.C. Ct. App. filed June 12, 2013)

Joseph N. Grate,

Petitioner,

v.

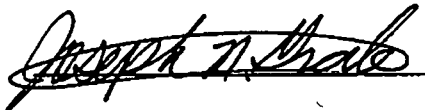
Waccamaw E. O. C. Inc,

Respondent.

CERTIFICATION OF SERVICE

I certify that I served the Notice of Appeal on Waccamaw E.O.C., Inc., by depositing a copy of it in the United States Mail, postage prepaid, on June 24, 2013, addressed to its attorney of record, Ralph J. Wilson, Sr.; Post Office Box 1827; Conway, South Carolina 29526, to 15th Judicial Clerk's office and to S.C. Court Administration.

June 24, 2013



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Ralph J. Wilson, Sr.
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Authorities

SCACR RULE 201
SCACR Rule 220 (b)
SCACR 501 CANON 1
SCACR 501 CANON 3

Questions

1. Does not rule Appellant have a right to the provisions of SCACR RULE 201?
2. Does not the rule regarding detail per SCACR Rule 220 (b). apply in this case?

Statement

1. The parties entered into a contract.
2. Respondent failed to perform on the Contract.
3. Plaintiff initiated Breach of Contract action against Respondent.
4. Respondent Countersued.
5. The Breach of Contract case was tried before a Jury.
6. The Jury found for Respondent, erroneously.
7. Plaintiff appealed to the Court of Appeals.
8. The Court of Appeals affirmed the previous court's decision.

Arguments

1. THE COURT OF APPEALS SHOULD HAVE REVIEWED THE CASE, IN ACCORDANCE WITH THE CITED AUTHORITIES, HEREIN,
The Jury ruled against Plaintiff but they were unable to determine who the

Defendant was and who was the Plaintiff; let alone being capable of deciding this simple case, based upon the evidence.

2. PETITIONER DID ALL THAT WAS NECESSARY FOR THE PROPER ADJUDICATION OF THE APPEAL.

3. THE OPINION DOES NOT REFLECT PROPER ADJUDICATION.

HUFF, WILLIAMS and KONDUROS, JJ., have some serious problems. For their opinion, what could possibly be their excuse? Is it that the problem here involves more than just HUFF, WILLIAMS and KONDUROS, JJ. ? By them, Petitioner has been victimized and deprived of Justice.

Conclusion

1. Because the issue of Contract Default raised in the Appellate Court is the same issue raised in the Circuit Court, Ulmer does not apply in this case.
2. There is no issue of a New Trial therefore Lites does not apply in this case.
3. In this case, Appellants contended that all of the evidence supports his position so of course he did not object to its presentation and appealed for a review of the judgment on the ground that the verdict does not reflect the evidence presented. Therefore, Peay has no application in this case. Appealing here because verdict and opinion does not reflect the evidence in the case.
4. The Court, in its Opinion, did not give any indication of correspondence between the Cited Cases and This Appeal. Therefore, the Opinion does not reflect Rule 220 (b).
5. Petitioner request that the case and the opinion be review from a legal perspective.

June 24, 2013


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The South Carolina Court of Appeals

Joseph N. Grate, Appellant,

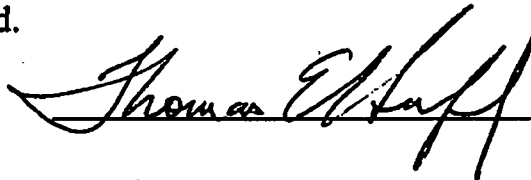
v.

Waccamaw EOC, Inc., Respondent.

Appellate Case No. 2012-209227

ORDER

After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.

 J.

 J.

 J.

Columbia, South Carolina

cc: Joseph N. Grate
Ralph J. Wilson, Sr.

FILED

August 29, 2013