

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
J. C. Nicholson, Jr., Circuit Court Judge

Appellate Case No. 2013-001623

South Carolina Electric & Gas Co., ...Respondent,

v.

Anson Construction Co., ...Appellant.

RECORD ON APPEAL

VOLUME II

Everett A. Kendall, II
James Eric Cavanaugh
1515 Lady Street
Post Office Box 12129
Columbia, SC 29211
(803) 256-2233
Attorneys for Appellant

John A. Massalon
I. Ryan Neville
Wills & Massalon, LLC
Post Office Box 859
Charleston, SC 29402
(843) 727-1144
Attorneys for Respondent

INDEX

1. Order Granting Plaintiff's Motion for Partial Summary Judgment, July 23, 2013	3
2. Summons and Complaint, July 15, 2011	10
3. Answer to Complaint, September 13, 2011	43
4. French Protestant Huguenot Church of Charleston v. SCE&G and Anson Construction Co., Inc. Complaint (2009-CP-10-4358)	49
5. Motion for Partial Summary Judgment, July 16, 2013.....	60
6. Anson Notice of Appeal, July 23, 2013.....	152
7. Transcript of Record of Hearing on July 18, 2013.....	161
8. Trial Transcript, July 22-23, 2013.....	211
9. Transcript of Deposition of Jesse Thigpen: 18:13-23:21; 19:12-20:14; 21:1-17; 24:2 – 25:22; 24:3-28:5; 27:9-28:5; 27:21-25; 27:24-25; 28:3-4; 53:13-54:2; 53:19-54:20; 54:3-56:15; 54:12-55:23; 54:20; and 55:8-18.....	287
10. Transcript of Deposition of Claude Newton: 9:7-24; 17:16-18:11; and 31:4-32:1.....	349
11. Transcript of Deposition of Clay Stutsman: 10:9 – 11:16; 11:5-10; 18:11-18; 23:3-4; 32:25-33: 13; 37:8-11; 38:20 – 39:2; 42:12 – 43:13; and 43:14-17.....	395
12. Transcript of Deposition of Pete Stutsman: 18:24-20:15; 26:11-23; 26:11-17; 26:17-21; 29:22-30:4; 32:3-33:18; 32:23-33:19; 34:17-22; 34:24-35:1; 44:14-19, 22-24; 44:25-45:15; 46:11-15; 58:25-59:4; 64:14-18; 75:19-25; 92:22-93:10; 98:9-11; 106:16-110:20; 159:18, 22-160:9, 22-23, 25-161:15; 161:9-12.....	450
13. Transcript of Deposition of Donnie Graham: 18:2-6, 14-19:7; 19:1-10; 21:2-8; 29:23-30:25; 30:22-25; and 44:19-45:4.....	619
14. Transcript of Deposition of Randy Morris: 20:8-21:20; 25:8-26:5; 27:6-12; 28:1-7; 29:6-14; and 31:7-20.....	669
15. Anson Quotation, December 13, 2007.....	706
16. Anson Updated Quotation, January 3, 2008	707
17. Anson Signed Quotation, January 4, 2008.....	708
18. SCE&G Purchase Order, January 4, 2008	709
19. SCE&G's General Terms and Conditions	711

20. Anson’s Invoice 732

21. Certificate of Counsel 733

1 A. Ask me again.

2 Q. Sure. I think I can ask the question. What
3 percentage of the work that Anson does with SCE&G
4 is done only on a quotation with no other document?

5 MR. CAVANAUGH: Object to the form.

6 A. A small percentage.

7 Q. How much is a small percentage?

8 A. 10.

9 Q. And it's your testimony today that Anson's
10 work for SCE&G only -- out of all the work it's
11 done for SCE&G, only 10 percent of the work that is
12 done is done solely on a quotation.

13 A. No. Solely on a verbal.

14 Q. Solely on a verbal. Okay.

15 A. Right.

16 Q. So 10 percent of Anson's contracts with
17 SCE&G are oral contracts.

18 MR. CAVANAUGH: Object to the form.

19 A. Approximately.

20 Q. Okay. How much percentage of Anson's
21 contracts with SCE&G are done solely on a
22 quotation, no other document?

23 MR. CAVANAUGH: I'm going to object to
24 the form of this whole line of questioning.

25 MR. NEVILLE: That's fine.

1 Q. You can answer.

2 A. I apologize. Ask me one more time.

3 Q. Sure. How much percentage of Anson's work
4 with SCE&G is done with solely a quotation, no
5 other document?

6 A. A small percentage, 10 percent, given that
7 if I'm understanding you -- if that's the only
8 piece of paper -- we've already told you that if we
9 get a purchase order, I use it because that's how
10 we get paid. That's an additional piece of paper,
11 a document based on our quotation, or whatever.

12 Q. All right. Well, I'm taking the purchase
13 order out of it. Okay? The only document that is
14 ever presented between Anson and SCE&G is Anson's
15 quotation. All right? How much of SCE&G and
16 Anson's work would fall into that scenario?

17 A. Without a purchase order.

18 Q. No. Not without a purchase order, but just
19 tell me with just the quotation. So by necessity
20 that would mean without a purchase order because
21 I'm talking about just the one document that Anson
22 presents to SCE&G. How much of SCE&G and Anson's
23 work is based solely on just the quotation, no
24 other document?

25 A. 10 or less percent.

1 Q. Earlier you'd testified that you'd get paid
2 based on the purchase order. Correct?

3 A. Correct.

4 Q. So how do you get paid for that 10 or less
5 percent where there is no purchase order?

6 A. We sent a bill in times past and we've
7 gotten a check.

8 Q. So you've had no problem with getting paid
9 on those jobs, that 10 percent that you say there's
10 no purchase order?

11 A. Not to my knowledge, no.

12 Q. So as we sit here today, 10 percent of
13 Anson's contracts with SCE&G are oral; is that
14 correct?

15 A. You'd asked me for an estimate.

16 Q. I'm asking you for an answer.

17 MR. CAVANAUGH: Object to the form.

18 A. I gave you an answer.

19 Q. Well, I'm asking you again so answer the
20 question. Is --

21 A. Less than 10 percent.

22 Q. Less than 10 percent now. Okay. Well, how
23 much less than 10 percent?

24 MR. CAVANAUGH: Object to the form.

25 A. 9 percent.

1 Q. So 9 percent of SCE&G and Anson's work is
2 done on an oral contract?

3 A. We have done oral contracts in the past, and
4 I'm talking about an extended period of time.

5 Q. I'm not asking you that question. I'm
6 asking you is SCE&G and Anson's work done on an
7 oral contract 9 percent of the time, yes or no?

8 MR. CAVANAUGH: Object to the form.

9 A. I'd say approximately 9 percent without
10 having any more documents to look over from our
11 records.

12 Q. What other documents would you need to
13 review?

14 A. We have a lot of records that we've --
15 we've -- we've amassed over a number of years. I
16 don't have all those records in front of me and I
17 don't know that all those records are in our
18 office. I'm talking somewhat from my experience.

19 Q. So you'd have to go do more research to get
20 an exact percentage?

21 A. Correct. And I'm also talking from my
22 experience, records or not.

23 Q. How long ago did you find out that this
24 deposition was going to take place today?

25 A. Maybe 30 days.

1 Q. 30 days. And when did you find out about
2 the topics that were going to be discussed in the
3 deposition?

4 A. I knew about the topics.

5 Q. And so you haven't had a chance to do this
6 research that you told me you need to go back and
7 do?

8 A. I have done research.

9 Q. Well, then what additional research do you
10 need to do in order to answer the questions that
11 I'm asking you today?

12 A. Refresh myself.

13 Q. How much of Anson's contracts with SCE&G are
14 oral?

15 A. I've told you, 9-ish percent.

16 Q. 9 percent. So no more research is needed to
17 be done to give that answer.

18 MR. CAVANAUGH: Object to the form.

19 A. No.

20 Q. Is that no, no research -- you need to do
21 more research or you're comfortable with no more
22 research?

23 A. That's as best as I can estimate with what I
24 know to be available for me.

25 Q. What else is not available for you? What is

1 not available for you?

2 A. We've worked for SCE&G a long time. We may
3 not have records that are readily accessible that
4 we did in 1982, 1992. So -- you've asked for my
5 experience and I've tried to provide it to you.

6 Q. Where are those records?

7 A. I don't know that they exist.

8 Q. So then how would you do research on records
9 that don't exist?

10 A. Think about it, try to remember.

11 Q. Well, we can stop, like I said earlier, and
12 take a break for lunch and you can think about it
13 in your own brain for as long as you want to, but
14 what I'm trying to get to an understanding of is
15 what do you not know that you need to know in order
16 to answer these questions I've asked you?

17 A. And I thought I had answered it. It's
18 approximately -- I would say 9 percent.

19 Q. Well, you haven't really answered my
20 question because you keep giving me like these
21 generic terms like bulk and about or a bunch. And
22 it's not a -- I guess it's 9 percent is not an
23 answer. And you've had adequate time to do
24 research on these topics, and you still don't know
25 the answer, and so I'm trying to figure out what

1 documents have you not been able to look at that
2 you need to look at in order to answer these
3 questions?

4 A. I haven't -- all documents available to me,
5 I've already looked at them.

6 Q. So there's no other documents that --

7 A. To the best of my knowledge, it's 9 percent.

8 Q. 9 percent. All right. Is there anybody
9 else at Anson that would be better equipped to
10 answer these questions?

11 A. No.

12 Q. You're the person.

13 A. Yes.

14 Q. So you wouldn't have to go back to Anson and
15 talk to anybody --

16 A. No.

17 Q. -- that does oral contracts with SCE&G?

18 A. No.

19 Q. Now, the second question I asked you, how
20 many contracts, percentage of contracts, does SCE&G
21 and Anson enter into that are done solely on the
22 quotation? The quotation is the only document that
23 is exchanged between the parties.

24 A. Maybe none.

25 Q. None. So earlier you said 10 percent.

1 A. You excluded the purchase order.

2 Q. I excluded the purchase order previously. I
3 said only the quotation. But as I understand it,
4 your answer is you do no contracts with SCE&G that
5 do not include a purchase order.

6 A. If any, very small. Very few.

7 Q. All contracts with SCE&G --

8 A. I didn't say all. I said it's not
9 impossible. We might be asked to do a very small
10 job and we do it. Certainly, what I'm telling you
11 is that there's an agreement and a purchase order
12 follows so, yes, SCE&G gives us a piece of paper, I
13 said the bulk of the time if not all of the time.

14 Q. Okay. Well, let's get more precise than
15 bulk. Let's give -- I mean you're the person that
16 is most qualified to testify on behalf of Anson.
17 What is the percentage of contracts with SCE&G and
18 Anson that include a purchase order?

19 A. 97, 98 percent or something like that.

20 Q. Now, is it Anson's testimony here today that
21 the church work fell into that 2-and-a-half percent
22 that don't include a purchase order?

23 MR. CAVANAUGH: Object to the form.

24 A. I said we had a purchase order for the
25 church work.

1 Q. So the purchase order was part of the
2 contract with --

3 A. No.

4 MR. CAVANAUGH: Object to the form.

5 A. No. We told you that we used the purchase
6 order for billing purposes.

7 Q. When you sent your invoice in for billing
8 purposes, did it have the purchase order referenced
9 on it?

10 A. As far as I'm aware, yes.

11 Q. That's pretty standard practice?

12 A. Yes.

13 Q. If we could go back to Exhibit 2, which was
14 the Complaint, I believe, and then flip to Exhibit
15 A, which was the page following page 8 of 8.
16 Earlier you testified -- and I want you to correct
17 me if I'm wrong -- this document was generated by
18 Anson?

19 A. Yes.

20 Q. And Anson usually calls these a quotation or
21 a bid?

22 A. Yes.

23 Q. Which one, quotation or bid --

24 A. It says quotation on it.

25 Q. All right. And who at Anson prepared this

1 document?

2 A. Me.

3 Q. Did SCE&G help you prepare the document?

4 A. No.

5 Q. I'm just struggling with why we would put
6 bullet point number two in this document. Can you
7 tell me since -- you drafted it.

8 A. Uh-huh.

9 Q. Why would you put that in there?

10 A. It's one of our more generic terms in that
11 this document we might use for any number of
12 purposes, one of which is that this might go to a
13 general contractor, and in turn that SCE&G in this
14 particular thing is the general contractor, and
15 that would be if we have an opportunity we say that
16 we'll look for a nonmodified AIA document or
17 subcontractor approved equal of which this became
18 the subcontractor approved equal.

19 Q. And how did it become subject to a
20 subcontractor approved equal?

21 A. Because I wrote that.

22 Q. You wrote -- because you wrote subcontractor
23 approved equal --

24 A. Because I wanted the option, and I'd either
25 get to have this document -- it could be a

1 nonmodified AIA or -- this document or any other --
2 me being the subcontractor -- form that I said was
3 acceptable.

4 Q. I'm just trying to figure out why even put
5 number two in there if it's not going to be subject
6 to another document.

7 A. It's two options. It can be option A or
8 option B.

9 Q. So you drafted this. Then why didn't after
10 the word "or" on number two say this document?

11 A. I'm not an English teacher. I wrote that
12 myself.

13 Q. Right. I didn't ask you if you were an
14 English teacher. I asked you why did you choose
15 the language that you did.

16 A. I liked it.

17 Q. And why did you like it?

18 A. Because I thought it conveyed what I wanted
19 to convey.

20 Q. Do you use subcontractor approved equal for
21 other subcontractors that you do work with?

22 A. Sure. Yes.

23 Q. And so why not take that part out if this
24 was going to be the contract and just say -- you
25 know, if this was the contract, why call it a

1 quotation?

2 A. Because it was a quotation before it was
3 executed or accepted, then it became an agreement
4 once it was accepted. That's why we asked them to
5 sign it.

6 Q. Then why didn't you scratch through
7 quotation and write contract -- or wait. You like
8 agreement. Why didn't you scratch through and
9 write agreement?

10 A. Oversight. I don't know.

11 Q. And why did you not sign the agreement?

12 A. I didn't think I had to sign the agreement.
13 My name's on the agreement and in turn so was the
14 gentleman from SCE&G.

15 Q. And so you don't think that you have to --
16 Anson doesn't sign agreements that it enters into
17 with other parties?

18 A. With the benefit of hindsight, I would have
19 done a lot of things different on this, but that's
20 what it was for this job on this occasion, and we
21 moved forward with it.

22 Q. And what I'm saying is, how many other
23 times -- well, scratch that. How many other jobs
24 does Anson do with SCE&G that would fall into the
25 scenario that we're presented with here today?

1 A. Very few.

2 Q. And how much is that a percentagewise?

3 A. It would be an estimate of -- a small
4 estimate -- a small quantity.

5 Q. How many?

6 A. Ask me one more time.

7 Q. Yeah. How many contracts has SCE&G and
8 Anson entered into that fit the scenario that we're
9 faced with here today?

10 A. Very few.

11 Q. And how many?

12 A. Maybe one.

13 Q. This is the only one? Sitting here today,
14 are you aware of any other contract that you've
15 entered into with -- that Anson has entered into
16 with SCE&G that fits this scenario that we're
17 presented with here today?

18 A. That we gave them an estimate, they accepted
19 the estimate and provided a purchase order, and we
20 billed against that purchase order. Is that what
21 you're asking me?

22 Q. I'm not asking you that question. The
23 reason -- all right. How many other contracts has
24 SCE&G and Anson entered into besides the one that
25 we're here for today that would fit this same

1 model?

2 A. Exactly the same model?

3 Q. Yes, exactly the same model.

4 A. A very small percentage, if any.

5 Q. Is it, yes, one, two, zero? How many?

6 A. Less than five.

7 Q. So there's been four other contracts with
8 SCE&G that are like this?

9 A. Over the span of three decades, it wouldn't
10 be impossible. I know of this one, if that's what
11 you're asking.

12 Q. That's what I want to know is I don't want
13 you to guess. I don't want you to do any more
14 guessing because you've guessed a lot. I want you
15 to testify about what you know.

16 Do you, sitting here today, know of any
17 other contract that SCE&G and Anson have entered
18 into where the quotation was the agreement, as you
19 call it?

20 A. No.

21 Q. This is it, the one and only.

22 A. As far as I'm aware.

23 Q. So is it your position here today, having
24 drafted this document, that no other document was
25 necessary to be executed after this document?

1 A. I didn't need any more than that. We had
2 SCE&G's for years -- for years of service to them,
3 that when they would agree to do something like
4 this, we'd move forward.

5 Q. But earlier -- and I mean just earlier, you
6 just testified that this was the only time that
7 this has happened. So which one is it? Has it
8 happened before or is this the only time?

9 A. We've had any number of occasions where
10 SCE&G has asked us to do something and we did it.
11 We've had -- we've tried to do what they wanted for
12 an extended period of time. This was no -- this is
13 no different.

14 Q. All right. Now, why was another document
15 not signed in this transaction?

16 A. I didn't think we needed to sign another
17 document. We had it. We had a document signed and
18 those were the terms.

19 Q. Despite bullet point number two saying that
20 this proposal is subject to execution of a
21 nonmodified AIA form or subcontractor approved
22 equal?

23 A. Right. And this in fact was the
24 subcontractor approved equal.

25 Q. So let me just make the record clear. It's

1 your testimony here today that no other document
2 was necessary to be signed.

3 A. We went to work based on this document.
4 That's correct. We didn't --

5 Q. I'm sorry. The reason why we're taking so
6 long is you keep not answering yes or no and you
7 just keep going into this explanation, and I love
8 the explanation, but I've got to get a yes or no
9 first. All right.

10 Is it your testimony here today that no
11 other document was necessary to be signed, yes or
12 no?

13 A. Yes. I beg your pardon. I didn't need
14 another document.

15 Q. Okay. Sitting here today, we'll ask the
16 question again because it was confusing. No -- was
17 there another document necessary to be signed?

18 A. We didn't need another document.

19 Q. All right. Did you need to sign a
20 nonmodified AIA form, yes or no?

21 A. No.

22 Q. Did you need to sign a subcontractor
23 approved equal, yes or no?

24 A. I needed the owner to sign.

25 Q. Yes or no, did you need to sign a

1 subcontractor approved equal?

2 A. You're asking me did I need to sign it.

3 Q. Did Anson need to sign a subcontractor
4 approved equal?

5 A. No.

6 Q. So despite the number two language that you
7 drafted, SCE&G didn't put bullet point number two
8 in there, did they?

9 A. No.

10 Q. You drafted this entire document?

11 A. Yes.

12 Q. Nobody helped you.

13 A. No.

14 Q. So despite the language in number two, no
15 other document had to be executed?

16 A. Not for our purposes, no.

17 Q. Well, then for who other's purposes?

18 A. Well, we were wanting to get paid. We
19 wanted an agreement. We got an agreement so we
20 went to work based on the agreement.

21 Q. Okay. And you went to work despite -- you
22 testified over 30 years of working with SCE&G, the
23 one and only time that this document is the way it
24 is, a contract, an agreement, this was the one
25 exception. Everything else included purchase

1 orders. You just thought that it would be fine?

2 MR. CAVANAUGH: Object to the form.

3 A. We trusted this to in fact go to work and we
4 did in fact go to work.

5 Q. Okay. And so despite this being the only
6 time you've ever done work like this, you just
7 thought it would be okay?

8 A. We thought -- we thought we had an agreement
9 and in fact if -- yes, we thought it would be okay,
10 your term, to go to work based on this, and we did.

11 Q. And you thought that this was the contract.

12 A. Yes.

13 Q. Okay. Despite it saying that it was subject
14 to the execution of a nonmodified AIA form?

15 A. I believe in concert with it saying that it
16 was subject to the subcontractor approved equal.

17 Q. Subject to the execution of the
18 subcontractor approved equal?

19 A. Right. Which this became the subcontractor
20 approved equal and we were the subcontractor.

21 Q. And you say that no other document needed to
22 be signed. This was it. This is the contract.

23 A. That's what we needed, yes.

24 Q. And just so we're clear, this is the only
25 time you've done work with SCE&G based on solely

1 the quotation.

2 A. That I'm prepared to tell you today, yes,
3 this is --

4 Q. I don't want that you're prepared to tell me
5 today. You had 30 days to get ready for today and
6 this has been going on since January of 2008. So
7 you've had more than four years. If you can't
8 answer the question, I want to know what you need
9 to know to answer the question. So sitting here
10 today, prepared as you'll ever be, unless you need
11 to tell me what else you need to do, how many more
12 contracts are there where only the quotation was
13 the contract?

14 A. None that I'm aware.

15 Q. Again, you keep qualifying everything, and
16 if you're not aware of it, then tell me, all
17 right -- none that you're aware of. What would you
18 need to do to be aware of other documents, other
19 contracts?

20 A. None.

21 Q. None. Okay. Thank you.

22 MR. NEVILLE: All right. I think we're
23 at a pretty good stopping point. Do you want to
24 break for lunch?

25 MR. CAVANAUGH: If you're ready to

1 break, I'm ready to break.

2 (A recess was taken.)

3 Q. Mr. Stutsman, before we took a break for
4 lunch, we were chatting a little bit about
5 different issues or questions that I'd asked you
6 earlier in the deposition in which you answered
7 that some more research would need to be performed
8 before you could answer, and so I'm going to pick
9 back up on a couple more of those.

10 I believe if the court reporter would please
11 read back into the record a question that is on
12 page 35 -- if I could see page 35, I could tell you
13 what line it starts on.

14 (The requested question was read back
15 by the reporter, starting on page 35, line 22: Q.
16 I'll ask that second question again because I just
17 want a yes or no first and then an explanation.
18 For the bulk of Anson's work with SCE&G, does SCE&G
19 sign the quotation that Anson submits to it?)

20 THE WITNESS: What was my answer
21 before?

22 (The requested answer was read back by
23 the reporter, beginning on page 36, line 3: A. I'd
24 have to do the research insofar as we have done
25 lots of jobs for SCE&G that nobody signed anything,

1 and, in turn, us nor them, but a purchase order
2 came and we did the work and we send them a bill
3 and they send us a check.)

4 A. What was your question?

5 MR. NEVILLE: The same question again,
6 if you can --

7 (The reporter read the requested
8 question, beginning on page 35, line 22.)

9 A. No.

10 Q. How many times has SCE&G signed a quotation?

11 A. One comes to mind.

12 Q. Is this the one that comes to mind?

13 A. Yes.

14 Q. Is there any other time that SCE&G has
15 signed the quotation?

16 A. Not without a lot of extra research, but I
17 do not believe so.

18 Q. What extra research would you need --

19 A. I would go back and look at what all records
20 in the last 25 or 30 years.

21 Q. And where are those records?

22 A. If they exist other than in my memory,
23 they'd be at our office.

24 Q. How are you going to do research on records
25 that don't exist?

1 A. Think about it.

2 Q. Well, we can do it like we did earlier and
3 you can think about it if you need some time. But
4 I need an answer or either I need an explanation of
5 what you're going to research. And then we're
6 going to leave the deposition open so that I can
7 come back and ask you that question once you've
8 done your research.

9 A. I've answered you. As far as the ones that
10 I'm aware of without looking at or considering for
11 months, which we haven't had an occasion to know
12 about this lawsuit for two years or three years as
13 you suggested a while ago.

14 Q. But you have known about this lawsuit for --

15 A. A period of time.

16 Q. And I can give you an exact period of time.
17 You've known about this lawsuit since July 15,
18 2011; is that correct?

19 A. If it's on that paper, yes.

20 Q. And we sit here today, and it is what? July
21 the 18th, 2012?

22 A. Yes.

23 Q. So what do you intend to accomplish with
24 more research that you couldn't have done in a year
25 and three days?

1 A. Had I known the questions before I walked in
2 here, I would have researched and given very
3 specifically that thought.

4 MR. NEVILLE: Well, then we're going to
5 leave the deposition open so that Mr. Stutsman can
6 go and research that particular question and then
7 we're going to call it back and ask him to answer
8 it.

9 Q. All right. So the best that you can give me
10 today is this is the only one and that you're going
11 to need to do more research?

12 MR. CAVANAUGH: Ryan, are you asking
13 him prior to the execution of the 2008 or up to
14 including and after that?

15 MR. NEVILLE: Prior to -- up until
16 January 4, 2008.

17 A. One.

18 Q. And this is the one -- no other time?

19 A. That I have recall of now, right. I do not
20 have any other recall right now.

21 Q. And now, are you going to go back and do
22 more research and find out whether there were other
23 ones?

24 A. I can.

25 Q. Well, are you? Because if you are then

1 we're going to leave this deposition open and we're
2 going to come back here and ask the same question
3 after you've done your research.

4 A. All right.

5 Q. Okay. So you want to come back here and go
6 research and answer this question again?

7 A. Is this for the purpose that if it were now
8 over right now? Is that we're done --

9 Q. No. I'm just going to leave that question
10 and we'll come back and do it later.

11 A. And I'll think about it in the meantime.

12 MR. NEVILLE: All right. There was a
13 question on page 45, I believe, if we could go to
14 that, where he told me that he needed to do some
15 more research.

16 (The requested question and answer were
17 read back by the reporter beginning on page 45,
18 line 16: Q. But sitting here today, you don't
19 recall if it came -- I know it's been a long time.
20 You don't recall if this one came to you or if it
21 came to somebody else.

22 A. I'd have to research that a little
23 bit.)

24 A. It came into our office.

25 Q. And just so we can move forward with the

1 record being clear, she read you a question that
2 was I believe on page 45 or so of the deposition
3 where you said you needed to do some more research,
4 and there was some -- probably some ambiguous terms
5 in that question because there was some context
6 that was missing, so I'll rephrase the question to
7 you.

8 Did this purchase order that's Plaintiff's
9 Exhibit B to the Complaint, was it emailed to you?

10 A. It came to our office with -- it was -- it
11 wasn't emailed to me. It was emailed to our
12 office.

13 Q. And who got that email?

14 A. Whit.

15 Q. Whit. Okay. Now that we've kind of cleared
16 up what you need to do more research on, we'll move
17 on. How many contracts with SCE&G include the
18 purchase order that you've -- that Anson's entered
19 into in the past?

20 MR. CAVANAUGH: Object to the form.

21 Q. Or it might be easier for you to answer it
22 the other way. Has there ever been a time where
23 the purchase order was not part of the contract
24 with SCE&G?

25 A. I'm not aware if it was part of the contract

1 or not, but we've used the purchase order almost
2 all the time for the purpose of billing.

3 Q. And again, I'm really trying to move this
4 forward as fast as we can, but I need a yes or a no
5 answer from you to my yes-or-no question, and then
6 you can explain yourself. Okay? How many times --
7 strike that.

8 Has the purchase order that SCE&G provides
9 to Anson never been a part of the contract?

10 A. I'm not sure if it's a part of the contract
11 or not. I don't know. I know it's a purchase
12 order that they provide to us and we bill against
13 it.

14 Q. So you don't -- sitting here today, you have
15 no testimony as to whether the purchase order is
16 part of the contract?

17 A. We use the purchase order for billing
18 purposes.

19 Q. Okay. But again, if a yes -- I'm asking you
20 yes-or-no questions. Is the purchase order part of
21 the contract?

22 A. It's part of the document package.

23 Q. All right. Is the purchase order part of
24 the contract, yes or no?

25 A. Yes.

1 Q. Was the purchase order part of the contract
2 with the work that Anson did at the church?

3 A. Not for other than billing purposes.

4 Q. Again --

5 A. No.

6 Q. -- I want a yes or no -- all right. So the
7 only time that the purchase order has not been a
8 part of the contract was for the Huguenot Church
9 work.

10 A. The context of --

11 Q. Yes or no, Mr. Stutsman. In every other
12 occasion in which Anson and SCE&G has done work,
13 with the exception of the church work, has the
14 purchase order been part of the contract, yes or
15 no?

16 A. You're asking me something I don't know if
17 it's part of the contract or not. It's part of the
18 document package. I told you that already.

19 Q. All right. Well, this is a yes-or-no
20 question. Is the purchase order part of the
21 contract for the church work?

22 A. I believe I've answered your question.

23 Q. Well, you haven't because you haven't said
24 yes or no, and I'm going to ask it again. Is the
25 purchase order part of the contract for the work

1 Anson performed for SCE&G that we've been calling
2 the church work?

3 A. No.

4 Q. No. And what do you base that on?

5 A. We have a document that we asked them to
6 execute, and they did.

7 Q. Earlier you testified that this was the one
8 and only time that that was the case, that the
9 quotation was the contract. Is that accurate?

10 A. Conditioned on what I answered before, yes.

11 Q. What was the condition on which you answered
12 before? Because I'm pretty sure right before we
13 took a break you said there were no other contracts
14 besides this one. So I want you to tell me what
15 the conditions were because I didn't hear any
16 conditions earlier.

17 A. This contract, the agreement we had was as
18 we moved forward with, that's what we used.

19 Q. Okay. And the quotation that Anson
20 provided, that Anson typed up without any input
21 from SCE&G, this was the contract and that was the
22 only time it was a contract.

23 A. As I remember, yes.

24 Q. What else do you need to remember? Because
25 you keep -- I need yes-or-no answers from you

1 today. You've had a year and three days since we
2 filed this lawsuit. You've had 30 days to prepare
3 for this deposition, and you keep saying, as I
4 remember, I need to do research, and so I need
5 yes-or-no questions or either I need you to explain
6 to me what it is you need to go do or who it is you
7 need to go talk to or why that person is not here
8 today instead of you.

9 A. I cannot.

10 Q. So what other time has the quotation by
11 itself, this one-page document, been the contract
12 besides this case?

13 A. What I'm aware of today is this one, this
14 one by itself.

15 Q. And what else are you going to do to --

16 A. Counsel myself.

17 Q. And how are you going to do that?

18 A. Give it some thought.

19 Q. Well, like I said earlier, we can -- I mean
20 I can take a break for -- I mean we can leave this
21 deposition open and come back another time if you
22 want to, but we can take a break right now. You
23 can give it some thought. I need an answer.

24 A. I provided an answer.

25 Q. Not really. All you provided was I need to

1 think about it.

2 A. Ask me your question again.

3 Q. Sure. How many other times besides for the
4 church work has the contract between Anson and
5 SCE&G been solely the quotation provided by Anson?

6 A. None.

7 Q. How many times besides the work done at the
8 Huguenot Church has the contract included the
9 purchase order?

10 A. It's typical, and when they send documents,
11 and every time we get a document, that's not
12 unusual for it to come.

13 Q. You keep not answering my question. You
14 said earlier that this was the only time that this
15 document was the contract. All right? And so I'm
16 asking you the inverse of that, which is how often
17 is the purchase order included in the contract?
18 Now, my math would make it seem that if this was
19 the only time that this was the document that was
20 the contract, then every other time the purchase
21 order was included as the contract.

22 A. I haven't been party to every contract that
23 there's been between our company and SCE&G.

24 Q. Who else has been a party to it?

25 A. They're long retired.

1 Q. Well, what else do you need to know for the
2 past -- you've been involved as president since
3 '88. So let's just go from 1998 till 2008. With
4 the exception of while we're sitting here today,
5 how many times has the purchase order not been part
6 of the contract?

7 A. I don't know of any.

8 Q. Is that no or yes?

9 A. As I understand, you asked me how many
10 times --

11 Q. You're correct. That was a bad question.
12 Has the purchase order ever not been part of the
13 contract with the exception of the church work?

14 A. I don't think so.

15 Q. If you will look at Plaintiff's Exhibit B to
16 the Complaint, the very first page. The third line
17 from the bottom it starts off with, by accepting
18 this order. Do you see where I'm talking about?
19 Third line from the very bottom.

20 A. Yes.

21 Q. I'd like you to read that line or that
22 sentence into the record, please.

23 A. Okay. This document that you've asked me to
24 read says, by accepting this order, vendor
25 acknowledges that has read and accepted the SCANA

1 corporate general terms and conditions.

2 Q. And if you'll flip on over to -- it is two
3 more pages from the one we were just looking at,
4 and it's an exhibit to the Complaint. Up at the
5 top it says general terms and conditions. Do you
6 see what document I'm talking about?

7 A. Page 1?

8 Q. Where it says general terms and conditions
9 at the top?

10 A. Yes. Yes.

11 Q. If you'll flip with me to page 10 of the
12 general terms and conditions. All right. And if
13 you'll go down to the last paragraph there,
14 paragraph 1:2.6. It's entitled indemnification.
15 Do you see where I'm talking about?

16 A. Yes.

17 Q. Are you familiar with what that word means?

18 A. Yes.

19 Q. What do you think that indemnification
20 means?

21 A. That our responsibility is to make somebody
22 else harmless for lack --

23 Q. Let me ask you a question and then you can
24 say yes or no. Does indemnification mean that you
25 will repay a party if your harm causes that party

1 harm?

2 MR. CAVANAUGH: Object to the form.

3 A. My interpretation -- that's what you're
4 asking me?

5 Q. Sure. Yeah. I mean you were kind of
6 hitting the nail on the head a little bit, but why
7 don't you tell me again just so the record's clear.
8 I probably shouldn't have followed up with that
9 follow-up question, just a lawyer being a lawyer,
10 but why don't you tell me again just so the
11 record's clear what your understanding of the term
12 indemnification is.

13 A. Another party expects to be made -- held
14 harmless regardless of whatever they do.

15 Q. And what is your understanding of paragraph
16 1:2.6 of this document? First of all, we can just
17 start by saying who is the contractor in this
18 particular document?

19 A. Anson.

20 Q. Anson. And who is the company in this
21 particular document?

22 A. SCE&G.

23 Q. Now, I'd like you to read into the record
24 that entire paragraph.

25 A. This document that you've asked me to read

1 says, contractor hereby agrees to save, defend,
2 indemnify and hold harmless company from any and
3 all liabilities, claims, suits, actions,
4 proceedings, fines, penalties, forfeitures, losses,
5 damages and the cost and expense incident thereto,
6 including but not limited to cost of investigation,
7 defense, settlement and attorney's fees arising
8 directly or indirectly out of any act or failure to
9 act on contractor's part or the part of any agents
10 serving subcontractor or contractor, whether
11 independent or otherwise, in connection with the
12 work undertaken under the contract.

13 Q. And is it Anson's position that had it
14 signed the purchase order that it would be
15 contractually obligated to indemnify SCE&G?

16 MR. CAVANAUGH: Object to the form.

17 A. Yes.

18 Q. So had you-all signed the purchase order we
19 wouldn't be sitting here today because you would
20 have indemnified SCE&G?

21 MR. CAVANAUGH: Object to the form.

22 A. I don't know the answer to that.

23 Q. Why not?

24 A. I don't -- you asked if we'd be sitting here
25 today.

1 Q. Well, how about in a hypothetical. All
2 right? We were going through some hypotheticals
3 earlier. Let's say in a hypothetical that Anson
4 was hired by SCE&G to do some work on Church Street
5 in between Huguenot Church and the Dock Street
6 Theatre, and that as part of that Anson and SCE&G
7 entered into a binding contract, one of which the
8 clauses was just like the one you just read, and
9 that Anson's work was the cause of damages suffered
10 by SCE&G. Would Anson repay SCE&G?

11 MR. CAVANAUGH: Object to the form.

12 Q. Yes or no.

13 A. If it was proven that Anson did anything
14 wrong to harm them, yes, we'd be paying for it.

15 Q. But as we sit here today, it is your sole
16 defense to contractual indemnity the fact that
17 there's no signature here on the purchase order?

18 A. No.

19 Q. What's your other defenses?

20 A. We've never agreed to that -- prior to that,
21 we'd never agreed to that document.

22 Q. You've never agreed to a purchase order from
23 SCE&G?

24 A. No. We have used purchase orders for
25 billing arrangements, for billing services.

1 Q. And so you've never been subject to SCE&G's
2 general terms and conditions?

3 A. We never -- prior to that we never signed
4 those general terms and conditions.

5 Q. And I don't -- I'm pretty sure you don't
6 have to sign it because that first -- that third
7 line from the bottom of the first page of the
8 purchase order, I don't know if you need to reread
9 it again.

10 A. I see it.

11 Q. Okay. I'm just trying to figure out where
12 you think it says that you have to sign the general
13 terms and conditions.

14 A. What constitutes an acceptance of it?

15 Q. Well, if you'll read right here -- you read
16 it earlier -- and so I'm trying to figure out what
17 else you think would have been necessary for you to
18 be contractually obligated to indemnify SCE&G. You
19 told me one thing is that you didn't sign the
20 purchase order. I get that.

21 Is there any other thing that you contend
22 would have been necessary for you to be
23 contractually obligated to indemnify SCE&G?

24 A. We would indemnify them from damages only if
25 in fact we were proven to have caused them damages.

1 Q. If you would have signed this document,
2 would you have been contractually obligated to
3 indemnify SCE&G for --

4 A. If proven that we had caused anybody any
5 damage.

6 Q. All right. That's fair enough. Do you
7 think that this quotation that you provided is
8 ambiguous?

9 A. It wasn't ambiguous to us.

10 Q. Do you think it could be ambiguous to
11 anybody else besides you? Yes or no.

12 A. Anybody else? That -- anybody on the
13 street?

14 Q. Anybody besides Anson, anybody other than
15 Anson --

16 A. It could.

17 MR. CAVANAUGH: Object to the form.

18 A. It could be ambiguous to many people.

19 Q. Yes or no, is this document ambiguous?

20 A. Not to my belief.

21 Q. Because you drafted it, right?

22 A. Yes, I did.

23 Q. Every word of it.

24 A. Yes.

25 Q. All right. Definitely bullet point number

1 two.

2 A. Yes.

3 Q. And you don't think that this document is
4 ambiguous even with bullet point number two.

5 A. Not to me.

6 Q. But it could be ambiguous to others.

7 MR. CAVANAUGH: Object to the form.

8 A. To lawyers.

9 Q. Okay. All right. What about to SCE&G?
10 Could it have been ambiguous to SCE&G?

11 MR. CAVANAUGH: Object to the form.

12 A. I can't speak to what SCE&G understands or
13 doesn't understand.

14 Q. Is this document capable of multiple
15 interpretations?

16 MR. CAVANAUGH: Object to the form.

17 A. I believe any document is subject to
18 multiple interpretations.

19 Q. And so you would say -- is that a yes to my
20 question? Because I asked you if this document is
21 capable of multiple interpretations. Yes or no?

22 MR. CAVANAUGH: Object to the form.

23 A. Conditioned on who reads it, yes.

24 Q. We spent -- and I'm not sure because I
25 wasn't at all the prior depositions where you-all

1 were deposing us, so I don't know. Were you at any
2 of those depositions where your attorney was
3 deposing SCE&G or anybody?

4 A. No.

5 Q. Have you reviewed any of those depositions
6 to prepare for today?

7 A. No.

8 Q. Let me talk a little bit about the work that
9 was being done out at the Huguenot Church. We've
10 kind of segued off the document kick. We might
11 come back to it. Tell me a little bit about what
12 was going on out there the day that -- strike that.

13 It's my understanding from your prior
14 testimony that you said that work was halted at the
15 Huguenot Church?

16 A. Yes.

17 Q. I don't want to put words in your mouth so
18 please correct me if I'm wrong. Did you say that
19 you believe that it was stopped by the City for
20 political reasons?

21 A. Yes.

22 Q. What are those political reasons? And you
23 might just be guessing. But just what are you
24 thinking the political reasons are there?

25 A. The City had issued a permit to place the

1 SCE&G improvement in a particular location in a
2 side wall. As I understand, that the City
3 department A didn't fully discuss this with City
4 department B. City department B got frustrated
5 when they learned that that was going -- that the
6 improvement was to be placed in the location that
7 the plans and the City permit said to place it.
8 And in turn, when City department B corresponded
9 with City department A, stop, don't put it there.

10 Q. Was there an incident that gave rise to the
11 stop or you believe it just to be correspondence
12 between A and B?

13 A. That was part of it. Part of why the work
14 stopped.

15 Q. What was part of it why the work stopped?

16 A. Part of it was that on the morning that we
17 were working, whether it was the police or
18 whomever, I'd have to -- I don't know, but said --
19 came to us and said there was a funeral going to go
20 on at the church down the street, and in turn if we
21 could postpone our activity long enough to get the
22 funeral procession gone from the church, to which
23 we agreed. And that that was the first reason that
24 we stopped working was because of the funeral down
25 the street. While we were stopped, came along that

1 the city inspector at that time came and said,
2 stop, don't go any farther.

3 Q. So you are unaware of any alleged banging or
4 concussions that were sent throughout the
5 neighborhood that caused the --

6 A. I wasn't aware then. I since became aware.

7 Q. Well, tell me a little bit about what you
8 have since learned.

9 A. It was alleged that in the installation of
10 the steel frame, for safety purposes that one has
11 to place into an excavation prior to putting a
12 concrete vault in a location, while we were
13 installing that frame, it was alleged that we
14 caused, by placing or slipping the frame into the
15 ground, that it was alleged that we caused
16 vibrations that caused damage to -- the church
17 being one and -- I don't know if there were others.

18 In a much smaller magnitude, down the street
19 there were a couple of allegations that I remember
20 that people said that work -- that work was going
21 on at all, was causing vibrations in their plaster.

22 Q. Does Anson just flat-out deny those
23 allegations?

24 A. Allegations, no, we don't deny the
25 allegations.

1 Q. So then was -- when you were given the
2 design plans, kind of going back to the very
3 beginning of this morning, we talked about those
4 design plans that Anson was given. When you were
5 given the design plans, did the plans look okay to
6 you?

7 A. We saw no reason to think the plans were
8 wrong.

9 Q. So if the plans had been followed, would
10 there have been any damage to the church or the
11 neighboring properties?

12 A. I think we did follow the plans, and I don't
13 believe that any significant damage happened to
14 either the church or those properties.

15 Q. Does Anson believe that it properly dug the
16 hole that the trench box was going to go into?

17 A. Yes.

18 Q. Anson believes that the hole was of an
19 appropriate size?

20 A. The excavation was an appropriate size, yes.

21 Q. And is it normal for trench boxes not to fit
22 into a properly dug hole?

23 A. The whole point for a trench box is to be
24 very snug going into a hole because that's the way
25 that it satisfactorily holds the soil back that

1 doesn't allow it to cave in, which is the whole
2 safety purpose for putting in a trench box.

3 Q. I get you on that one. But in order for it
4 to be installed, doesn't the hole have to be big
5 enough for it to slide in?

6 A. It has to be able to go in, and I believe
7 the hole was big enough for it to go in because it
8 did in fact go in the hole.

9 Q. I know that based on our prior talking that
10 there were some allegations about the church that
11 Anson had used -- I'll butcher the construction
12 terminology, but the bucket of the trackhoe to put
13 the trench box into place? Are you aware of those
14 allegations?

15 A. Yes.

16 Q. What do you think Anson did out there as far
17 as installing the trench box? Do you think that
18 Anson installed the trench box without any problem
19 or do you recognize that the trench box got held up
20 for one reason or another? What's your take on
21 that?

22 A. I don't think it got held up at all. That
23 normal procedure is to excavate a hole without a
24 trench box to a particular depth, three or four,
25 some amount of feet deep, allowing one to install a

1 trench box so it doesn't fall apart just by -- you
2 have to have the walls of the trench to be able to
3 support the trench box as you're installing it.
4 Then as you continue you dig out from the middle of
5 a trench box to undermine it, and then you take the
6 curled backhoe on the corners of the trench box and
7 press it down into place, that a trench box
8 becomes -- by OSHA safety standards, it's worthless
9 if you overexcavate a hole. That it's supposed to
10 be snug when it's installed.

11 Q. That makes sense. And so as you're kind of
12 lowering the trench box in and digging out the
13 center area and lowering it some more and digging
14 out of the center. And you -- I think you said you
15 go to each corner and press --

16 A. Press down, yes, sir.

17 Q. -- press using the bucket of a trackhoe?

18 A. Yes.

19 Q. Do you draw a distinction between pressing
20 and banging?

21 A. Certainly.

22 Q. What do you think the difference is there
23 between pressing and banging?

24 A. Often, the eyes of the beholder, that a --

25 Q. What is -- before you start and then I'll

1 have to stop you, what in Anson's eyes -- let it be
2 the beholder -- what is the difference between
3 banging and pressing?

4 A. If you touch a steel-framed trench box with
5 a steel bucket, when you put it on there to press
6 it, it makes a noise. It doesn't make an excessive
7 noise. It doesn't do any of that, but we're not
8 talking about something that we brought it from 18
9 or 24 inches and banged. We put it on there and
10 we, for an anecdotal term, you worry it down,
11 you --

12 Q. Press it down.

13 A. -- press it down, massage it down, whatever.
14 And very similarly to any square object or device
15 that you want to go down in an even form, you can't
16 go to one corner and get that all the way down and
17 then go to the next -- you have to do it
18 sequentially and systematically to be able to put
19 it in place. OSHA rules are important. It's far
20 more important the safety of our employees that get
21 in that excavation.

22 Q. When you're doing the pressing, as you
23 described, how loud of a noise could one expect to
24 hear? I mean are we talking about hearing it from
25 five feet, 50 yards? Like give me an idea how loud

1 is it going to be when that makes contact the first
2 time before you start?

3 A. In and of itself, you might hear it 25, 30
4 feet away. When you are -- also the excavator with
5 the diesel engine and that is obviously also
6 running. So you magnify the noise by just -- and
7 as a car rides by or any numbers of things happen,
8 that that much noise gets created.

9 Q. But the pressing in and of itself you
10 wouldn't hear for more than 30 feet?

11 A. I wouldn't expect as such.

12 Q. And how many times, because I think you said
13 that this -- and I want you to correct me if I'm
14 wrong -- as I understand it, the trench box was I
15 mean almost in the perfect spot when the church
16 came running with their arms flailing about noise
17 and vibrations. Is that how you understand it?

18 A. It wasn't almost in a perfect spot, it was
19 where it needed to go. It was in the perfect spot.

20 Q. So it had already made it to full
21 installation?

22 A. Yes.

23 Q. There wasn't any part of it sticking out
24 above the ground?

25 A. It was as deep as it needed to be for the

1 purposes of whatever depth there was for that
2 vault, that we had overexcavated in the bottom,
3 filled the bottom with stone, which is per your
4 plans that say to do that. So you create a solid
5 foundation, and that -- whether or not the trench
6 box sticks up a little bit or not, as long as it's
7 down deep enough to accomplish what you want to
8 accomplish, then it's deep enough.

9 Q. Is that industry standards just to kind of
10 put it in as deep as you want and have it sticking
11 out?

12 A. Not necessarily. It's at whatever size box
13 you have versus whatever depth hole you have.

14 Q. Is it Anson's normal practice to leave the
15 top of trench boxes --

16 A. There's part of that as a safety rule that
17 you're supposed to have it somewhat above the level
18 of the ground. It's supposed to be up a little
19 bit.

20 Q. And I'm asking you these questions because I
21 don't know. I don't do what you do. So
22 it's industry standard to leave a little bit -- the
23 top of a trench box exposed from the ground if you
24 were looking at it?

25 A. To prohibit earth to fall over the trench

1 box inside the box on top of the people.

2 Q. That makes sense. Now, how much is it
3 supposed to be exposed? Is one inch around
4 enough --

5 A. It could be six inches, it could be two
6 feet, as long as the trench box -- it's not so much
7 what's on the top, it's what's on the bottom.

8 Q. Okay. I follow you. When Anson was out
9 there doing this work, where were you?

10 A. The first day I wasn't on the job. I'm not
11 sure if I was at the office or at another job when
12 that was going on, but I wasn't on the job. If
13 that answers your question.

14 Q. Because back in the first case there was
15 always some confusion as to when the alleged
16 banging took place, and so I didn't know -- were
17 you there on the day when --

18 A. No.

19 Q. Who would have been the person on site in
20 charge that day?

21 A. James Smith.

22 Q. James Smith. Okay. And he would have been
23 controlling the operations?

24 A. Yes.

25 Q. Does SCE&G tell you how to install a trench

1 box?

2 A. They expect us to follow the safety
3 standards for the installation of a trench box.

4 Q. Would the safety standard include not
5 banging on the top of the trench box but, as you
6 described, pressing?

7 A. To my knowledge, SCE&G doesn't tell us how
8 to put a trench box in. It's up to us.

9 Q. So you're in control of the trench box
10 installation.

11 A. Yes.

12 Q. Nobody's telling you what to do. It's
13 Anson's show, right?

14 A. Other than -- over and above us, over and
15 above SCE&G, the Federal Safety Health and -- the
16 OSHA rules do tell you what to do, and then we're
17 adhering to that.

18 Q. I guess what I'm getting at, SCE&G is not
19 out there telling you it needs to be installed this
20 way or that way. They just give you the plans and
21 then you install it.

22 A. And they tell us the location, yes.

23 Q. Right. They tell you the location and then
24 it's -- do you say Anson controls it from then?

25 A. For all intents and purposes, yes.

1 (Off-the-record discussion.)

2 Q. At what point does the transition of control
3 go from SCE&G to Anson? Is it at the time that
4 SCE&G gives the plans to Anson, or when did you --
5 you know, because I envision you driving a --
6 captaining a ship, and at some point on this
7 installation of the trench box ship, SCE&G passed
8 the baton to you guys and you stepped in and took
9 control. So when do you consider Anson in control?

10 A. We mobilize through the job. It's ours to
11 do.

12 Q. And then you-all stay in control until you
13 leave.

14 A. Yes.

15 Q. And SCE&G doesn't really have anything to do
16 with you -- they don't direct your work out there?

17 A. They come and they have input and they --
18 they regularly inspect. They regularly have input,
19 and our relationship with SCE&G has been that we're
20 all here to get this thing done and not be sitting
21 in this room, that we were attempting to do that.
22 And SCE&G, which Danny Highland, I believe was the
23 inspector then, that either he or Elbert Strickland
24 visited the job from time to time and see how we're
25 doing and proceed on.

1 Q. Monitor things, right?

2 A. Yes.

3 Q. But they're in control of it. It's you.

4 A. No. It's us doing it.

5 Q. All right. So moving on from kind of once
6 the hole was dug and once you had it, like you say,
7 installed up to OSHA standards or whatnot, but
8 right after the alleged banging occurred, that's
9 kind of where we are now. And we can talk about
10 that. So that's when this stop work order came in?

11 A. That's when we got the official one. If you
12 call it an unofficial that the policeman, I believe
13 it was a policeman, asked us about the funeral,
14 then we did that. There wasn't any paper. There
15 was a man just asked us if we'd do it. It
16 wasn't -- we're working on Church Street today. If
17 the City of Charleston comes and says there's a
18 funeral, then we'll stop and wait for whatever
19 passes by.

20 Q. Sure. You'll just have to excuse me,
21 because I didn't -- I've worked on this case for a
22 long time. I didn't even know there was a funeral
23 out there that day. So when did the funeral --
24 when was it scheduled? Was it scheduled to take
25 place later that same day that the banging occurred

1 or was it --

2 A. No. I think when we were finishing the box,
3 preparing to put the vault in the ground, that we
4 too didn't have a schedule for the funeral. We
5 just -- and we don't have a schedule for the
6 funerals. It's that -- if we go down there as --
7 not to be flippant, but you might expect that
8 nobody's advising us that there's a funeral or not
9 other than we see all the cars. And on this
10 occasion, a policeman or someone else came and
11 asked if we would hold off.

12 Q. And then after the policeman did that, later
13 on that morning, the alleged banging incident
14 occurred?

15 A. I'm not sure that it was that -- all that's
16 in the past of some sort because the box was
17 already in the ground. Had it not been for the
18 policeman asking us to wait off for the funeral,
19 the vault would have been in the ground before the
20 City guy even showed up. It was because we were
21 waiting that, be it coincidence or whatever, that's
22 when he came along the scene.

23 Q. So I'm trying to get an idea of the whole
24 stopping of work out there, because -- let me ask
25 another question. I'm sorry.

1 When people heard noises and felt banging,
2 as was alleged, did they come out and request the
3 work to be stopped?

4 A. Not to us.

5 Q. Not to you-all. Okay. So it was sometime
6 after the alleged banging occurred that you
7 received the formal stop work order.

8 A. As I understand, yes.

9 Q. And how much time passed in between the
10 alleged banging and the formal work order? Are we
11 talking hours, minutes?

12 A. I think it might have been as much as a day.

13 Q. A day. Okay. So moving on from the actual
14 installation of the trench box -- and we'll kind of
15 now delve into what we'll call remediation of the
16 trench site, the hole.

17 What was your understanding, once this stop
18 work order was placed, of what was going on? You
19 said that there were some political pressures?

20 A. That's what we believe.

21 Q. And I'm sorry. I forgot, but what were
22 those political pressures again?

23 A. City department A had --

24 Q. I got you. You don't need to go into that
25 whole City department A -- aside from the scenario

1 that you did with the City department A and City
2 department B, did you have reason to believe that
3 anybody at the church was exerting political
4 pressure on the City to get involved or -- you
5 know, anything like that, any outside pressure from
6 the individuals?

7 A. I believe the City -- excuse me -- the
8 church was unhappy about the location of the
9 trench -- excuse me -- the digging and the trench
10 box and the eventual vault that was going to go
11 into the sidewalk, I believe that the French
12 Huguenot Church was opposed to that and exerted
13 whatever influence they could to make that not
14 happen even though it had been City permitted and
15 SCE&G had permission -- had given us permission
16 because they had permission themselves to put the
17 box in that location.

18 Q. If SCE&G provided you with a plan that -- or
19 let me ask it -- SCE&G provided you with the plan
20 and you thought that the plan was okay? Yes or no.

21 A. Yes.

22 Q. Yes. All right. And then you took that
23 plan, Anson took that plan and took control of the
24 site? Yes or no.

25 A. Well, there was another document that came

1 along that was over and above the SCE&G plan that
2 we had no reason to doubt the SCE&G plan. There
3 was also a City permit that illustrated where to
4 put the box and where to put the -- do the whole
5 thing. So based on those two documents we had no
6 reason to doubt that that's where it was supposed
7 to go.

8 Q. So then the banging happens or the alleged
9 banging happens. I'm sorry. And then everybody
10 stops and then the remediation process starts,
11 like -- and I'm going to -- sorry. I keep
12 stumbling.

13 What did you understand needed to be done to
14 remediate the hole?

15 A. What I understood to happen is nothing other
16 than we could have done -- that we were prepared
17 to -- once the trench box was in the ground, it was
18 in the ground. There was nothing stopping other
19 than politics, in my opinion, than to just go ahead
20 and put the vault in there and proceed on. Let the
21 vault be exactly where the plans said.
22 Unfortunately, powers above us decided, no, that
23 can't happen. As to --

24 Q. Let me stop you right there real quick.
25 Powers above us, I'm assuming you mean powers above

1 Anson?

2 A. Correct.

3 Q. But that wasn't SCE&G that said -- it was
4 the power above SCE&G, it was the City of
5 Charleston, right, saying stop?

6 A. I'm not privy to all the remarks between
7 SCE&G and the City of Charleston, but I know that
8 the people we're working for were SCE&G. They said
9 to stop, so it wasn't -- both of them told us to
10 stop so we stopped.

11 Q. I just wanted to make sure I had that clear.
12 As far as you know, SCE&G would have -- if the site
13 was ready to go, SCE&G would have been fine with
14 putting the transformer there had it not been for
15 the powers that be that you described?

16 A. I have no reason to think they weren't
17 intending to put it there.

18 Q. Why else would they build a hole? Hire you --

19 A. And they have the plans.

20 Q. Okay. And so the -- it stops and then the
21 remediation process begins because the church and
22 the powers that be say, quit the installation
23 there. It became known that the vault was not
24 going to go in the hole that Anson dug; is that
25 correct?

1 A. I'm not sure of the timeline because whether
2 that happened that very moment or that day, I
3 don't -- I don't know. Because we were asked to
4 secure the hole, to secure the area, in fact we did
5 secure the hole. We put steel plates on top of it
6 and barricaded it and let whom all ever think about
7 what they were going to do. It was -- I think
8 maybe -- it was numbers of weeks or -- what our
9 involvement was a couple -- several weeks later
10 when we did what we did. In the meantime, others
11 had been brought in that -- we believe
12 unnecessarily brought in to do whatever they want
13 to do with the trench box that was in the hole
14 ready for the vault. For a couple of weeks it sat
15 there ready for the vault.

16 Q. Okay. And so Anson is -- I just want to
17 make sure I've got the timeline straight. Anson is
18 asked to stop work, secure the area. And so that's
19 what you-all do. You-all stop work and secure the
20 area?

21 A. I understand it was over a period of a
22 couple of days, yes, yes.

23 Q. All right. And then you -- and by you I
24 mean Anson -- Anson stays out of the loop for a few
25 weeks while you say others decide what to do with

1 the hole. Is that --

2 A. Not only decide what to do; they actually
3 hired other people to go in there and do stuff.

4 Q. Okay. And then Anson came back in the loop
5 to refinish the sidewalk and the pavement or
6 whatnot?

7 A. Correct. And that was part -- by our term,
8 not necessarily the remediation. We weren't
9 involved in that. That was part of the regular
10 contract anyway to --

11 Q. So --

12 A. -- pave it down and back to pavement.

13 Q. So then I guess Anson didn't participate in
14 the remediation? It doesn't sound like it.

15 A. It's terminology. That if in fact the
16 remediation was putting the sidewalk back, yes, we
17 did. However, that was also part of our original
18 contract so --

19 Q. Got you.

20 A. All we did was -- we didn't -- we weren't --
21 we didn't bill for all of our contract. We didn't
22 complete all of our contract because there was a
23 line item to put the vault in. We didn't put the
24 vault so we didn't charge for it, and there were
25 several others that we didn't do.

1 Q. With what you described as others that came
2 in during the period of time when Anson secured the
3 area and when Anson came back on to finish its job,
4 those others that you refer to, let's talk about
5 those people and what they did a little bit.

6 First of all, did SCE&G contact Anson and
7 ask Anson to participate in that process?

8 A. No.

9 Q. No. You never received a letter from SCE&G
10 asking you to participate in that process and put
11 your insurance carrier on notice?

12 A. Those are two different questions.

13 Q. Okay. Well, then let's separate them out.
14 Were you asked by SCE&G to put your insurance
15 carrier on notice about this alleged --

16 A. Yes.

17 Q. Did you do that?

18 A. Yes.

19 Q. What was the insurance company's response?

20 A. Okay. They'd address it as --

21 Q. Well, did they deny the claim? I mean what
22 was their response?

23 A. Something to the effect of, okay, when we
24 see the facts, we'll investigate the matter and
25 perform accordingly.

1 Q. They just told you to deal with it?

2 A. No, no, no. Not a bit. That -- they didn't
3 ask us, okay, great, who do we send the check to?
4 They didn't say that. They said, okay, let's go
5 through the process, let's figure out what
6 happened, how it happened, et cetera, and we'll
7 address it. And I think they did.

8 Q. In the timing of this period of time
9 where -- so I can just get it right and we're all
10 talking about the same thing, let's call it the
11 remediation period. And we'll call the remediation
12 period the time from when you stopped and secured
13 the area to the time when Anson came back in and
14 finished its job. Okay? Let's just call that the
15 remediation period. Is that fair?

16 A. Right.

17 Q. Okay. So when in relation to the
18 remediation period did Anson receive the letter
19 from SCE&G requesting that it put its insurance
20 carrier on notice?

21 A. Early on in the process.

22 Q. And earlier you pointed out that I asked a
23 poor question, which was that I asked you whether
24 you were invited to participate in the remediation
25 or whether you were asked to be put on notice. Is

1 that the question that I did --

2 A. Yes. That's why I thought there were two
3 questions.

4 Q. Okay. So I think you answered the first
5 question which was SCE&G asked Anson to put its
6 insurance carrier on notice fairly early on in the
7 remediation process?

8 A. Yes.

9 Q. Now, was Anson ever asked to participate in
10 the remediation?

11 A. Not at that stage. And if you define
12 remediation throughout the asphalt and the
13 pavement, yes, we did. But when the -- to solve
14 the problem of the excavation and the trench box,
15 we were perfectly ready and willing, right there,
16 we'll take it out, we'll fill it up, we'll do
17 whatever -- whatever powers decide have to be done,
18 we were ready and willing to do that. They didn't
19 ask us to do that. They asked other people to do
20 that.

21 Q. Did Anson do anything affirmatively to say,
22 hey, we'll --

23 A. I'm sure we did.

24 Q. Who had those communications on behalf of
25 Anson? Would that have been you?

1 A. Yes. And I'm sure that we asked typically
2 the inspectors what we have to do, and there
3 wasn't -- there was no answer. It was that we have
4 these other people coming in. Whether or not the
5 inspector specifically told us he was coming in, I
6 don't remember, but I know that it didn't matter
7 because they showed up, the other people.

8 Q. Do you have a problem -- and again, I'm
9 sorry, I keep saying you. Does Anson have a
10 problem with the way in which the excavation was
11 remediated? Do you take issue with it?

12 A. I think it was inordinately expensive from
13 what figures we've seen for what could have been
14 done much less expensively. That, yes, if that's
15 what you believe is a problem, we would have a
16 problem because we believe that we could have
17 satisfactorily removed the trench box, not having
18 anyone have to have bought it. And then part of
19 the leaving it, abandoning it in place was -- I'm
20 not sure who decided that it was to be abandoned in
21 place, but in fact it was abandoned in place, and
22 sections were cut out of it and whatnot, but I
23 believe that we could have done that less
24 expensively by a considerable amount of what was
25 charged, as well as I believe we could have gotten

1 the box out without -- we could have dismantled it
2 and taken -- and extracted it from the trench
3 without damage to anything.

4 MR. NEVILLE: Let's mark this as 4.

5 (Exhibit No. 4 was marked for
6 identification.)

7 (Off-the-record discussion.)

8 Q. Mr. Stutsman, have you ever seen this
9 document before?

10 A. Yes.

11 Q. You have? Okay. When did you see this
12 document?

13 A. I don't remember the exact date, but in one
14 of the packets of papers that have come to our
15 office, we saw this.

16 Q. I take from your prior testimony that you
17 thought the remediation process could have been
18 done at a more affordable price than what it ended
19 up costing?

20 A. I think so.

21 Q. How much do you think -- that if you were in
22 control and running the ship, how much do you think
23 it would have cost to do the remediation work?

24 A. That would definitely take me to do some
25 research insomuch as that all these numbers that

1 for the remediation we wouldn't have had something
2 like \$100,000 to the French Huguenot Church, we
3 wouldn't have had \$187,000 to the Dock Street
4 Theatre project cost.

5 Q. So let's just -- I mean as you're talking,
6 we can just do it -- you can just scratch numbers
7 off and I can go get a calculator if you want to do
8 it that way, or if you want to just kind of think
9 in your mind --

10 A. Well, for a lot of the part, I don't know
11 what all these people did.

12 Q. Sure. All right. Well, let's -- I guess
13 we'll start at the beginning and we'll try to run
14 through this fairly quickly. Do you know what
15 Sunbelt Rentals is?

16 A. Yes, I do.

17 Q. And what are they in the business of doing?

18 A. Renting equipment.

19 Q. And here based on this document, it looks
20 like they were paid \$17,000 by SCE&G for the items
21 listed there?

22 A. Correct.

23 Q. And do any of these numbers in Sunbelt
24 Rentals -- for example, does it seem high that
25 Sunbelt Rentals charged SCE&G \$12,000 for the

1 trench box?

2 A. The fact of the matter is whether that's a
3 good price for a trench box or -- it's not the
4 issue. The issue is I wouldn't have left it in the
5 ground. I'd have taken it out. So that's \$17,000
6 that nobody would have paid because I'd have given
7 it back to them.

8 MR. CAVANAUGH: Ryan, I'm going to
9 object to this line of questioning to the extent
10 that you've given him a summary of the claims paid
11 and asked him to interpret whether or not these
12 expenses are reasonable and what these costs could
13 have been performed for without providing him any
14 backup today as to what these expenses were for.
15 So he cannot compare what these charges are for.
16 You've generalized the charges on the summary. So
17 I'm going to object to that. You can keep asking
18 him the questions. I just want that on the record.

19 MR. NEVILLE: That's fine. And you
20 don't have to say object to every single time. We
21 can all understand that until we get done
22 questioning about this document, you object to it.

23 MR. CAVANAUGH: My objection stands.

24 MR. NEVILLE: And if I ask a question
25 that I think is unrelated to this document, I'll

1 let be it be known to you before I ask it. Okay?

2 MR. CAVANAUGH: All right. Thank you.

3 Q. So let's go through this document one way
4 where I'm going to ask you about the different
5 price for the things that are listed here, for
6 example, like this steel trench box, as I just
7 said, and then we'll go through it another way
8 where you will tell me, well, I wouldn't have had
9 to have done a steel trench box. Is that okay with
10 you? Can we do it that way?

11 A. All right.

12 Q. Okay. And again, having noted your
13 attorney's objection, do you think that \$12,080 is
14 high for the cost of a trench box?

15 A. No.

16 Q. Do you see anything in there -- do you know
17 Sunbelt Rentals to be a reputable dealer?

18 A. Yes.

19 Q. Could you see -- it would probably be easier
20 to do it this way. Do you see anything in that
21 bulleted list totalling 17,000 that you say is
22 inordinately high?

23 A. I don't know that I -- I'm not saying it's
24 inordinately high if in fact we understand. I
25 don't know what it was.

1 Q. I got you. And I completely understand
2 that, and I think that that's why your attorney
3 made a perfectly legitimate objection. So I get
4 that, but just sitting here today, we're looking at
5 it, again, 220 pipe spreaders, eight inches in
6 diameter, \$1,600. That seems like a reasonable
7 number to you?

8 A. That seems like the number they charge.

9 Q. And do you have any issue with that price?

10 A. I'm aware that's the kind of price they
11 charge for that.

12 Q. That's what they -- all right. I just
13 wanted to make sure my client wasn't getting hosed
14 in having to pay more than what somebody else would
15 have to pay. And so \$1,600 is the market rate that
16 Sunbelt would sell something like that for?

17 A. Approximately.

18 Q. So at this -- and I think I asked this
19 question, but I'll ask it again to make sure. The
20 bulleted items here on Sunbelt Rentals totalling
21 17,000, do you take issue with any of those
22 numbers?

23 A. Yes. Only -- well, I'm not --

24 Q. And keep in mind I'm going to give you an
25 opportunity to go back through it and say, I

1 wouldn't have paid Sunbelt Rentals anything because
2 I would have removed the trench box and given it
3 back to them. So I'll give you that opportunity,
4 but let's go through it my way first and then we'll
5 go through it your way. For the items listed
6 there, does \$17,000 seem reasonable to you for the
7 items listed there?

8 A. A little high but okay. A little high.

9 Q. How much by a little?

10 A. A couple of thousand dollars.

11 Q. So 15,000 would have been fine?

12 A. (Nodded.)

13 Q. Okay. Moving on to the surveyors, do you
14 know George A. Z. Johnson, Jr., Inc.?

15 A. Yes.

16 Q. Have you ever done business with him before
17 or --

18 A. Ever, yes. Recently, no.

19 Q. Is that a result of the Huguenot -- of the
20 church work?

21 A. No.

22 Q. No personal falling out with Mr. Johnson?

23 A. No.

24 Q. Just hadn't done business?

25 A. Correct.

1 Q. Do you call into question -- if he said that
2 it was 8,675, do you have any reason to believe
3 that he would lie for anything?

4 A. I don't think he would lie, but --

5 Q. I get it. You probably would never have
6 hired Mr. George --

7 A. No. I don't know what service he performed
8 down there.

9 Q. Absolutely. We don't know because I don't
10 have the invoices with me today, and I'm not going
11 to bore you with all those details. I think that
12 Mr. Johnson's the best person to testify as to his
13 charges. I just want to get your take on these
14 things.

15 Do you know Ken Humphries, the Terracon
16 Company? Have you ever had any business with them
17 or --

18 A. Terracon, yes. Ken Humphries, no.

19 Q. Do you have any opinion of Terracon,
20 negative or otherwise?

21 A. No.

22 Q. Are they generally a pretty reputable
23 company?

24 A. To my knowledge.

25 Q. What about Vibra-Tech?

1 A. I don't know Vibra-Tech.

2 Q. You've never heard of Vibra-Tech before?

3 A. No.

4 Q. We'll skip that. Move on over to the second
5 one. Barrier Geotechnical, have you ever heard of
6 that company before?

7 A. No.

8 Q. American Dock and Marine?

9 A. I know they exist. That's all.

10 Q. They look like they're in the welding
11 business if they cut off the top of a trench box?
12 Is that -- or something --

13 A. From what -- from what I would believe from
14 what I've seen, American Dock and Marine is a dock
15 builder or a home dock kind of builder.

16 Q. I guess a better answer is you're not quite
17 sure what they do?

18 A. Correct.

19 Q. All right. Fair enough. What about WPC?

20 A. They and Terracon are the same company.

21 Q. Wando Concrete?

22 A. I'm familiar with them.

23 Q. Are they a reputable company?

24 A. As far as I'm aware.

25 Q. Do you have any issues with the Charleston

1 police department we need to know about?

2 A. No.

3 Q. The next bullet item there, I think that
4 this would refer you to some of the neighboring
5 properties that had some complaints. The Lynaghs
6 were one of the neighbors of the -- were you ever
7 contacted by SCE&G about any of the damages to the
8 neighboring properties?

9 A. We had a letter from SCE&G that itemized
10 three or four residences. The letter -- I don't
11 remember whether 132 Church Street specifically was
12 one of the houses that they said they inspected,
13 but the letter offered that any damage was, by that
14 observation, cosmetic. In that bunch of papers,
15 the letter's in there.

16 Q. But you were advised of SCE&G's negotiations
17 with the Lynaghs, and it sounds like a couple other
18 properties too?

19 A. There were a couple of others, but I'd have
20 to go back -- bear with me. I'd have to go back
21 and look. I have no reason to disbelieve that 132
22 Church Street wasn't in the thing, but I don't have
23 instant recall that that was one of them.

24 Q. But you'll agree with me that there were
25 some --

1 A. There were several. Two or three.

2 Q. And then obviously we think very highly of
3 ourselves, the Anson Construction is the next -- we
4 don't have any problem with --

5 A. The best in this country.

6 Q. All right. The original vault work. All
7 right. And then the Dock Street Theatre project
8 costs, it looks like we'll provide you-all an
9 itemized expenses.

10 MR. NEVILLE: I know that, Eric, you
11 and I had talked about that and we'll get that to
12 you.

13 Q. All right. Well, that takes me through that
14 list the way that I wanted to go through it. And
15 like I promised you, I will now -- if you will tell
16 me what you would have not had to do or if you
17 wanted to just tell me what you would have done,
18 you know, however you want to handle it. I'd like
19 to know if they came and tapped Pete Stutsman and
20 said, Mr. Stutsman, you're in charge of this, do
21 it, what would you have done?

22 A. You need to tell me. That the first thing I
23 would have suggested would be, we've excavated the
24 hole. It is professionally safe. It's where the
25 plans say, let's put the vault in, and proceed just

1 as we were doing. That it seemed incredulous to us
2 that if there's some argument about the
3 installation of the trench box, the trench box is
4 already in. The church hasn't fallen down. That
5 where we've been -- it's alleged that we caused
6 whatever damage, if you look at the photos of the
7 foundation and the wrought iron fence that are
8 within eight or ten inches from where we installed
9 this thing, it hasn't moved at all. It hasn't
10 cracked at all. There are old cracks there that
11 haven't been disturbed at all. Left to our own
12 resources, we would have lobbied to, let's put the
13 vault in and continue on as we're going.

14 If in fact that became, no, you can't do
15 that for a purpose -- for people above our rate of
16 pay, said all right, then we will --

17 Q. Let me stop you real quick.

18 MR. NEVILLE: Can we go back to you
19 need to now object to some questions, because I
20 feel like we're not talking about this document
21 anymore, and I just want to make the record clear.

22 Do you have a problem with the question
23 that I'd asked him, which was to tell me what he
24 would have done had he been in control of the
25 situation.

1 MR. CAVANAUGH: I mean I'm fine with
2 this right now.

3 MR. NEVILLE: All right. So that
4 objection that was continuing is waived.

5 MR. CAVANAUGH: My objection was based
6 on the fact that you gave him a document for which
7 you provided no backup and asked him to interpret
8 whether the costs were reasonable, and he has no
9 idea what these costs are for. So that's what my
10 objection is now to the extent that you continue to
11 ask him whether Vibra-Tech's expenses were
12 reasonable when you've provided him no invoices
13 here to support backup. So I just think that --
14 without --

15 MR. NEVILLE: I'm done with --

16 MR. CAVANAUGH: Good enough. Then my
17 objection is ended pending another one.

18 Q. Now, I'm sorry that I cut you off, but I
19 wanted to make sure that we didn't have any legal
20 issue with your answers that you're giving. And so
21 I'll ask the question again, and you can start up
22 where you left off, where I interrupted you, which
23 is if you were in control, what would you do? And
24 I believe what you had told me was that you would
25 have just continued the project as is, in less

1 words than what you said, but then you were going
2 to go on to tell me if you were told, no, it can't
3 be installed and do what you had suggested to do.

4 So basically your plan B would have been?

5 A. The plan B would have been -- in the biggest
6 picture, we're in the service business. We try to
7 provide what we understand the customer wants. So
8 the plan A would have been we thought the customer
9 wanted to place the vault exactly where it was
10 shown and it was agreed and permitted and all that.

11 If for some external force, they came to us
12 and said, don't do that, from that point forward,
13 then we would have opted to let us extract the
14 trench box safely, professionally, without damage
15 to anything because we thought we hadn't damaged
16 anything already.

17 Then we would have extracted the box, filled
18 with either select fill dirt or a controlled
19 density fill product that's a ready-mix thing. We
20 would have filled it up, capped it off and put the
21 sidewalk back just exactly as we had -- we
22 ultimately did do. Replaced the tree that we had
23 moved out, which if you take as a ballpark estimate
24 our part of the -- as you call remediation was some
25 \$23,000. I'm not sure -- for that 23 plus another

1 23, we could have gotten the whole thing out and we
2 wouldn't be talking about \$600,000, we might be
3 talking about \$40,000 or something to the effect of
4 that, which I am quite confident we could have
5 gotten that trench box out within a couple of days.
6 Even if we had to have taken what, for political
7 reasons, was inordinate handwork, we could have
8 gotten it out without damaging anything. The
9 excavation there frankly was pretty good. I'm not
10 sure, were it not for federal safety standards,
11 that that ground wasn't good enough to hold up
12 without a trench box. However, the rules are the
13 rules, which are frankly secondary to us getting
14 one of our guys hurt. So in turn the box went in
15 the hole. That's what we would have done if
16 someone had said, okay, can you-all do that, the
17 answer is yes.

18 Q. And what you just described to me, would
19 that have been all up to code, so to speak?

20 A. Yes.

21 Q. You mentioned something about OSHA and --

22 A. Well, the rules. There are safety rules in
23 that --

24 Q. You wouldn't have violated any safety rules
25 by doing what you just suggested doing?

1 A. No, no.

2 Q. Now, did somebody -- I mean who told you
3 don't do that?

4 A. We weren't asked -- we were prepared to do
5 that, but we were, for all intents and purposes,
6 you know, eased out the way here.

7 Q. Did you offer to do any work during the
8 remediation period?

9 A. Of course.

10 Q. Okay. What did you offer to do?

11 A. Anything they asked us to do.

12 Q. And who did you communicate that offer to?

13 A. I'm sure the inspectors. And by that time
14 I'm -- this thing had boiled up to a point where,
15 not just the inspectors, but there was -- Matt
16 Hammond was, as I'm remembering, was in the mix.
17 There were supervisory guys from SCE&G, because all
18 of a sudden, that when the mayor's office gets
19 pounding on the table, well, Anson goes running
20 down there. Honestly, SCE&G goes running down
21 there too because it's just part of the business.
22 So we didn't say that we would not do anything. We
23 weren't asked to do anything. In fact, we were
24 pretty much summarily excused.

25 Q. When you say you made the offer to help, and

1 you said inspectors, who was it that you -- what
2 inspector was it that you communicated that offer
3 to?

4 A. Either Danny Highland or Elbo in that --
5 understand that we never told anybody anything that
6 we wouldn't. We were there to do it. We were
7 contracted to do it.

8 Q. Right. But you weren't contracted to do the
9 remediation work. You were --

10 A. We weren't given the chance to do that.

11 Q. But as you sit here today, you recall
12 offering Danny Highland and Elbo Strickland that
13 you-all would do the remediation work?

14 A. We told everybody that would listen as well
15 as -- if you can understand, that we believe this
16 was our job to do. We didn't think that we'd have
17 to go offer additional service. If some change
18 came along the way in the job, we didn't have to --
19 and they told us to do it, we didn't have to say,
20 we will do it. It was part of the thing, change it
21 and do it and move on. We were there to do
22 whatever they told us to do.

23 Q. Now, why would you offer to remediate it?

24 A. It was incumbent. If in fact we -- if we go
25 to an asphalt patch and for some reason or another,

1 they say, don't patch it, make it bigger, make it
2 different, make it deeper, whatever, then I have to
3 ask -- as long as we know what they want, we will
4 do that. The same thing down there, that here came
5 a bump in the road, for lack of a better term, and
6 that, okay, you've decided you don't want the box,
7 the improvement to go in the location it was
8 designed and shown to go. It's going to go
9 someplace else. Okay. You don't know where it's
10 going to go. Okay. But if you want to fill this
11 hole up, okay. That was -- we believe that was
12 already part of our job. We didn't have to offer
13 to do it because we'd already contracted to do it.

14 Q. And just so I'll get it straight, and I'm
15 just going to run through the timeline, the banging
16 of the remediation period, the alleged banging
17 occurred, you got the stop work order, correct?

18 A. There was some other stuff that happened in
19 the middle, but -- why we stopped was the funeral.
20 But that -- you know, that was part of the
21 sequence, yes.

22 Q. I got you. So the alleged banging occurred,
23 then the stopping for the funeral, then the
24 stopping formally, and then you secured the
25 premises?

1 A. Uh-hum.

2 Q. And then you were notified by SCE&G to put
3 your insurance carrier on notice. You did that.

4 A. Within -- within the several days. You
5 know, where this happened at X o'clock, 9:00, I'm
6 not prepared for that, but, yes, within shortly
7 they asked and we did.

8 Q. So you-all put them on notice, and then the
9 insurance company told you-all to -- they would
10 just handle it in their normal course of business?

11 A. Correct.

12 Q. And then SCE&G notifies you of the
13 neighboring properties, you can't remember which
14 ones, but there were a few --

15 A. Yes, they did.

16 Q. And then the remediation work by the -- what
17 you've referred to as the others occurs.

18 A. Over the period of time, yes.

19 Q. All right. And then Anson comes back in to
20 finish its job.

21 A. Yes.

22 Q. Okay. What I just went through is an
23 accurate chronological order?

24 A. I think.

25 Q. And the reason why Anson didn't participate

1 was because -- in the remediation process was
2 because it wasn't asked to?

3 A. Correct.

4 Q. SCE&G never asked it to participate in the
5 remediation process?

6 A. Not that I understood they were asking,
7 because we would have done that. In fact --

8 Q. Okay.

9 A. No, they didn't. And other than --
10 understand that we did the sidewalk, that we
11 believe that's -- that's -- we're parsing words
12 here, that that was part of our job. We would have
13 filled up the hole and extracted the thing as part
14 of our job. Without it being called remediation,
15 we would have just fixed it.

16 Q. And I guess at the very beginning of this
17 whole thing, we got it started because you drew a
18 distinction between a question that I thought was
19 one and the same, but you rightfully pointed out it
20 was two questions.

21 What do you know -- how do you distinguish
22 between put your carrier on notice, we believe this
23 to be your fault with, hey, Anson, how about help
24 us out? What's the difference there between those
25 two?

1 The question is what's the difference
2 between, Anson, put your carrier on notice, we
3 believe this is your fault. Okay? That's
4 statement one. And the difference between that
5 and, Anson, we need you to help us with this
6 situation?

7 A. We didn't ever tell them we wouldn't help
8 them. That we were there to do. But that too
9 is --

10 Q. Did you ever affirmatively tell them that
11 you would help them? And I mean besides Elbo and
12 Danny, did you ever, for example, communicate to
13 Sandy Kammer that you were ready and willing to
14 help?

15 A. We may have in that we got summoned --

16 Q. Well, yes or no.

17 A. Yes.

18 Q. You did? And how did you tell Sandy? In a
19 telephone call?

20 A. We got --

21 Q. Email?

22 A. No. My term, we got summoned to SCE&G's
23 office, I believe Friday of the week of this thing.
24 We didn't even know why we were going there. And
25 on -- well, we went to SCE&G's office here in

1 Charleston, on -- I believe it's Leeds Avenue. We
2 go in there. We talk to -- it might have been Matt
3 Hammond. I'm a little -- who was that. But the
4 good Ms. Sandy got on the phone and was telling us,
5 here's part -- we were discussing the thing. I'm
6 sure sometime during that conversation -- we
7 didn't ever say that we weren't there to do
8 whatever that we were there to do, that we were
9 just learning there was some allegations or
10 problems or whatnot that we didn't even know about.

11 So in turn that I feel reasonably confident
12 that sometime during that meeting it was implicit
13 that we would help them, that we were already there
14 on the job, that we were doing anything they asked
15 us to do. We had already proceeded with what they
16 had asked us to do.

17 Q. Well, if it was implicit that you-all would
18 help them, then why were you, as you termed it,
19 summoned to their office? I mean why was that a
20 necessary step --

21 A. Because I think they wanted to bring this to
22 our attention that somebody off, not having to do
23 with this -- with us, was complaining about
24 vibrations -- I'm not sure if it was vibrations or
25 mostly noise. That there were -- we were learning

1 about there was -- this is when we started to learn
2 about was there somebody complaining about
3 anything.

4 Q. And so at that meeting with -- at the Leeds
5 Avenue with SCE&G, at that point you said, I'll
6 help or -- because --

7 A. Sure, we did --

8 (Reporter Interruption.)

9 Q. Did you state, we will help in the
10 remediation process?

11 A. I'm sure we did not use remediation because
12 there wasn't a remediation project to do. And so
13 we never said that we would -- that wasn't ours to
14 fix, ours to do. We were already contracted on the
15 job, we already were proceeding based on our
16 contract, as you want to make a big deal out of,
17 but we were working on that. That we were there to
18 do it. Of course we would help them.

19 Q. And I just want to make sure I'm clear
20 because I don't want to put words in your mouth.
21 For instance, you just said that you would not have
22 used the terms that I said when I said, did you
23 say, we will help in the remediation process.

24 So what exactly did you say to the people at
25 SCE&G that day you went to their Leeds Avenue

1 office?

2 A. We didn't know there was any remediation to
3 do, that we were there to perform the job. If in
4 fact the job changed, we would address changing the
5 job. If in fact it wasn't -- the location of the
6 vault was going to be moved from wherever it was to
7 someplace else, okay, tell us where it is and we'll
8 entertain putting it over there. Putting it
9 someplace else.

10 Q. And what did you say to them that day?

11 A. I don't recall exactly what words that we
12 said. However, I am confident there was no
13 indication that we wouldn't do everything that we
14 could to pursue the job and we were on the job
15 already.

16 Q. And earlier in this process of asking you
17 about the remediation period, we talked about some
18 higher-ups putting the stop work order on. Do you
19 recall that?

20 A. Yes.

21 Q. Do you think that SCE&G was in control of
22 the remediation process, or do you think that the
23 higher-ups were in control of the remediation
24 process?

25 A. As far as I'm aware, SCE&G was in control of

1 that.

2 Q. So you don't think SCE&G was taking orders
3 from the higher-ups. You think that they were the
4 top of the food chain to the best of your
5 knowledge?

6 A. I'd have to say I don't know who was
7 influencing SCE&G.

8 Q. And you don't think it was the same
9 political pressures that told them and you-all to
10 stop work?

11 MR. CAVANAUGH: Object to the form.

12 A. That's somewhat conjecture on my part, that
13 I don't know what -- I am reasonably confident in
14 why the box couldn't go in the sidewalk after the
15 fact. As to who was pressing who from whatever
16 level, that wasn't directly in our knowledge. I
17 don't know.

18 Q. So just to kind of sum up the remediation
19 topic and then we'll move on, SCE&G asked you to
20 notify your insurance carrier early in the
21 remediation period.

22 A. And we did, yes, sir.

23 Q. And you did.

24 A. Yes.

25 Q. And then the insurance company said to

1 just -- they'll handle it in their normal course of
2 business?

3 A. Yes.

4 Q. And then SCE&G notified you of the damages
5 to the neighboring properties?

6 A. They did.

7 Q. And they asked you to participate with them
8 on that?

9 A. No. They did --

10 Q. They just told you about it.

11 A. Yes.

12 Q. Did it just say -- was it like, did the
13 letter say, hey, Pete, just thought you might want
14 to know?

15 A. No.

16 Q. I mean -- I got it. So then --

17 A. That's why I thought they'd asked us to
18 involve our insurance company, because the
19 excavation on the job, we'll handle that. We'll --
20 as your term -- remediate that, not hard. If in
21 fact there's somebody down the street who's
22 claiming that their plaster has cracked, that's not
23 what Anson does. And in turn that made why --
24 what's the involvement of the insurance company?
25 It's for those purposes, which you asked me a

1 question, there were two parts to that question,
2 what was the difference between them asking us to
3 help us and the identifying this to the insurance
4 company.

5 There's a difference what we would do versus
6 what someone else would do and be provided for by
7 the insurance company.

8 Q. So SCE&G asked you to put your insurance
9 company on notice?

10 A. Yes.

11 Q. You put your insurance company on notice?

12 A. Yes.

13 Q. And then the remediation by the others took
14 place?

15 A. Over the next days.

16 Q. And then you came in and finished your work.

17 A. Yes.

18 Q. And I know -- in typical lawyer fashion, I
19 do have one more question about this document.

20 (Off-the-record discussion.)

21 (A recess was taken.)

22 Q. I think, Mr. Stutsman, we kind of almost
23 wrapped up the remediation topics, and I have a
24 couple more questions though before we leave that.

25 And if you'll look at Exhibit 4 there, and

1 flip to the last page, and there is a line item for
2 French Huguenot Church settlement \$100,000. Do you
3 see where I'm talking about?

4 A. Yes.

5 Q. Do you have any issue with the amount that
6 SCE&G paid to settle the Huguenot Church case?

7 A. I don't really have a basis to evaluate it.

8 Q. Well, do you think that that's a reasonable
9 settlement, \$100,000, to settle that case? You-all
10 were involved in that case, correct?

11 A. I know, right.

12 Q. Do you think that \$100,000 was a reasonable
13 amount to pay for SCE&G, or should they have paid
14 less?

15 A. I think they should have paid none.

16 Q. What do you base that on?

17 A. Because I don't think that we did any damage
18 to the church.

19 Q. And what do you base that on?

20 A. We had a report prepared for us
21 that itemized -- professional report as to what the
22 condition of -- was the church that -- as I
23 understand, that's what the settlement was for was
24 for the French Huguenot Church.

25 Q. You're right.

1 A. And I believe that we didn't damage it. I
2 believe that it's got 156 years worth of
3 deterioration, but I don't think it was damaged by
4 what we -- that couple of hours or days or
5 milliseconds, or whatever it was, damaged that.

6 Q. Does Anson flat-out deny that it was banging
7 on the top of the trench box?

8 A. That's in the eyes of the beholder. We were
9 pressing on the box to put it down.

10 Q. And we'll let Anson be the beholder here.
11 Does Anson deny banging on --

12 A. By our interpretation, yes.

13 Q. And the interpretation is what you described
14 earlier when you --

15 A. Pressing down.

16 Q. Pressing and banging, you gave that
17 distinction?

18 A. Yes.

19 Q. And earlier when you were describing banging
20 you, I believe, said that you consider banging when
21 you lift the arm, or the bucket -- excuse me -- 18
22 to 24 inches and then come down?

23 A. And forcibly put it down.

24 Q. Is that accurate of your prior testimony?

25 A. Yes.

1 Q. Where do you draw the line between banging
2 and pressing? Like, for example, you know, we can
3 work down from, in your scenario, 18 inches. If
4 you were to come down from 17 inches, would that be
5 banging?

6 A. It's on a case-by-case basis depending upon
7 what kind of soil -- what you're trying to get it
8 down through, if it's loose soil or tight soil.
9 That I would think that three to four inches is
10 pressing it down; two to three inches, pressing it
11 down. If you're a foot higher or 18 inches higher,
12 then that's -- and if you're forcibly putting on
13 and not if you rest it on there or -- just because
14 you make contact with it doesn't necessarily mean
15 that it's banging. Yet it will make a noise if in
16 fact you just come and make contact between the
17 metal to metal.

18 Q. And the pressing that you've described,
19 you'd only hear that from about 30 feet or so? And
20 again, I remember you qualified it with the diesel
21 engine and the cars driving by, but the actual
22 pressing.

23 A. To my way of thinking, and I don't have a
24 decibel meter out there.

25 Q. But you've been out at work sites before --

1 A. Yes.

2 Q. -- where pressing occurred?

3 A. Yes.

4 Q. And that would be your idea, about 30 feet?

5 A. In the situation that's down there, you have
6 effectively a wind tunnel of Church Street. Sound
7 carries, that it might be more than 30 feet. It
8 might be more than 50 feet given that it is a
9 relatively enclosed tunnel-like area where the
10 street's here and there are buildings on both
11 sides, and noise and wind and dust and whatnot
12 travel up and down the available corridor.

13 Q. So 50 feet you could hear a press out there?

14 A. I think you might.

15 Q. And I just want to make sure that we've got
16 an idea. So 30 feet, you definitely could hear it.
17 50 feet, you might be able to hear it?

18 A. Might.

19 Q. Now -- sorry. I got sidetracked off. You
20 said that SCE&G shouldn't have paid the church
21 anything is your position?

22 A. That's my opinion.

23 Q. Did the church in the prior case that has
24 resulted in us being here today, did the church
25 prepare a report that actually showed significant

1 damage to the property?

2 A. I know they prepared a report. As to the
3 magnitude of the damage, I don't know to what
4 extent they claim the damage was.

5 Q. So there's a report that you just discussed?

6 A. Yes.

7 Q. And then there was a report by the church?

8 A. Yes.

9 Q. And the church report probably alleged more
10 damages than the report that you were talking
11 about?

12 A. I have -- I would believe so.

13 Q. Now, also you said that we shouldn't have
14 paid -- and by we you're saying SCE&G. You're
15 saying SCE&G shouldn't have paid anything, but we
16 did. SCE&G paid \$100,000 to settle that case. Did
17 Anson pay anything to settle that case?

18 A. Our insurance company paid, yes.

19 Q. And how much did the insurance company pay?

20 A. I think it was \$300,000.

21 Q. You think it was 300 or was it 300? That
22 seems like a lot of money to not really know the
23 number.

24 A. It is -- my recollection is it's something
25 approximating \$300,000. I don't have the exact

1 number that our insurance company paid for this
2 meeting, but I believe it was approximately
3 \$300,000.

4 Q. At least \$300,000?

5 A. I think it was \$300,000.

6 Q. And so if Anson, through its insurance
7 company, paid \$300,000, but you believe --

8 A. I don't think they should. They elected to
9 settle at that amount, which that's their decision,
10 and we were to accept their decision.

11 Q. So you didn't have any control over your
12 insurance company?

13 A. No. Not for that.

14 Q. Did your insurance company pick up your
15 defense for the lawsuit for which we're here today?

16 A. Yes.

17 Q. Has it sent you a reservation of rights
18 letter?

19 A. Yes.

20 Q. Do you understand what that is?

21 A. Yes.

22 Q. So what is your understanding of
23 reservations of rights letter?

24 A. They reserved the right to say if -- if they
25 want to interpret our policy as to not covering

1 whatever this might result to, then they might not
2 cover it.

3 Q. And they could -- would they look to Anson
4 Construction for that money? Is that what --

5 A. I'm not sure. As far as the insurance
6 company's concerned, they wouldn't look for us,
7 that others might. They won't look for it for us
8 to pay if they don't.

9 Q. So your understanding of the reservation of
10 rights letter is that they're paying your defense
11 but reserving the right to what? What's --

12 A. To not pay themselves.

13 Q. To not pay?

14 A. Themselves. They're reserving the right for
15 them not to pay the money -- whatever claim --
16 whatever result there might be.

17 Q. And then in that situation you don't believe
18 that Anson --

19 A. No. I didn't say that. I said they don't
20 believe they should pay them -- the reservation --
21 we're parsing words again. That if they deny that
22 that's their responsibility, it will be of no
23 consequence if or whoever pays the money if they
24 successfully say that it's not theirs. Others, not
25 the insurance company, but you-all might decide

1 that we're supposed to pay it.

2 Q. Well, that -- we didn't sue your insurance
3 company. We sued Anson. So we are saying that
4 Anson is responsible for payment. All right. I
5 think that we're moving from that topic. I'm
6 not -- I'm not quite finished but I'm getting
7 close. I think we're done with the remediation and
8 the damages topic.

9 As I understand it, you just take issue that
10 your insurance company paid 300,000 and you take
11 issue that we paid 100. Do you think that neither
12 party should have paid any money to the church?

13 A. Yes. Yes.

14 Q. Okay. And you base that on the report that
15 you referred to earlier?

16 A. My observation.

17 Q. And your observation -- who -- do you
18 remember what company prepared that report that
19 you're talking about?

20 A. Gentleman's name was Frechette. He's since
21 passed away. But Dave Frechette I believe was his
22 name.

23 Q. I remember Dave. He was a nice guy. It was
24 really unfortunate. These are going to be kind of
25 random questions because I just neglected to go

1 over them in the course of my questions.

2 What is Anson's process for obtaining work
3 permits from the City of Charleston for work
4 occurring inside the city limits?

5 A. It's not uncommon for our process to be
6 given those permits by whomever we're working for.

7 Q. And again, to try to avoid the issue that we
8 ran into earlier with bulk and percentage and all
9 that kind of stuff, can you tell me a percentage as
10 opposed to a bulk?

11 A. I'd say 90 percent of the permits that we
12 get for the department of public service, which is
13 the City street permit, come from whomever we're
14 doing the job for.

15 Q. And then the other 10 percent would mean
16 that you-all, Anson --

17 A. We occasionally do that, yes.

18 Q. What's the decision process there? I mean
19 why 10 percent you do and why 90 percent you don't
20 get the permits?

21 A. Our standard procedure is that we disclaim
22 permits totally, 100 percent. Economics sometimes
23 that force us to where if it's the last small thing
24 or the last thing to preclude us from getting
25 started on a job, we sometimes amend that policy to

1 go get the permit, typically in the name of
2 whomever we're doing the work for to be able to
3 speed the process. That's what prompts the issue.

4 Q. Why have that decision process in place?
5 Why not get the permits in Anson's name?

6 A. It often costs money, and in order to keep
7 our job estimates as low as possible, that's not
8 money Anson's earns, that's just money Anson turns.

9 Q. Sure. I understand. We have to pass our
10 costs on to our clients too.

11 A. Right.

12 Q. But I can't imagine -- well, why don't I
13 just ask. How much does a permit cost? I mean for
14 example, we'll just use this church case. How much
15 would a permit like that cost?

16 A. \$25.

17 Q. So costs really aren't much in the grand
18 scheme of things?

19 A. Yes, sir, they are. That a permit, if one
20 bids a job for an entity and in turn you disclaim
21 the permits. And regardless of what the permit
22 costs, be it \$2,500, sometimes it costs \$25,
23 sometimes they cost \$25,000, depending on wherever
24 that is, it is not unusual for the permit -- the
25 entity that writes the permit to make several

1 conditions in that permit that might limit the work
2 to nighttime, daytime, this, that, whatever, to
3 which the reason we don't get the permits is
4 because we're taking that off the table to say that
5 that's covered in our price.

6 If a permit comes and it's got conditions on
7 it that are over and above what we've priced, then
8 our -- what we relay to the owner is that we'll
9 adhere to the permit that you have, but there are
10 these conditions on it, they're limiting the work
11 hours, that they're limiting the noise. There are
12 any numbers of things they might do. So when you
13 bid a job, it's not uncommon to not be aware at
14 that point what all permit regulations may be
15 imposed.

16 Q. Is one of the reasons why you don't get
17 involved, you choose to stay away from the permit
18 in your name for liability purposes?

19 A. There are many purposes, but --

20 Q. Well, yes or no, is one of the reasons for
21 the --

22 A. Yeah, one of them.

23 Q. And did Anson pay any other monies besides
24 the \$300,000 that we previously discussed as a
25 result of the church work?

1 A. I'm certain that our insurance company paid
2 the lawyer. I don't know what that fee was, but
3 I'd have to believe that the insurance company paid
4 the lawyer.

5 Q. Any other third parties that you're aware of
6 that were paid money?

7 A. As part of the lawsuit?

8 Q. Well, yeah, first as part of the lawsuit.

9 A. Not that I'm aware of.

10 Q. And as any other --

11 A. We had vendors. If you're asking as part of
12 the job, that did we pay monies to suppliers or the
13 fuel man or whatever, yes, we paid those fees.

14 Q. But nothing in -- those were for the work
15 you performed --

16 A. Yes.

17 Q. -- not for the alleged damages?

18 A. No.

19 Q. So probably a better way to ask my question
20 would have been did you pay any -- did Anson pay
21 any money besides the \$300,000?

22 A. I'm sure we paid the deductible. Whatever
23 the policy deductible was, we paid that.

24 Q. Besides the deductible and the \$300,000?

25 A. No, no.

1 Q. And the attorney's fees?

2 A. Uh-huh.

3 Q. What are Anson's policies, procedures or
4 practices regarding purchasing liability insurance
5 and adding or not adding its customers to those
6 insurance policies?

7 A. The policy is we prefer not to, that we as a
8 general rule do not add someone as an insured
9 unless -- that is our policy.

10 Q. Why is that your policy?

11 A. We subscribe to less is more. If we don't
12 need to put somebody else on our insurance policy,
13 we don't.

14 Q. And I cut you off. You were about to say
15 something else. You said, that is our policy.
16 Then it sounded like you were about to say --

17 A. Similar to where that if a contract requires
18 it, we'll put a -- as an additional insured based
19 on the attractiveness of the contract.

20 Q. Has SCE&G ever been added as an additional
21 insured?

22 A. I don't know right off -- I'm sure they
23 have. I don't know a percentage of how many times
24 they have, but I -- I'd have to go look at the
25 policies, but I'm saying, yes, we have -- we very

1 likely have put SCE&G on it before if in fact it
2 was part of the requirements to do it.

3 Q. If they asked for it, you did it?

4 A. Yes.

5 Q. And it's happened on more than one occasion
6 where you've --

7 A. Probably more than one.

8 (A recess was taken.)

9 Q. Do you recall what the deductible amount was
10 that you paid?

11 A. No.

12 Q. Could you venture a guess? Was it \$500,
13 \$1,000, 1,500, 10,000?

14 A. Closer to 1,000 than 10,000.

15 Q. Closer to 1,000?

16 A. 1,000.

17 Q. Are you aware that the church has actually
18 had repairs done to it?

19 A. I've observed -- or it's come to -- I've
20 been advised that the church is making
21 improvements. I'm not sure whether they have
22 anything to do with the building or not.

23 Q. Are you aware that the church has undergone
24 a repair since the alleged incident that gave rise
25 to the --

1 A. No.

2 Q. You're not aware?

3 A. No.

4 Q. What did you hear then? You said you've --

5 A. There's some work in the yard that has been
6 told to me is going on. It hasn't been relative to
7 the building.

8 Q. Okay. So you've heard that they've been
9 doing some grounds work?

10 A. Yes.

11 Q. And no --

12 A. That I'm aware of.

13 Q. All right. Did you say that you-all were --
14 Anson was doing work on Church Street today?

15 A. Yes.

16 Q. I'll represent to you that the church at one
17 point in recent history has been covered in
18 scaffolding and there was work being done to it, so
19 you may want to just stop by and look at it.

20 But at any rate, earlier you had testified
21 when we were kind of going through the remediation
22 period questions about the political pressure and
23 when the mayor bangs on his table you go down there
24 and see what's wrong. Do you remember that line of
25 questions?

1 A. Yes.

2 Q. Can you explain a little bit more about that
3 whole process? For example, I know that you don't
4 mean literally that you can hear Mayor Riley
5 banging on the table.

6 A. No, of course not. No.

7 Q. So can you tell me just a little bit
8 about -- well, first of all, before you tell me
9 about it, have you ever had incidents with the City
10 of Charleston similar to the one that occurred with
11 the church work?

12 A. Similar meaning?

13 Q. To use your analogy earlier, the mayor was
14 banging on his table about the church work.

15 A. Okay.

16 Q. Have you had similar instances with the City
17 in that --

18 A. Our experience is that the mayor of
19 Charleston is a hands-on type of guy. We have not
20 had experience where there's been some giant claim
21 or some big complaint, but we have had occasion
22 where the mayor would send word to a subordinate A
23 or subordinate B that there was a pothole or a
24 patch or there was something that he was asking
25 that would be addressed and it came to us to

1 address it and we did.

2 Q. Have you ever told the mayor or the City,
3 no, we're not going to do what you're asking us to
4 do?

5 A. No.

6 Q. Going back to the \$300,000 payment to the
7 church, if you thought that -- and by you I
8 guess -- well, let me ask you this. When you were
9 saying earlier that you didn't think that the
10 insurance company should pay the church any money,
11 did you mean you personally or did you mean --
12 because I know I've been mistakenly doing the you
13 and the Anson a lot -- did you mean Anson
14 collectively as a company thought that the
15 insurance company should not pay?

16 A. My opinion was that there was no damage done
17 to the church so in turn no one should have to have
18 paid any grand bunch of money to the church.

19 Q. Including SCE&G?

20 A. Yes. I don't think anybody should have had
21 to.

22 Q. But SCE&G paid \$100,000. I'll represent to
23 you that they paid 100 --

24 A. I'll take it that it's such.

25 Q. And you-all paid 300,000?

1 A. To my awareness, yes.

2 Q. Why did Anson pay \$300,000 if you thought it
3 shouldn't?

4 A. Because --

5 MR. CAVANAUGH: Object to the form.

6 A. Because we're representing -- we're
7 represented by our insurance company as a partner
8 in this -- in this effort as well as the earlier
9 effort, and our insurance company thought that that
10 was -- they chose to pursue that, to settle for
11 that amount of -- to settle the issue, they would
12 pay that much money.

13 Q. Was it to risk a potential bigger exposure
14 at trial?

15 A. I can only -- I can believe that an
16 insurance company always thinks that they could
17 have a large exposure or no exposure, and more
18 often -- or as often as not, they decide to come up
19 with what's -- what they think is an acceptable
20 exposure and see if it can be settled for that much
21 exposure. And I'm believing that's what they did.

22 Q. This will be my final question I think.
23 Earlier we had kind of gone around about this whole
24 you need to go back and do research thing and us
25 not really wanting to leave your deposition open.

1 This I'm sure was a really fun day for you.

2 But you've had a few hours now to kind of
3 think about that question and what research you
4 might perform. And if you recall the question that
5 I asked was can you think of any contract with
6 SCE&G besides the one that we're sitting here for
7 today that did not include the purchase order? And
8 you answered, none that I'm aware of. Is that
9 accurate?

10 A. That's correct.

11 Q. And have you -- do you still want to go back
12 and do research on that or are you comfortable with
13 saying none?

14 A. I think none since 2000, if we can -- that I
15 was thinking that would have a whole experience.
16 If we say from 2000 till, say, 2006. Is that --

17 Q. Well, just because I am a lawyer and
18 terrible in math, I like to kind of speak in terms
19 of tens. So if you're comfortable with saying from
20 1998, January 4th, 1998 to January 4th, 2008,
21 because that's when this incident occurred, I would
22 be comfortable with limiting it to that. For
23 your --

24 A. Without doing anything, I would be more
25 comfortable if it stopped at 2006.

1 MR. NEVILLE: Well, then I'm going to
2 have to leave the deposition open. And just so you
3 can converse with your client, I will limit my
4 questioning on the topic to the question that we've
5 talked about. And just so the record is clear, the
6 question that I've asked is is Anson aware of any
7 contract other than the one that we're sitting here
8 for today in which the purchase order was not a
9 part of the contract, and my understanding, as we
10 are sitting here today, the answer is no; is that
11 correct?

12 A. From 2000 -- to -- you're asking me if
13 there's a ten-year -- if we can come to some term
14 right now of a 10-year period.

15 Q. I'd rather not even put a term on it. I'd
16 rather just either say none and we can leave it as
17 is, or either say none and you're going to go do
18 research. So it doesn't matter to me. Whatever --
19 however you want to do it is fine, but if the
20 answer is none, then we'll close up shop. If the
21 answer is none, I'm going to do research, then I
22 want to leave the deposition open for that one
23 topic.

24 MR. CAVANAUGH: Can we go off the
25 record?

1 (Off-the-record discussion.)

2 Q. Mr. Stutsman, we were finishing up with that
3 wrap-up question of are you aware of any other
4 contract that SCE&G has entered into besides the
5 one that we're here for today that did not include
6 the purchase order, and you said, none that I'm
7 aware of.

8 And so what we've done with -- agreed to do
9 is to allow you -- you're allowed to do this
10 anyway -- but what we have agreed to do and your
11 counsel I think will suggest -- I'm not going to
12 put words into his mouth -- he'll have that
13 opportunity in a second -- is that we'll let you
14 read and sign your deposition, and what that means
15 is that when you're having a hard time sleeping in
16 the next few nights you can read your transcript
17 from today, and if you want to make any changes to
18 it, you're more than welcome to. However, if you
19 make changes to it, then we have the right to come
20 back and ask you about those questions. And the
21 difference -- you're allowed to make clerical
22 changes. Like, for example, if you said their and
23 you meant T-H-E-I-R there, but the court reporter
24 wrote they're, T-H-E-Y-'R-E, you'd be able to
25 change that, as long as it didn't make a

1 substantive change to your answer, without having
2 to go back and ask questions. The only thing that
3 we can go back in and ask you questions about are
4 if you make a substantive change, like if you said
5 no and then you come back and say yes, something
6 like that. Do you understand?

7 A. Yes.

8 Q. All right. I see that your attorney has a
9 question or two or no?

10 MR. CAVANAUGH: I do have some
11 questions. Are you done for now?

12 MR. NEVILLE: I'm done unless something
13 pops up after.

14 MR. CAVANAUGH: Great. It won't take
15 very long at all.

16 EXAMINATION

17 BY MR. CAVANAUGH:

18 Q. Mr. Stutsman, you were asked earlier, have
19 been asked repeatedly, about the contracting
20 process between SCE&G and Anson, of which you've
21 discussed in detail there have been many years that
22 you-all have worked together. Has the contract --
23 has the contracting process been done the exact
24 same way every time?

25 A. No.

1 Q. Is it in fact different from contract to
2 contract, depending on the terms or the work that's
3 to be done?

4 A. Job to job, yes, it is different.

5 Q. To your knowledge, as you sit here today,
6 prior to 2008, has SCE&G -- have you ever signed or
7 has Anson ever signed a purchase order that SCE&G
8 sent them?

9 A. No.

10 Q. If you will look at what is marked as
11 Exhibit 2, we'll go to Plaintiff's Exhibit B, which
12 is SCE&G 58058, will you please read here on the
13 purchase order where it says -- starts with vendor,
14 will you read that paragraph for me?

15 A. Vendor is required to acknowledge its
16 acceptance of the purchase order contract by having
17 its authorized representative sign in the space
18 below and return the signed copy to the buyer.

19 Q. Have you ever signed this particular
20 purchase order?

21 A. No.

22 Q. Has Anson ever signed this particular
23 purchase order?

24 A. No.

25 Q. If you can look at also Exhibit Number 2,

1 what has been marked -- excuse me -- what is listed
2 as Plaintiff's Exhibit A to the Complaint, SCE&G
3 066, is that your quotation or proposal for the
4 Church Street job?

5 A. Yes.

6 Q. Is that Mr. Jesse Thigpen's signature at the
7 bottom of the page?

8 A. Yes.

9 Q. Can you recall an instance where anyone from
10 SCE&G, prior to this contract being executed, ever
11 signed an Anson proposal?

12 A. No.

13 Q. Is that abnormal for SCE&G to sign an Anson
14 proposal?

15 A. Yes.

16 Q. You were asked earlier about plans that you
17 were given as part of the job and whether you
18 were -- made any changes or were asked to make any
19 changes. Do you remember that discussion from
20 plaintiff's counsel?

21 A. Yes.

22 Q. And you said -- did I hear you say you did
23 not -- you were not asked to make any changes to
24 the drawings that you were given for this job?

25 A. We weren't asked to make any changes.

1 Q. Are you ever asked to make changes?

2 A. No.

3 Q. You do work -- do you do work as directed by
4 the contractor who is employing you?

5 A. Yes.

6 Q. Earlier you were asked about the remediation
7 process, and I believe you stated that Anson, other
8 than placing back the concrete and the palm tree,
9 palmetto tree, Anson was not involved in the
10 remediation process; is that correct?

11 A. That's what I said, yes.

12 Q. And you don't -- do you recall whether Anson
13 was ever asked to participate in the remediation
14 process other than putting back the slab and
15 putting back the Palmetto tree?

16 A. No.

17 Q. They were not asked?

18 A. Correct.

19 Q. I want to show you and mark as Exhibit 5.

20 (Exhibit No. 5 was marked for
21 identification.)

22 (Exhibit No. 6 was marked for
23 identification.)

24 Q. So if we will look at Exhibit 5, will you
25 just take a minute and read that letter, please,

1 from J. David Kibler to I believe you?

2 A. Yes.

3 Q. If you'd just take a look at it.

4 A. Do you want me to --

5 Q. Just take a look at it and tell me when
6 you're ready.

7 A. Yes, sir.

8 Q. Do you see anywhere in that letter where it
9 says, please help us with the remediation process?

10 A. No, sir.

11 Q. Would it be accurate to say that that letter
12 in fact just asks you to place your insurance
13 company on notice of possible allegations of
14 damage?

15 A. Yes.

16 Q. But nowhere in that letter is there a clause
17 or even an insinuation that -- would you interpret
18 it as an insinuation that you should participate in
19 the remediation process?

20 A. No.

21 Q. Thank you. And if you'll look at what's
22 been marked as Exhibit 6, can you take a minute to
23 take a look at that letter, please?

24 A. Yes.

25 Q. Okay. That letter's dated February 15, 2008

1 and is marked -- Bates stamp marked Anson 0073.
2 Anywhere in that letter do you see where SCE&G is
3 requesting that you participate in the remediation
4 process?

5 A. No.

6 Q. Would it be accurate to say that that letter
7 again requests you to notify your insurance
8 carrier?

9 A. Yes.

10 Q. Is there also a paragraph in there that
11 addresses allegations that there are cracks or
12 investigation of cracks and damages at local
13 residences?

14 A. Yes.

15 Q. And what is the -- this letter is from
16 Ms. Sandylynn Kammer, and what does she say about
17 those cracks and damages?

18 A. What I read is that it says, SCE&G
19 structural experts conducted the inspections and
20 none -- and are confident there are no structural
21 issues associated with these houses. None -- no
22 structural issues.

23 Q. And before that, the sentence says that the
24 cracking or damages was superficial and cosmetic?

25 A. Yes, yes.

1 Q. And just for the record, Exhibit 5 was a
2 letter dated February 5th, 2008 and it was Bates
3 stamped Anson 00072.

4 Did you receive any other letters from SCE&G
5 after that that you can recall that asked them --
6 asked you to participate in the remediation
7 process?

8 A. No.

9 Q. Were you ever asked at all by anyone from
10 SCE&G what they should do to remediate the hole?

11 A. No.

12 Q. Earlier Mr. Neville asked you whether you
13 denied the allegations of the Complaint, and you
14 stated you didn't deny the allegations. Did you
15 mean that you did not deny that the allegations
16 were made, you do not admit the allegations as
17 they're stated, correct?

18 A. Correct.

19 Q. You also stated earlier that SCE&G does not
20 control things at a job site, but if they employ
21 you to do work on their behalf, are they in fact
22 controlling things?

23 A. Yes.

24 Q. You're doing work at their request or at
25 their direction, correct?

1 A. Correct.

2 Q. And the 23,000 and some change on Exhibit 4,
3 paid to Anson, 23,316.50, was all part of the
4 original contract; is that correct?

5 A. Yes.

6 Q. Anson was never paid anything additional for
7 any remediation work or any other work it did at
8 the Dock Street Theatre up through remediation?

9 A. No.

10 MR. CAVANAUGH: That's all the
11 questions I have.

12 (A recess was taken.)

13 MR. NEVILLE: I will clean up the read
14 and sign thing, and that will be it. Well,
15 actually I think we already cleared it up. I
16 didn't know if you wanted to say anything else
17 about reading.

18 MR. CAVANAUGH: You can put this on the
19 record. It's fine. I agree with the read and sign
20 that I'll have my client -- I'll have Mr. Stutsman
21 read the deposition, and if he agrees with the
22 testimony, he will sign it and thereby close the
23 deposition.

24 MR. NEVILLE: And if not, then we'll
25 come back for the --

1 MR. CAVANAUGH: Obviously if he makes
2 any substantive changes, plaintiff's counsel is
3 allowed to redepose him on whatever substantive
4 changes he makes.

5 MR. NEVILLE: Agreed.

6 (The deposition was concluded at
7 4:25 p.m.)

1 STATE OF SOUTH CAROLINA

2 COUNTY OF CHARLESTON

3
4 I, J. Lynn Clark, Registered
5 Professional Reporter and Notary Public for the
6 State of South Carolina at Large, do hereby certify
7 that the witness in the foregoing deposition was by
8 me duly sworn to testify to the truth, the whole
9 truth and nothing but the truth in the
10 within-entitled cause; that said deposition was
11 taken at the time and location therein stated; that
12 the testimony of the witness and all objections
13 made at the time of the examination were recorded
14 stenographically by me and were thereafter
15 transcribed by computer-aided transcription; that
16 the foregoing is a full, complete and true record
17 of the testimony of the witness and of all
18 objections made at the time of the examination; and
19 that the witness was given an opportunity to read
20 and correct said deposition and to subscribe the
21 same.

22 Should the signature of the witness not
23 be affixed to the deposition, the witness shall not
24 have availed himself of the opportunity to sign or
25 the signature has been waived.

26 I further certify that I am neither
27 related to nor counsel for any party to the cause
28 pending or interested in the events thereof.

29 Witness my hand, I have hereunto
30 affixed my official seal on July 28, 2012 at
31 Charleston, Charleston County, South Carolina.

32
33 J. Lynn Clark
34 NCRA MERIT REPORTER
35 REGISTERED PROFESSIONAL REPORTER
36 RPR, CP-CM, CSR(Iowa)
37 My Commission expires
38 February 5, 2017
39
40
41
42
43
44
45

DEPONENT CORRECTION SHEET

I, the undersigned, PETER S. STUTSMAN 30(b)(6)
ANSON CONSTRUCTION, do hereby certify that I have
read the foregoing deposition and wish to make the
following clarifications and/or corrections, if
any.

PAGE	LINE	CHANGE	REASON
------	------	--------	--------

PETER S. STUTSMAN 30(b)(6) ANSON CONSTRUCTION	Date
--	------

LC

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF CHARLESTON	)	
	)	
South Carolina Electric & Gas Company,	)	
	)	C/A NO. 2011-CP-10-5009
Plaintiff,	)	
	)	
vs.	)	
	)	
Anson Construction Company, Inc.,	)	
	)	
Defendant.	)	
	)	

30(B)(6) DEPOSITION OF

DONNIE GRAHAM

Thursday, May 17, 2012
10:24 a.m.-11:37 a.m.

The 30(B)(6) deposition of DONNIE GRAHAM, taken on behalf of the Defendant at the offices of Wills, Massalon & Allen, LLC, 97 Broad Street, Charleston, South Carolina on the 17th day of May, 2012, before Lyn Allen Hudson, Court Reporter and Notary Public in and for the State of South Carolina, pursuant to Notice of Deposition and/or agreement of counsel.

APPEARANCES:

Representing the Plaintiff:

John A. Massalon, Esquire
Wills, Massalon & Allen, LLC
97 Broad Street
Post Office Box 859
Charleston, South Carolina 29402

John Mahon, Esquire
In-House Counsel
SCANA Corporation
100 SCANA Parkway
MC222
Cayce, South Carolina 29033

Representing the Defendant:

Everett A. Kendall, II, Esquire
Eric Cavanaugh, Esquire
Sweeny Wingate & Barrow, P.A.
1515 Lady Street
Columbia, South Carolina 29201

Also Present:

Sandylynn Kammer, Claims Agent, SCANA Corp.

CONTENTS:

(Deposition of Donnie Graham)

	PAGE
Exhibit Index	3
Stipulations	4
Examination by Mr. Kendall	5
Examination by Mr. Massalon	45
Re-Examination by Mr. Kendall	49
Certification of Reporter	50

EXHIBIT INDEX

EXHIBITS:	IDENTIFIED AT PAGE:
Defendant's Exhibit Number One	5
Defendant's Exhibit Number Two	32
Defendant's Exhibit Number Three	33
Defendant's Exhibit Number Four	38

S T I P U L A T I O N

It is hereby stipulated and agreed by and between the parties hereto, through their respective attorneys of record, that this deposition is taken in accordance with the South Carolina Rules of Civil Procedure;

That the formality of READING AND SIGNING is specifically WAIVED;

That all objections, except as to the form of the questions and the responsiveness of the answers, are reserved until such time as this deposition, or any part thereof, may be used or is sought to be used in evidence.

- - -

1 (Defendant's Exhibit Number One was marked for
2 identification purposes.)

3 DONNIE GRAHAM, being duly sworn, deposes and testifies as
4 follows:

5 MR. GRAHAM - EXAMINATION BY MR. KENDALL:

6 Q: Will you state your full name?

7 A: Donnie Vernon Graham.

8 Q: Mr. Graham, my name is Rhett Kendall. I represent
9 Anson Electric Company. I issued a notice of a
10 deposition that asks for SCE&G to identify certain
11 individuals to give testimony today on behalf of the
12 corporation. This is not your deposition per se. In
13 other words, I'm not here so much to find out what
14 Donnie Graham knows, but I'm here to find out what
15 SCE&G will say to certain questions. And they have
16 chosen to have you give those answers; okay? So I just
17 want you to be mindful of that, that your testimony
18 today is the testimony of the company. Do you
19 understand that?

20 A: I understand.

21 Q: During the course of the deposition today if you have
22 any questions of me, particularly if my questions have
23 been unclear, if you have some concerns about the way I
24 phrased something or the words that I've used, please
25 ask me to repeat myself or to rephrase things. I'll be

1 glad to do that; okay?

2 A: Okay.

3 Q: During the deposition today if you have questions about
4 how we proceed, what you should do, should we take a
5 break and those kinds of things, again, if you will
6 address those to me I'll be glad to respond to you;
7 okay?

8 A: Okay.

9 Q: What our rules discourage is your having conversations
10 with other people off the record or seeking advice from
11 counsel even while on the record. Mr. Massalon knows
12 the rules. He knows when it's appropriate and not. I
13 just want you to be aware that there are limitations on
14 that.

15 A: Okay.

16 Q: Do you understand that?

17 A: I understand.

18 Q: And speaking of a break, if during the day, this
19 morning you need to take a break I'll be glad to do so.
20 I don't know how long how long your deposition will be
21 because I don't know all that you will say. I
22 anticipate it's not going to be terribly long. But
23 it's important that you remain comfortable. So whether
24 it's for personal comfort, to clear your mind, to
25 stretch your legs, whatever you may need, if you will

1 tell me, we'll stop; okay?

2 A: All right.

3 Q: I need to first know what it is subject matter-wise
4 that you understand that you're here to testify about.
5 So I have asked, had marked as Exhibit One the
6 deposition notice. And I'll provide that to you. I
7 don't know if you've seen that document in that form or
8 not. Have you?

9 A: Yes, I have.

10 Q: Okay. Can you please identify for me what you
11 understand you will be testifying to today? But just
12 do it by item number if we can just start there. Item
13 one, the procurement, SCE&G's general procurement
14 process? Or I'm sorry. How do we have number one? I
15 don't have that exact document in front of me. What's
16 --

17 MR. MASSALON: May I help out on this just a
18 little bit?

19 MR. KENDALL: Yes.

20 MR. MASSALON: We are offering him up, he probably
21 knows some things about the allegations of the
22 complaint.

23 MR. KENDALL: Okay.

24 MR. MASSALON: But mainly the procurement process.

25 MR. KENDALL: Okay.

1 MR. MASSALON: I believe we sent you an e-mail on
2 this. But mostly on number three the procurement
3 process. I think number four which also includes some
4 questions about the procurement process. And number
5 six, selecting vendors.

6 MR. KENDALL: Okay.

7 MR. MASSALON: And again, there may be a little
8 bit of crossover. But those are the primary ones.

9 MR. KENDALL: And this, obviously the topic of
10 allegations of the complaint is brought.

11 MR. MASSALON: It is.

12 MR. KENDALL: Are there any particular allegations
13 or should I go through all of them or do you want to
14 refer to it generally?

15 MR. MASSALON: What I, I didn't get that specific
16 with you or with him. But I --

17 MR. KENDALL: I tell you what. I'll pose
18 questions and if he can answer, great. And if he
19 cannot, I'll understand that someone else is designated
20 for that.

21 MR. MASSALON: Right. Yeah. That's probably
22 good.

23 MR. KENDALL: Okay. Very good. I think that's,
24 that would be the easiest way for us to proceed.

25 **Q: You've heard the conversation, Mr. Graham, that**

1 Mr. Massalon and I have had. Are you in agreement with
2 that?

3 A: That will be fine.

4 Q: Okay. And so your testimony today again is that of the
5 company on those issues. Tell me what your current
6 position is with SCE&G.

7 A: Manager of strategic sourcing, supporting the wires
8 group.

9 Q: Supporting which group?

10 A: Wires group which is --

11 Q: Wires?

12 A: Yeah.

13 Q: Is that the electric?

14 A: Yeah.

15 Q: How long have you been in that position?

16 A: I estimate about eight years probably.

17 Q: So in 2006, 2007, 2008 is the time frame that the facts
18 involved in this case took place. Were you in that
19 position at that time?

20 A: Yes.

21 Q: And what is your, what are your duties as the manager
22 of strategic sourcing supporting the wires group?

23 A: I supervise employees under me as far as contracting
24 and procurement of materials and services.

25 Q: And are you currently an employee of SCE&G or SCANA?

1 A: SCANA.

2 Q: And in 2007-2008 were you an employee of SCANA or
3 SCE&G?

4 A: SCANA.

5 Q: And is there a working arrangement between SCANA and
6 SCE&G for this procurement service?

7 A: Yes.

8 Q: Does SCE&G have a procurement department for the
9 electrical services other than what you, your office
10 performs?

11 A: No.

12 Q: So you do everything for SCE&G?

13 A: Yes.

14 Q: All right. Who is your, who do you directly report to?

15 A: A lady by the name of Maureen Elmore.

16 Q: And what is her title?

17 A: Senior manager.

18 Q: Does she work just in the procurement area like as you
19 do or does she have broader responsibilities?

20 A: In the procurement area like I do.

21 Q: Okay. Is there anybody above you that is responsible
22 solely for wires or once it gets above you it gets
23 broader?

24 A: It broadens out.

25 Q: It broadens out?

1 A: Yes.

2 Q: So is Ms. Maureen -- you said her name is Maureen?

3 A: Uh-huh (affirmative response).

4 Q: Or Ms. Elmore? Her last name is Elmore?

5 A: Elmore.

6 Q: Ms. Elmore is, there are other managers like you for
7 other divisions that she also supervises?

8 A: That's correct.

9 Q: Okay. I understand. Are you familiar with the
10 procurement process utilized by SCE&G in 2007 and 2008?

11 A: I am.

12 Q: What is, what was your daily involvement in the
13 procurement process?

14 A: Being a manager over the group is pretty much not
15 hands-on day-to-day. It's kind of overseeing process.

16 Q: Who, are you familiar with the contract that is at
17 issue in this case?

18 A: I am.

19 Q: How do you refer to that contract? I want a label I
20 can put on it so we can call it the such and such
21 contract.

22 A: With Anson? You can call it --

23 Q: The Dock Street? Can we call it the Dock Street --

24 A: If you want to. Yes.

25 Q: You will know what I'm talking about?

1 A: Yes.

2 Q: And just for shorthand purposes, is it your
3 understanding that that contract was for the
4 installation of a transformer vault in Church Street in
5 front of the French Huguenot Church?

6 A: That's correct.

7 Q: So we're just going to call it the Dock Street
8 contract?

9 A: Right.

10 Q: Is it your understanding -- who do you understand was
11 the procurement officer, if you have such a title, or
12 the procurement person for that contract?

13 A: A gentleman that works for me, Randy Morris.

14 Q: Explain to me how in general terms a contract is
15 awarded for a specific job such as, just using the Dock
16 Street as an example, I don't want you to tell me yet
17 about Dock Street, but in general that kind of sort of
18 one-off job if you will rather than part of a long-term
19 hang a thousand wires, a thousand miles of wire kind of
20 job. We need this particular job done at this
21 particular time. Tell me how that is, what's the
22 procurement process for that?

23 A: We obtain proposals from potential suppliers and
24 evaluate the proposals and coordinate it with our
25 operations folks as far as awarding the contract to a

1 potential supplier and issue a purchase order.

2 Q: Let me back up from, the first step you put into place
3 was obtaining proposals.

4 A: Uh-huh (affirmative response).

5 Q: But there has to be a job first.

6 A: Yes.

7 Q: There has to be a project identified; correct?

8 A: Yes.

9 Q: Where is the project identified? Who does that?

10 A: It's identified by the operations folks. And they give
11 us the scope of the work. And we take the scope and
12 put it together with our requirements and send it out.

13 Q: So once they have defined what the work is in
14 operations, then that is transmitted to who at, in your
15 office?

16 A: To the buyer or purchasing agent so to speak that
17 supports that group.

18 Q: Okay. In this case that's Randy Morris?

19 A: That's correct.

20 Q: In general, that is some front line procurement
21 officer?

22 A: Yes.

23 Q: What's Randy's title?

24 A: He's a procurement agent three.

25 Q: Three?

1 A: (Nods head affirmatively.)

2 Q: What does procurement agent three authorize him to do

3 in terms of size of job or amount of money spent?

4 A: The limit with that approval with him is fifty

5 thousand.

6 Q: Okay.

7 A: And he has authority to contract up to that amount.

8 Q: So once the job is, arrives in procurement, in the

9 procurement office, what does the procurement officer

10 then, what were the steps he does? You said he puts

11 together a package for a proposal?

12 A: Right.

13 Q: What is that called?

14 A: It's the RFP. Request for proposal.

15 Q: So whenever, once operations has defined the job, an

16 RFP is issued by your office?

17 A: Uh-huh (affirmative response).

18 Q: Correct?

19 A: Correct.

20 Q: And then, and who does that RFP go to?

21 A: To the suppliers we have identified that can do the

22 work.

23 Q: Is that, is that the suppliers from, that procurement

24 has identified or that operations has identified?

25 A: It's a combination.

1 Q: Does the operations give you the list of people they
2 would like the RFP to go to?

3 A: Not always. But most of the time.

4 Q: Do you have an approved vendors list?

5 A: What we try to do is source it locally. If there's
6 local -- depends on the volume. Depends on the size of
7 the contract, you know. And we try to focus on a local
8 presence to do the work.

9 Q: Okay. And so once the, a list is determined of here
10 are the folks we want to send it to, and you said
11 that's done in collaboration with operations and
12 procurement; correct?

13 A: Yes. Uh-huh (affirmative response).

14 Q: And then the RFP is sent out to those vendors; correct?

15 A: That's correct.

16 Q: Is it mailed? Faxed? E-mailed? How does it go out?

17 A: Most of the time it's -- today it's probably e-mailed.

18 Q: Do you remember back in 2007-2008?

19 A: I couldn't tell you back then.

20 Q: It's not put into like a bidding room or a, you know,
21 some of the local associations have a drawing room or a
22 bid room. It's not posted there, is it?

23 A: No.

24 Q: It goes directly?

25 A: Yes.

1 Q: And then after the RFP goes out I imagine there's some
2 sort of deadline for a return; is that correct?

3 A: That's correct.

4 Q: To whom is the response, the proposal provided?

5 A: To the procurement agent.

6 Q: It's supposed to be returned to the procurement agent?

7 A: That's correct.

8 Q: Then what happens?

9 A: He would do a financial evaluation and get to, with
10 operations and get their concurrence to award it to the
11 successful contractor.

12 Q: What do you mean by a financial evaluation?

13 A: Just look at the pricing, look at the quotes that we
14 got back.

15 Q: Do you always go low bid or do you make sure that it
16 seems right or what?

17 A: We make sure it seems right. Not necessarily low bid
18 every time. Sometimes there may be circumstances
19 involved with the low bid that, you know, that won't
20 allow us to award it to the low bid. But we go there
21 most of the time.

22 Q: So once the, it is determined, the financial evaluation
23 is done it's determined who will get the award, you
24 said you communicate that to operations?

25 A: Yes.

1 Q: And then what happens?

2 A: Get their concurrence. And they will award the
3 contract.

4 Q: Is there a document called a notice of award?

5 A: Normally we send out a purchase order.

6 Q: Okay. And that's the way the contractor finds out?

7 A: We may call them first.

8 Q: Okay. And the purchase order is issued from
9 procurement?

10 A: That's correct.

11 Q: And then once the purchase order goes out, what's next?

12 A: Once it goes to the successful contractor and then
13 operations coordinates it and administers it with the
14 contractor.

15 Q: At some point does there have to be a received, does
16 your office receive the signed purchase order?

17 A: We request that they be signed most of the time. But
18 not always. And we don't always get it back signed.

19 Q: If you don't get it back, who, does operations get the
20 signed purchase order?

21 A: We assume that if work has started that the contractor
22 has accepted the contract and we go from there.

23 Q: Is there a form RFP? In other words, is there in your
24 computer system a template that you use to create an
25 RFP?

1 A: We have one that we use. Yes.

2 Q: And do you have a template that you use for the

3 purchase order?

4 A: No.

5 Q: Every purchase order is --

6 A: Could be different.

7 Q: -- could be different?

8 A: The basic design is the same.

9 Q: You mean where the lines on the page are?

10 A: Yeah.

11 Q: But the words change from contract to contract?

12 A: That's correct.

13 Q: Okay.

14 A: They match what's on the RFP and scope. And reference

15 the scope.

16 Q: After the work begins is procurement involved in the

17 process after that?

18 A: Not normally.

19 Q: Once a job is completed and it's time to pay the

20 vendor, whose, which department does that?

21 A: That would be the operations area.

22 Q: Uh-huh (affirmative response).

23 A: Releasing it for payment.

24 Q: Okay. So they do that on a computer system?

25 A: Yes.

1 Q: And does your system use that purchase order as the,
2 basically a job tracking number?

3 A: That's correct.

4 Q: So that once that vendor, if the vendor wants to get
5 paid it needs to associate its invoice with a purchase
6 order number?

7 A: That's correct.

8 Q: And then accounting knows this is an okay, a bill
9 that's okay to pay?

10 A: That's correct.

11 Q: This has gone through the right channels; correct?

12 A: That's correct.

13 Q: Okay. Is there a -- going back to the vendor
14 selection, did you tell me there is a group of
15 pre-approved vendors?

16 A: Basically we look at who we've done business with in
17 the past, depending on the size of the job. And if
18 we've done business say in the Charleston area with two
19 or three, then we --

20 Q: If you're working with a vendor for the first time --

21 A: Uh-huh (affirmative response).

22 Q: -- let's say the operations folks, for whatever reason
23 --

24 A: Uh-huh (affirmative response).

25 Q: -- have in mind somebody that has not previously done

1 work with SCE&G, is there a process that that vendor
2 must go through before it can obtain approval to do
3 work?

4 A: Yes, there is.

5 Q: What is that process?

6 A: Our supplier strategy folks have a packet that they
7 send out to that supplier to fill out which includes
8 their W-9, their, whether they're small business in a
9 GSA status so to speak, whether they are small business
10 minority, that sort of thing. We look at their
11 financials to see if they are a solid financially sound
12 company. And we also verify that they have the
13 appropriate insurance.

14 Q: Are there any agreements that the vendor, prospective
15 vendor must sign in advance of being awarded any work?

16 A: No.

17 Q: So they are not required to sign anything at that
18 qualification stage?

19 A: They have to sign the W-9.

20 Q: Okay. Because you need their EIN numbers?

21 A: Yes.

22 Q: In terms of, so at the qualification stage in order to
23 become a qualified vendor for SCE&G they don't have to
24 sign an agreement, a vendor agreement or anything of
25 that nature; correct?

1 A: No.

2 Q: And you don't require that they sign the purchase
3 orders before they start work; correct?

4 A: We try to obtain them. But no. We don't require them.

5 Q: So it's possible that a vendor is awarded a job and
6 completes work and is paid for work without ever having
7 signed an agreement with SCE&G; is that correct?

8 A: That's correct.

9 Q: Okay. Who is the, you -- I think this term was yours,
10 supplier strategy folks. Who is that?

11 A: That's a group in the strategic sourcing area that
12 keeps up with suppliers, information as far as the W-9s
13 and the forms that they fill out and send back in that
14 we are required by the federal government to keep on
15 file.

16 Q: Sure. And you've used strategic sourcing as a part of,
17 that's the department you're a manager in; correct?

18 A: Yes. Uh-huh (affirmative response).

19 Q: But there is a group that looks at just the suppliers
20 and managing your vendors and that kind of thing?

21 A: That's correct.

22 Q: Who heads that group?

23 A: A lady by the name of Mamie Price.

24 Q: Do you know whether Mamie Price was involved in any way
25 with the approval or selection of Anson as a vendor to

1 SCE&G?

2 A: I couldn't say. I don't know.

3 Q: Do you know how long Anson has been a vendor to SCE&G?

4 A: A pretty good while.

5 Q: Do you know whether, do you know anyone that was
6 involved in that initial qualification for vendor?

7 A: No.

8 Q: They've just been around as long as you have?

9 A: Yeah.

10 Q: So once you're in at SCE&G nobody asks you to requalify
11 or go through a revetting process or at least, or does
12 that happen from time to time?

13 A: It depends on the job. It depends on the size of the
14 job.

15 Q: Okay.

16 A: But we do periodically do re-evaluations.

17 Q: In other words, if somebody had always done fifty
18 thousand dollar or less jobs and now is trying to
19 qualify for a five hundred thousand dollar job, you
20 might want to get some more information?

21 A: We'll look at some additional info.

22 Q: Okay. Is the, is the supplier strategy folks, do they
23 keep a vendor file?

24 A: Yes.

25 Q: Mamie's group does?

- 1 A: Yes.
- 2 Q: And it includes the W-9?
- 3 A: Yes.
- 4 Q: And I think you described something like GSA status?
- 5 A: Right.
- 6 Q: They keep some information there?
- 7 A: That's correct.
- 8 Q: Do they request and keep current financials on all
- 9 vendors?
- 10 A: No.
- 11 Q: And do they request and keep insurance verification for
- 12 the vendors?
- 13 A: Possibly.
- 14 Q: Should they?
- 15 A: They keep it. If they get it, they keep it on file.
- 16 But they don't necessarily have it on every one. But
- 17 if we have a job we verify the insurance.
- 18 Q: So that can be done on a job-by-job basis?
- 19 A: That's right.
- 20 Q: And so the policy or the procedure is that even if you
- 21 don't have it on file when a job is awarded a
- 22 certificate of insurance has to be provided?
- 23 A: Yes.
- 24 Q: And do you have certain criteria or requirements for
- 25 the certificate of insurance?

- 1 A: There are standard requirements. Yes.
- 2 Q: And are those published, what the standard requirements
3 are?
- 4 A: When we send an RFP out, our terms and conditions has
5 the insurance requirements in there.
- 6 Q: So it will describe what all they have to do --
- 7 A: That's right.
- 8 Q: -- in terms of amounts and those kinds of things?
- 9 A: (Nods head affirmatively.)
- 10 Q: Does SCE&G require that it be named as an additional
11 insured on all liability policies for its vendors?
- 12 A: Yes.
- 13 Q: Is that a condition to obtaining work?
- 14 A: Yes.
- 15 Q: Is responding to an RFP required in order to get work
16 from SCE&G?
- 17 A: Not necessarily. We may have a rush job that needs to
18 be something started very quickly. And we might not
19 send an RFP out.
- 20 Q: Okay. How long would it, does it ordinarily take? If
21 I have a, if operations has a job defined, know what
22 they're going to do --
- 23 A: Uh-huh (affirmative response).
- 24 Q: -- how long does it ordinarily take to go from them
25 contacting you for the first time and you getting an

1 RFP out?

2 A: Two or three days maybe.

3 Q: And is there a standard lead time or response time in
4 an RFP?

5 A: If it's not a complicated job normally we'll give them
6 a couple of weeks.

7 Q: Okay.

8 A: Depending on the job it could be longer.

9 Q: If it's something that's under fifty thousand dollars
10 you return that pretty quick?

11 A: A week or two at at the most.

12 Q: So if you've got two to three weeks' lead time your
13 office should be able to go through the RFP process;
14 correct?

15 A: Correct.

16 Q: Does the RFP include general terms and conditions?

17 A: Yes.

18 Q: Is that a document that is authored by your office?

19 A: No.

20 Q: Who is responsible for the contents of the RFP? I
21 mean, excuse me, of the general terms and conditions.

22 A: That is a standard form that we have that legal has put
23 together.

24 Q: All right. But your office is responsible to deliver
25 that as part of the RFP; correct?

1 A: That's right.

2 Q: And --

3 A: And it also goes out with the PO.

4 Q: Also with the PO. So a person who is in that process
5 should receive it twice?

6 A: Yes.

7 Q: And if the, does your office -- strike that. If the
8 RFP documents, particularly the general terms and
9 conditions needs to be updated, feel like changes need
10 to be made to it, is there a committee that, within the
11 procurement office that meets to discuss possible
12 changes?

13 A: Periodically we meet and work with legal to make
14 changes as necessary to update it.

15 Q: The process that you have described today for the
16 procurement process on smaller jobs, the fifty thousand
17 and less, is that, the types of things Mr. Morris
18 handles on a, as part of his job, is that written down
19 in a manual?

20 A: I don't think so.

21 Q: How does, how do you as the manager communicate to a
22 new hire, for example, how that process works?

23 A: We, we have a manual called Buyer Guidelines that we
24 refer to. It is not a process.

25 Q: Guidelines?

1 A: Yes.

2 Q: If a procurement officer three decided not to follow
3 those guidelines, is that okay?

4 A: If there are some sufficient justification, yes.

5 Q: You would not want them to ignore the guidelines every
6 day?

7 A: No.

8 Q: Okay. So you think those guidelines are important?

9 A: Yes.

10 Q: And is it, are they in a bound version, a bound copy?

11 A: A binder.

12 Q: In a binder?

13 A: (Nods head affirmatively.)

14 Q: And so if I were to send a request through the lawyer
15 for that document, if I called it Buyer Guidelines you
16 would know exactly what to pull off your shelf?

17 A: Yes.

18 Q: Is that document updated periodically?

19 A: It needs to be updated but it hasn't been updated in a
20 while.

21 Q: Do you know if it's been updated since 2007?

22 A: I'm not sure. I would have to go look at it to see
23 when we put it together.

24 Q: Do you know whether it was in place in 2007 --

25 A: I can't.

1 Q: -- or some version of it?

2 A: I can't answer that. I don't know.

3 Q: Do you recall whether at the bottom of the page or some
4 other place it has dates, printed dates?

5 A: Very possibly it does.

6 Q: Are you familiar with the contents of the vendor file
7 for Anson Construction?

8 A: I'm not sure I understand what the vendor -- what do
9 you mean by vendor file?

10 Q: Fair enough. You described for me Mamie's department.
11 And that they keep --

12 A: Oh, that vendor file.

13 Q: That vendor file. I've given it that label. What
14 would you call it?

15 A: It's a vendor file. Yes.

16 Q: Are you familiar with the contents of the vendor file
17 for Anson?

18 A: I don't know what's in there. No.

19 Q: Have you ever seen a terms, the general terms and
20 conditions that you described that was signed by Anson
21 Construction?

22 A: I don't know.

23 Q: Okay. Are you aware of any specific occasion? And I'm
24 going to ask this question in two parts. Are you aware
25 of a specific occasion based on your personal knowledge

1 of when those general terms and conditions were sent to
2 Anson?

3 A: In regards to this specific job?

4 Q: Ever.

5 A: Or ever?

6 Q: Ever.

7 A: Ever? They get a copy, or they get a copy every time
8 we issue an order --

9 Q: Okay.

10 A: -- or an RFP.

11 Q: Is that based on your understanding of the practice or
12 is that your understanding of you saw them get issued
13 and so you know --

14 A: The practice.

15 Q: Okay. That's what I was trying to, going to try to
16 distinguish was the difference between what you expect
17 happen because you're the manager of the department and
18 you know what the practice is --

19 A: Yeah.

20 Q: -- versus what you have observed happen because you saw
21 it actually occur; okay?

22 A: (Nods head affirmatively.)

23 Q: My question was the latter of that, where you actually
24 know because either you did it yourself or you were
25 standing there as it was done where Anson was given a

1 copy of your general terms and conditions.

2 A: It's the practice.

3 Q: Okay.

4 A: I don't know.

5 Q: You have no personal knowledge?

6 A: No.

7 Q: And, but because of the way you established your

8 systems and your practices at SCE&G, you expect the

9 date was given to them every time an RFP was sent to

10 them; correct?

11 A: Correct.

12 Q: And every time a PO was issued to them; correct?

13 A: Correct.

14 Q: And if it wasn't done that way then your practice

15 wasn't followed; correct?

16 A: Correct.

17 Q: Have you been able to, and in an effort to prepare for

18 your deposition today, have you been able to verify

19 that those general terms and conditions were ever sent

20 to Anson?

21 A: I did not verify that.

22 Q: Have you been able to verify that the general terms and

23 conditions -- well, let me back up. Do you know

24 whether an RFP was issued for the Dock Street project?

25 A: No. It wasn't.

1 Q: Do you know whether a PO was issued?

2 A: Yes, it was.

3 Q: And were you able, have you been able to determine
4 whether the PO was issued, when the PO was issued
5 whether the general terms and conditions were attached
6 to it?

7 A: They were not attached.

8 Q: Okay.

9 A: We referenced the terms and conditions on the PO.

10 Q: Right.

11 A: And referenced also a web site where they're available.

12 Q: But you didn't physically attach them?

13 A: No.

14 Q: But the practice is to physically attach them?

15 A: Not always. No.

16 Q: Okay.

17 A: We reference them. And they're also available on the
18 system.

19 Q: When you send out the RFP, do you also sometimes send
20 them physically --

21 A: No.

22 Q: -- and sometimes don't?

23 A: They are sent out when we issue the RFP.

24 Q: Okay. So just to, I'm not trying to trap you so much
25 as to clarify or make sure I understand. Your previous

1 testimony I understood to be that the practice is to
2 send, physically send the general terms and conditions
3 with the PO. But you're testifying now that that's
4 not --

5 A: I consider the reference to them and the web site on
6 the PO as sending.

7 Q: Okay.

8 (Defendant's Exhibit Number Two was marked for
9 identification purposes.)

10 Q: I want to show you a document that was attached to the
11 complaint in this lawsuit. And I have had it marked
12 here as Exhibit Two. Are you familiar with that
13 document?

14 A: Yes. That's a purchase order.

15 Q: Okay. By the purchase order, you mean for the Dock
16 Street job?

17 A: And evidently it was, the general terms and conditions
18 were attached.

19 Q: Well, there is included as part of the exhibit. I'll
20 just reference to you that that's the way it was in the
21 complaint. But were you able, have you been able to
22 independently verify that in fact it was? A moment ago
23 I think you told me it was not.

24 A: I wasn't sure.

25 Q: Okay. I did not mean to represent to you, and perhaps

1 I should, in fact I think I will separate the two from
2 each other for that reason so we avoid that confusion.
3 Will you hand that back to me? I'm going to, the
4 purchase order will be Number Two. And that's what was
5 previously -- that will be Exhibit Two.

6 (Defendant's Exhibit Number Three was marked for
7 identification purposes.)

8 Q: And another document we'll mark here as Exhibit Three.

9 MR. MASSALON: Is this an exhibit?

10 MR. KENDALL: That's exhibit -- not yet.

11 MR. MASSALON: No?

12 Q: So Exhibit Two, that is the purchase order for the Dock
13 Street project; correct?

14 A: Looks like it.

15 Q: And I believe you previously testified that Randy
16 Morris was the buyer who issued this?

17 A: That's correct.

18 Q: And he was authorized to do so?

19 A: Yes.

20 Q: Do you know, can you tell from this or have you learned
21 independently how it was sent, how this PO was sent?

22 A: It was probably mailed. I can't say for sure. I don't
23 know.

24 Q: All right. You think it was probably mailed on January
25 4th 2008?

1 A: About that time.

2 Q: Okay. At any time have you sent or seen a signed
3 version, a version of this or a copy of this that is
4 signed by vendor representative?

5 A: I don't know.

6 Q: You don't know whether you have or you haven't?

7 A: I don't think I've seen the vendor signed.

8 Q: Have you looked for one?

9 A: Yes. I'm pretty sure it has been signed.

10 Q: Okay. Now, the, looking right above where it says
11 vendor representative signature, it says vendor is
12 required to acknowledge its acceptance of the purchase
13 order --

14 A: Uh-huh (affirmative response). That's correct.

15 Q: -- by having its authorized representative sign in this
16 space. So that is a requirement of the purchase order,
17 is it not?

18 A: I'm trying to look.

19 Q: Right above the signature line.

20 A: We, we ask that they sign, acknowledge receipt of the
21 purchase order by signing it.

22 Q: Is that how y'all define required is by that's a
23 request?

24 A: We don't always get it.

25 Q: But you require it?

1 A: Yeah. But we ask that they sign it and acknowledge
2 receipt of the PO.

3 Q: Okay. Let's look at the language just to make sure
4 that I understand. When it says vendor is required to
5 acknowledge its acceptance, not receipt but acceptance,
6 of the PO by having it signed and returning it to the
7 buyer, are you telling me that the word require isn't,
8 doesn't mean mandatory? It means it's optional?

9 A: If you are defining it as that.

10 Q: No. I'm asking how SCE&G defines it.

11 A: We don't, we require that they sign -- well, we ask
12 that they sign it and acknowledge receipt of the PO.
13 But if they don't and we try to expedite it and we
14 don't get it, we will not pull the job because of it.

15 Q: And so it's optional?

16 A: It --

17 Q: Signing --

18 A: -- could be optional. Yes.

19 Q: Signing this is optional?

20 A: Yes.

21 Q: Okay. If you will take a look at the general terms and
22 conditions which we've marked as Exhibit Three. Is
23 this the terms and conditions that are referenced in
24 the purchase order? And I'm looking just to speed
25 things along -- not to -- where it says in the very

1 first paragraph general terms and conditions dated
2 2/28/2006?

3 A: That's the one that's referenced. Yes.

4 Q: Okay. And is it your position, is it the position of
5 SCE&G that these are the general terms and conditions
6 that are, were in force for the Dock Street project?

7 A: They are dated February 28th 2006. So this is the one.
8 Yes.

9 Q: Okay. Does SCE&G permit its vendors to negotiate the
10 terms of the general terms and conditions?

11 A: Yes.

12 Q: And were they, do you, do you recall any instance where
13 the general terms and conditions were negotiated by
14 Anson?

15 A: I don't recall.

16 Q: Who handles those negotiations with vendors?

17 A: Would be the buyer or the purchasing agent.

18 Q: All right. So general terms and conditions can be
19 modified?

20 A: Yes.

21 Q: Does SCE&G ever permit work to proceed where the
22 general terms and conditions are rejected in full?

23 A: No.

24 Q: There's never been an occasion?

25 A: I can't say that. But if we get exceptions back to our

1 general terms and conditions, we will negotiate an
2 acceptable set of T and Cs before we issue the
3 contract.

4 Q: Are you familiar with -- strike that. Is there a
5 written contract between SCE&G and Anson for the what
6 we've been calling the Dock Street project?

7 A: That would be this.

8 Q: Okay. By this describe for me the specific --

9 A: The purchase order and the general terms and
10 conditions.

11 Q: All right.

12 A: I'm referring to this purchase order as the contract.

13 Q: Now, and you will agree that you do not have a signed
14 copy of that contract?

15 A: Correct.

16 Q: And have you ever spoken to a representative of
17 Anson -- or let me strike that. Who entered this, who
18 was the agent on behalf of SCE&G that entered this
19 contract?

20 A: Would have been Randy Morris.

21 Q: And who was the agent on behalf of Anson that entered
22 this contract?

23 A: I do not know.

24 Q: So is it, is there any other document other than those
25 two that form the contract between SCE&G and Anson for

1 this Dock Street project?

2 A: Should be a copy of Anson's quote or proposal.

3 Q: You believe that is, is that part of the contract?

4 A: Should be.

5 Q: Yes or no? Is it?

6 A: Yes.

7 Q: Okay.

8 MR. KENDALL: Oh, John, did I already give you
9 the --

10 MR. MASSALON: Yeah. You gave me one with the
11 first package.

12 MR. KENDALL: Okay.

13 (Defendant's Exhibit Number Four was marked for
14 identification purposes.)

15 Q: Let me show you Exhibit Four. Is that the proposal you
16 were just referring to?

17 A: It appears to be.

18 Q: This copy has a Bates label that says SCE&G 066. Do
19 you know where this document was, to whom it was
20 delivered at SCE&G?

21 A: No. I do not.

22 Q: Do you know where it was kept?

23 A: It was kept -- what do you mean?

24 Q: Was this put in as part of this job file in the local
25 operations office or was it kept up in the buyer's

1 file?

2 A: We have a copy in the buyer's file.

3 Q: Okay. Do you know how you got a copy?

4 A: It was sent from our operations folks I'm assuming.

5 Q: Okay. Do you know Jesse Thigpen?

6 A: Yes, I do.

7 Q: Who is Jesse Thigpen?

8 A: He's in operations, engineering area.

9 Q: Do you recognize his signature on this document?

10 A: I can't say that that's his signature. No.

11 Q: You're just not familiar with his signature?

12 A: No.

13 Q: As opposed to you're not suggesting it's forged?

14 A: No.

15 Q: You just don't know that that's his signature?

16 A: I just don't know. No.

17 Q: Okay. There's a date beside his name of January 4th

18 2008. That is also the date that the PO was issued.

19 Do you know, do you have any documents or records that

20 indicate the sequence between those two?

21 A: Huh-uh (negative response).

22 Q: Is that a yes or a no?

23 A: No. I don't know.

24 Q: And I ask that for clarification of the court reporter.

25 Yes and no as much as you for her.

1 A: (Nods head affirmatively.)

2 Q: So then the documents that make up the contract between
3 SCE&G and Anson are Exhibits Two, Three and Four;
4 correct?

5 A: Yes.

6 Q: And there's nothing else that defines or adds to or
7 takes away from that; is that correct?

8 A: Not that I know of.

9 Q: The general terms and conditions have on the back of
10 it, the last page is, you talked about the insurance
11 requirements. And I want to ask if that's what you are
12 referring to, the very last page of Exhibit Three.

13 A: That's correct.

14 Q: And you require, if I read this correctly that -- I'm
15 looking sort of the second paragraph, it's a little bit
16 bolded in my copy, under the address. And then it says
17 if the certificate of insurance is not on the Acord.
18 Do you see where I am?

19 A: Yes.

20 Q: Paragraph -- okay. Go to the second sentence. In
21 addition it, referring to the certificate of insurance,
22 must name SCANA Corporation and its subsidiaries as an
23 additional insured.

24 A: Uh-huh (affirmative response).

25 Q: Do you see that?

1 **A:** **Yes.**

2 **Q:** **Is that a requirement of the contract?**

3 **A:** **That is a requirement that we have additional**
4 **insurance.**

5 **Q:** **Do you know whether SCE&G or SCANA ever obtained a**
6 **certificate of insurance for the Dock Street job that**
7 **said that?**

8 **A:** **I don't know. We verify insurance when we issue the**
9 **contracts. But I do not know specifically what that**
10 **Acord form said.**

11 MR. KENDALL: Now, I'm going to ask John just to
12 intervene. Is he going to testify as to the breach of
13 this contract or is that someone else?

14 MR. MASSALON: I don't expect him to know anything
15 specific about this contract other than what he sees in
16 the documents.

17 MR. KENDALL: Just in terms of the allegations of
18 the complaint that reference breaches of this contract
19 he's not the guy?

20 MR. MASSALON: I don't think he's the guy. It's
21 the operations folks.

22 MR. KENDALL: Okay.

23 MR. MASSALON: Randy Morris and all the other guys

24 --

25 MR. KENDALL: All right.

1 MR. MASSALON: -- you know, that you've got.

2 MR. KENDALL: Then I'm not going to play got you
3 by asking him those questions today.

4 MR. MASSALON: No. He's just, knows about the
5 contracts and the procurement process and things you've
6 asked him about.

7 Q: So in terms of -- Mr. Graham, in terms of the
8 allegations of the complaint that you were prepared to
9 testify on, those, part of those allegations, and I
10 don't want to go line by line through it, it will take
11 us forever. I want to do it in categories if that's
12 fair. If that's not fair, I'll go line by line. But
13 it seems to me that what I've heard is any allegation
14 that touches on the documents forming the contract,
15 those are allegations that you would testify on; is
16 that correct?

17 A: I think so. Yes.

18 Q: All right. To the extent that I have questions about
19 the performance of the work on the contract or breaches
20 of the terms of the contract, you're not prepared to
21 testify about those issues?

22 A: No.

23 Q: Okay. And so I will not go into them with you. As I
24 understand your office is not directly involved in
25 issuance of payment for work; is that correct?

1 A: Correct.

2 Q: If I have questions about who authorized payment on
3 this PO, do you know who can best answer that? Or do
4 you --

5 A: Probably somebody in operations.

6 Q: Are you familiar with any other contract between SCE&G
7 and Anson?

8 A: As far as -- no, I don't. This --

9 Q: This is the only one you came prepared to testify to?

10 A: Yeah.

11 Q: All right. Are you aware that there have been other
12 contracts --

13 A: Oh, yes.

14 Q: -- between the companies?

15 A: Yes. There have been others.

16 Q: And, but just in terms of preparing for today you did
17 not review those contracts?

18 A: No.

19 MR. KENDALL: To the extent, John, that item four
20 includes other contracts I'll just reserve, if you want
21 to designate somebody at a later time for that
22 question. You had his name here. But I'm not going to
23 play got you with that.

24 MR. MASSALON: Yeah. I think Randy Morris
25 probably would be able to testify about that.

1 MR. KENDALL: Okay.

2 MR. MASSALON: But even if he does not or there's
3 somebody that knows more about the other contracts than
4 him then we'll figure out who that is and produce them.

5 MR. KENDALL: Okay. I see. You also had Randy on
6 that.

7 MR. MASSALON: Right. Because this one is
8 procurement process involving all contracts.

9 MR. KENDALL: Right. And --

10 MR. MASSALON: Including this one.

11 MR. KENDALL: You had previously indicated Randy
12 would be there. So that's fine.

13 MR. MASSALON: Yes.

14 MR. KENDALL: That's fine. Yeah. If we can take a
15 break for just a minute. I want to confer with my
16 assistant, my counsel.

17 MR. MASSALON: Sure.

18 (Break - 11:21 a.m.-11:30 a.m.)

19 Q: I just have a few follow-ups, a few questions. Was an
20 RFP issued in this matter for the Dock Street project?

21 A: It doesn't appear that it was.

22 Q: Is there typically an RFP number?

23 A: Yes.

24 Q: So ordinarily the response to that would include the
25 number?

1 A: Correct.

2 Q: And you've looked for -- have you looked for an RFP?

3 A: I've looked, I've looked at this file that we had and
4 there's no RFP.

5 Q: RFP. Other than the general terms and conditions and
6 whatever's typed on the base of your RFP, what else
7 typically goes with an RFP?

8 A: Instructions to bidders, scope of work and terms and
9 conditions.

10 Q: Scope of work is --

11 A: And any drawings that are applicable.

12 Q: All right. Do you know how, do you know whether those
13 other documents, the instructions to bidders, the scope
14 of the work and drawings, do you know whether those
15 parts were ever given to Anson in this case?

16 A: I can't answer that as far as the drawings. But
17 probably not, instruction to bidders were not given.

18 Q: Because that generally comes from your office?

19 A: Yes.

20 Q: And scope of work and drawings typically comes from
21 operations?

22 A: Yes.

23 Q: All right. That's all that I have for you. I thank
24 you.

25 A: All right.

1 EXAMINATION BY MR. MASSALON:

2 Q: Mr. Graham, I have just a few follow-up questions for
3 you. You were shown Exhibit Number Two which is a
4 purchase order. Do you see that?

5 A: Uh-huh (affirmative response).

6 Q: Under SCE&G's purchase order, does a contractor have
7 the responsibility to make itself familiar with all the
8 requirements of the work?

9 MR. KENDALL: Object to the form.

10 Q: And that's an objection for later. So if you can
11 answer, please do.

12 A: Yes. It is the responsibility of the contractor to
13 make sure that they've got all the information required
14 to do the work.

15 Q: Okay. And you're actually reading that from the
16 purchase order; right?

17 A: It's on here. Yes.

18 Q: Okay. And does the requirements of the work include
19 the terms and conditions?

20 A: That's correct.

21 Q: Okay. So would it be your view that the contractor
22 that works for SCE&G or SCANA has the responsibility to
23 know the conditions under which it's working?

24 MR. KENDALL: Object to the form.

25 A: Correct.

1 Q: Which include the terms and conditions?

2 MR. KENDALL: Object to the form.

3 A: Correct.

4 Q: Now, you were also shown a, Exhibit Four is the Anson
5 contract. Do you see that? And would you look at item
6 number two, number two? And I'll read it. You correct
7 me if I read it incorrectly. This proposal is subject
8 to execution of a non-modified AIA form for
9 sub-contractor approved equal. Do you see that?

10 A: I see that.

11 Q: What does that mean?

12 MR. KENDALL: Object to the form.

13 A: Basically what Anson is saying is they want to work
14 under the AIA form.

15 Q: And what does for sub-contractor approved equal mean?

16 MR. KENDALL: Object to the form.

17 A: That would be a negotiated set of terms and conditions
18 if they take exception to our terms and conditions.

19 Q: Okay. And I understand from your prior testimony that
20 you didn't negotiate this particular contract with
21 Anson; is that right?

22 A: That's correct.

23 Q: Okay. You mentioned that from time to time SCE&G does
24 negotiate the terms of the terms and conditions?

25 A: That is correct. If the supplier contractor takes

1 exception to any portion of it.

2 Q: Okay. If that had happened, meaning if Anson in this
3 case had asked for a renegotiation or modification of
4 the terms and conditions, is that something that
5 Mr. Morris would have done or would you have gotten
6 involved in that?

7 A: That would have been something he would have done.

8 Q: Okay. Would you have known about it or been involved
9 in it in any way?

10 A: No. I probably would not have.

11 Q: Okay. So if we want to know if Anson had asked for any
12 change in these terms and conditions for the Dock
13 Street Theater job we would need to ask Mr. Morris?

14 A: Correct.

15 Q: Are you personally aware of an instance in which Anson
16 has done a job for SCE&G and SCANA and negotiated the
17 terms and conditions to exclude its indemnity
18 obligation?

19 A: I don't know of an instance that that has happened.

20 Q: With Anson or anybody?

21 A: With Anson.

22 Q: Oh, with Anson?

23 A: (Nods head affirmatively.)

24 Q: Okay. And you are not aware of any requests on the
25 Dock Street Theater job by Anson to change the terms

1 and conditions?

2 A: Not aware of any.

3 Q: But that doesn't necessarily mean that they did not,
4 Mr. Morris could know something you don't?

5 A: Possible.

6 Q: All right. I think that's all I've got.

7 RE-EXAMINATION BY MR. KENDALL:

8 Q: I want to clarify. I believe you remembered that you
9 testified earlier you have not reviewed any other Anson
10 contract prior to testifying today?

11 A: I have not.

12 Q: But you just testified that there had never been a
13 time --

14 A: I said I wasn't aware of any.

15 Q: Okay. That's fair. That's fair enough. Thank you.

16 MR. MASSALON: Nothing else from me. That's all
17 I've got.

18 Further deponent sayeth not.

19 (There being no further questions, the deposition concluded
20 at 11:37 a.m.)

21

22

23

24

25

1 CERTIFICATE OF REPORTER

2 I, Lyn Allen Hudson, Court Reporter and Notary Public
3 in and for the State of South Carolina, do hereby certify
4 that I reported the deposition of Donnie Graham on the 17th
5 day of May, 2012, that the witness was first duly sworn by
6 me, and that the foregoing 49 pages constitute a true and
7 correct transcription of the said deposition.

8 I FURTHER CERTIFY that I am neither attorney nor
9 counsel for, nor related to or employed by, any of the
10 parties connected with this action, nor am I financially
11 interested in said cause.

12 I FURTHER CERTIFY that the original for said
13 transcript shall be hereafter sealed and delivered to Sweeny
14 Wingate & Barrow, P.A., 1515 Lady Street, Columbia, South
15 Carolina. This sealed original transcript shall be retained
16 by the above party, who shall be responsible for filing same
17 with Court prior to trial or any hearing which might result
18 in a final order on any issue.

19
20
21 Lyn Allen Hudson, Court Reporter
Notary Public for South Carolina

22 My commission expires: February 8, 2016
23
24
25

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF CHARLESTON	)	
	)	
South Carolina Electric & Gas Company,	)	
	)	C/A NO. 2011-CP-10-5009
Plaintiff,	)	
	)	
vs.	)	
	)	
Anson Construction Company,	)	
Inc.,	)	
	)	
Defendant.	)	
	)	

30(B)(6) DEPOSITION OF

RANDY M. MORRIS

Thursday, May 17, 2012
12:11 p.m.-1:00 p.m.

The 30(B)(6) deposition of RANDY M. MORRIS, taken on behalf of the Defendant at the offices of Wills, Massalon & Allen, LLC, 97 Broad Street, Charleston, South Carolina on the 17th day of May, 2012, before Lyn Allen Hudson, Court Reporter and Notary Public in and for the State of South Carolina, pursuant to Notice of Deposition and/or agreement of counsel.

APPEARANCES:

Representing the Plaintiff:

John A. Massalon, Esquire
Wills, Massalon & Allen, LLC
97 Broad Street
Post Office Box 859
Charleston, South Carolina 29402

John Mahon, Esquire
In-House Counsel
SCANA Corporation
100 SCANA Parkway
MC222
Cayce, South Carolina 29033

Representing the Defendant:

Everett A. Kendall, II, Esquire
Eric Cavanaugh, Esquire
Sweeny Wingate & Barrow, P.A.
1515 Lady Street
Columbia, South Carolina 29201

Also Present:

Sandylynn Kammer, Claims Agent, SCANA Corp.

CONTENTS:

(Deposition of Randy M. Morris)

	PAGE
Exhibit Index	3
Stipulations	4
Examination by Mr. Cavanaugh	5
Examination by Mr. Massalon	32
Certification of Reporter	37

EXHIBIT INDEX

EXHIBITS:

IDENTIFIED AT PAGE:

(No Exhibits Were Marked)

S T I P U L A T I O N

It is hereby stipulated and agreed by and between the parties hereto, through their respective attorneys of record, that this deposition is taken in accordance with the South Carolina Rules of Civil Procedure;

That the formality of READING AND SIGNING is specifically WAIVED;

That all objections, except as to the form of the questions and the responsiveness of the answers, are reserved until such time as this deposition, or any part thereof, may be used or is sought to be used in evidence.

- - -

1 RANDY M. MORRIS, being duly sworn, deposes and testifies as
2 follows:

3 MR. MORRIS - EXAMINATION BY MR. CAVANAUGH:

4 Q: Mr. Morris, can you just state your full name for the
5 record?

6 A: My name is Randy M. Morris.

7 Q: Okay. And my name is Eric Cavanaugh. I represent
8 Anson Construction Company in this action filed by
9 SCE&G. You are here today as to --

10 MR. KENDALL: Where is Exhibit One?

11 MR. MASSALON: I think it's in that pile right
12 there.

13 Q: You're here, you've been designated by SCE&G, and here
14 to do a notice of deposition we sent to SCE&G. You
15 have been chosen to testify to certain topics today on
16 behalf of SCE&G. This is not your personal deposition.
17 This is, you are here on behalf of SCE&G testifying on
18 their behalf. Can you just take it and look at the
19 notice of deposition and, or if you can remember what
20 you have been designated to testify to today, what
21 topic or number topic you've been?

22 A: That was indicated where?

23 Q: It's page one and two starting one through, I believe
24 there are nine topics if you --

25 MR. MASSALON: And maybe I'll help out some on

1 that.

2 MR. CAVANAUGH: Okay.

3 MR. MASSALON: He's going to know some of the
4 factual allegations in the complaint which would be one
5 about this contract and the purchase order and all that
6 stuff. As far as three and four goes, again, he's
7 going to know something about the procurement process
8 generally and also the procurement of the work for Dock
9 Street. And also, let's see, number six. As far as
10 vendor selection he'll know something about selecting
11 vendors in general.

12 MR. CAVANAUGH: Okay.

13 MR. MASSALON: And Anson in particular.

14 MR. CAVANAUGH: Okay.

15 MR. MASSALON: And I think that covers it.

16 **Q: Okay. Good enough. Mr. Morris, we just have a few**
17 **rules I want to refresh you to. If you have any**
18 **questions or are unclear about anything I'm asking you**
19 **today, please just ask me. Have you ever been deposed**
20 **before?**

21 **A: Yes, I have.**

22 **Q: So you are familiar with the process?**

23 **A: A little bit.**

24 **Q: Okay.**

25 **A: It's been a few years.**

1 Q: Our rules really prohibit you from speaking with anyone
2 other than, about topics of your testimony today during
3 the course of the deposition including your counsel.
4 So obviously if you have any questions, please just ask
5 me. If you need clarification, ask me.

6 A: Sure.

7 Q: Also it's easier, the court reporter is over here
8 transcribing and there are some recording devices on
9 the table. Yeses and nos work best versus uh-huhs and
10 huh-uhs --

11 A: I understand.

12 Q: -- don't show up well in script.

13 A: I understand.

14 Q: If you need a break or something, I don't anticipate
15 we're going to be here too terribly long today. But if
16 you do need a break, just ask me.

17 A: Sure.

18 Q: And I'll try to work that in as best as I can.

19 A: Okay.

20 Q: But like I said, I don't anticipate that we will be
21 here very long today. Can you tell me what you have
22 done to prepare for this deposition today?

23 A: The only thing that I've done to prepare for this
24 deposition is I attended a meeting that we had over on
25 Aviation Avenue with I think some of the rest of the

1 parties that are going to be deposed here over today
2 and I guess tomorrow. And just to briefly familiarize
3 us --

4 MR. MASSALON: And let me interrupt here. I think
5 what he's talking about is a meeting to prepare for the
6 deposition with us. And I would ask him not to answer
7 --

8 MR. CAVANAUGH: Right. Right.

9 MR. MASSALON: -- give any information about what
10 was discussed during that meeting.

11 Q: Mr. Morris, I don't want to know anything you talked to
12 Mr. Massalon about. In general what I'm asking you is
13 did you review any files for today or what did you do
14 in preparation generally?

15 A: Well, actually not recently. A few months, a couple
16 months ago I had to go through the process of pulling,
17 you know, various purchase orders from the, for the
18 area of the company that I work in that had been
19 requested I think by you.

20 Q: Okay.

21 A: Just kind of showing the history of what we had done
22 with Anson over the years.

23 Q: Well, thank you. Now you, what is your, what is your
24 role or job title at SCE&G?

25 A: I'm procurement agent.

- 1 Q: And how long have you been in that role?
- 2 A: Twenty-one years.
- 3 Q: Twenty-one years. Is your official title as a
4 procurement agent three?
- 5 A: That is correct.
- 6 Q: And it's the same role for the past 21 years?
- 7 A: No. It's, I mean, I've been a procurement agent. But
8 I think initially I started out as procurement agent
9 one and then procurement agent two. And then actually
10 just recently procurement agent three in the past year.
- 11 Q: What does the one, two and three mean?
- 12 A: Just level of experience. And I think it's just our
13 procurement department's way to designate the level of
14 experience for the various procurement agents.
15 Procurement agent one would be somebody who has
16 basically just been in the profession for a short
17 period of time and still going through a learning
18 process. And then two just indicates a different
19 higher level of skills.
- 20 Q: As a procurement agent one, two or three, do you have
21 greater purchasing authority at each level?
- 22 A: Yes.
- 23 Q: You do?
- 24 A: Uh-huh (affirmative response).
- 25 Q: And what is your purchasing authority as a procurement

1 agent three?

2 A: Well, a lot of that is, when you say authority I think
3 to approval levels where you don't have, the approval
4 level is set for the procurement agent three so that
5 the contracts that they work on as far as the value,
6 that they don't need another superior's approval unless
7 it goes over a certain amount. And then also the types
8 of contracts and procurement issues that you get
9 involved with.

10 Q: Okay. Were you a procurement agent three in,
11 between 2006 and 2008?

12 A: No. I was two.

13 Q: You were a two?

14 A: Yes.

15 Q: Do you remember what your authority was at that time?

16 A: As it relates to value of contracts that I could issue,
17 I could issue about, approval above my level in the
18 procurement department, I guess that would have been
19 fifty thousand. Something like that.

20 Q: And you, if you went to get approval who would you get
21 approval from?

22 A: At that point in time and still is, that would be
23 Donnie Graham.

24 Q: Mr. Graham is your supervisor?

25 A: That's correct.

1 Q: Were you the procurement agent for the -- let me back
2 up just a second. We're discussing today, one of the
3 issues that we're discussing today is the Dock Street
4 Theater job. If we refer to it that way, is that okay?
5 Do you know what I'm talking about?

6 A: Yes, I do.

7 Q: So I'm going to refer to it that way so that you and I
8 are both on the same page.

9 A: Okay.

10 Q: Were you the procurement agent for the Dock Street
11 Theater job?

12 A: Yes.

13 Q: And what -- that's okay. I didn't mean to cut you off.

14 A: That's fine.

15 Q: Did you have something else that you wanted to say?

16 A: No. I didn't.

17 Q: And how did you first learn or when did you first learn
18 about the Dock Street Theater job?

19 A: The first that I learned about it was I received an
20 e-mail from one of our engineers down here who is
21 responsible for doing most, a lot of the work in the
22 downtown historic district, particularly metro
23 Charleston. That's Claude Newton. Indicating that
24 they had a proposal from Anson and they wanted to go
25 about contracting with them for this work.

1 Q: And do you know the approximate time frame?

2 A: No. No. I actually, I remember, I know it's in, I
3 can't even remember to be honest to this day what year
4 it is, or what year that was. I remember it being the
5 early part of the year though.

6 Q: Do you remember seeing the Anson proposal you've just
7 referred to?

8 A: Yes.

9 Q: At that time?

10 A: At that time. Yes, I do.

11 Q: Okay. If I show you exhibit, what's been marked as
12 Exhibit Number Four is that the proposal that you saw?

13 A: That's the proposal I saw except for one exception.

14 Q: And what was that?

15 A: Nobody had signed it.

16 Q: Okay.

17 A: From our company.

18 Q: And the proposal is dated, it has a fax stamp on it
19 dated December 13th 2007. Would you have seen that
20 proposal sometime after that date?

21 A: Yes.

22 Q: Okay. And Mr. Newton showed you the proposal?

23 A: He e-mailed me a copy of the, I think the fax that he
24 received from Anson. Yes.

25 Q: And what did you, did that e-mail include any direction

1 as to what you were supposed to do?

2 A: That they wanted to issue, get a purchase order issued
3 to Anson for that particular work.

4 Q: Did you issue the purchase order at that point?

5 A: After a few questions generally, you know, I'll, our
6 general procedure is to try to bid work out when we
7 can. But if they give me a sufficient enough reason
8 not to, I don't. And I probably issued the purchase
9 order within 24 hours or so, maybe even the same day
10 after I had reviewed the proposal and talked with
11 Claude.

12 Q: When you look at the proposal, when you looked at the
13 proposal, is that just a typical Anson proposal?

14 A: No.

15 Q: What was different about it?

16 A: The only thing different about it that I could see, I
17 didn't see any clear exceptions or anything of that.
18 They did reference an AIA document which was unusual.
19 I had never seen them do that before.

20 Q: And did you bring that to anyone's attention?

21 A: Not at the time. No.

22 Q: Did you have any conversations with anyone at Anson?

23 A: No.

24 Q: Once you issued the purchase order, do you remember how
25 and when you issued the purchase order and what format

1 you issued the purchase order?

2 A: I issued, well, how I issued the purchase order is
3 probably, most of the time I'll send the supplier or
4 vendor or contractor whoever that we're doing the,
5 transacting with a copy of the purchase order and any
6 referenced attachments via e-mail. The e-mail would
7 have included a PDF file of the purchase order itself
8 and probably our general terms and conditions and any
9 other documents that I might need to reference.

10 Q: Do you remember specifically how you did this
11 particular purchase order?

12 A: Pretty sure I e-mailed it.

13 Q: Pretty sure you e-mailed it. You referenced also the
14 general terms and conditions. Do you believe that you
15 also sent the general terms and conditions with the PO?

16 A: I have no doubt that I did that.

17 Q: I'm sorry?

18 A: I have no doubt that I did that.

19 Q: You have no doubt?

20 A: That's just standard procedure.

21 Q: Do you recall the date that you sent the purchase
22 order?

23 A: No. But it would have been the same date that I issued
24 the purchase order which reflects on the purchase
25 order. Is that it there?

1 Q: I'm getting ready to show it to you.

2 A: Okay.

3 Q: I'm going to show you Exhibit Two, which has been
4 marked as Exhibit Two. I ask you just to take a brief
5 look at that.

6 A: Depending on the time of day that I did this it was
7 early. If I got the order generated early that morning
8 it would have been probably e-mailed to them that day.
9 If it was late that afternoon more than likely I would
10 have got it to them late that afternoon too. But there
11 are some cases where our system, we can either go in
12 and manually dispatch an order on our system or we can
13 let the system itself dispatch the order for us to do
14 whatever we want to the next day. And it would run on
15 what we call our night dispatch. I can't say for
16 certain that I didn't let it run on night dispatch.
17 But more than likely I did a manual dispatch, and
18 dispatched and e-mailed to them the same day I created
19 the order.

20 Q: But do you know specifically that that's what you did?

21 A: I did not document that. No.

22 Q: If it runs on an overnight dispatch, is the date that's
23 indicated the time you issued it or the time --

24 A: The time I created it, the time I went in and created
25 the order on the system.

1 Q: So --

2 A: So if I created it on the 4th and I let it go on a
3 night dispatch, it would have been dispatched out the
4 next morning. But if I did a manual dispatch I would
5 have had it ready to dispatch and e-mail them a copy
6 that same day. What I mean by dispatch is the system
7 will generate a PDF copy of the purchase order and
8 e-mail it to me.

9 Q: It would e-mail it to Anson?

10 A: Me.

11 Q: To you?

12 A: Yes.

13 Q: And so the date on the purchase order means the date
14 you created the PO. And then if it goes on night
15 dispatch -- I just want to make sure I'm understanding
16 this -- the vendor would not have received it until the
17 5th?

18 A: Correct. But the way that I dispatch orders, I
19 generally have mine set up for what we refer to as
20 print where it's not faxed to the -- our system can fax
21 the purchase order to the, automatically to the vendor.
22 But I don't let mine go out that way. I request it to
23 print so that I can view it and make sure everything's
24 okay before I send it to them. Then I'll e-mail it to
25 them. Then they are e-mailed directly from me.

1 Q: So if you, I just want to understand, if you dispatched
2 it you would have looked at it on the morning of the
3 5th and then e-mailed it to them after that?

4 A: No. What I'm saying is I probably dispatched it on the
5 4th. I probably did a manual dispatch. There's a
6 chance that I let it go to the night dispatch but it's
7 very, very seldom that I do that. So as far as the day
8 that I actually sent it to them it's either the 4th or
9 5th. More likely the 4th.

10 Q: Did someone tell you when to issue the PO?

11 A: No one other than my conversation with Claude based on
12 the e-mail he sent me. And that would have probably
13 been as I said within 24 hours of the time that I
14 created this purchase order.

15 Q: Are you, do you know who Jesse Thigpen is?

16 A: Yes.

17 Q: Do you know what his role is?

18 A: He is either an engineer or associate engineer.

19 Q: A minute ago --

20 A: Or was at the time.

21 Q: Okay. A minute ago we talked about this proposal. And
22 you said you had seen the proposal with the exception
23 of Mr. Thigpen's signature.

24 A: Correct.

25 Q: Have you ever seen this document?

1 A: That document?

2 Q: With Mr. Thigpen's signature?

3 A: Yes.

4 Q: Did you see it --

5 A: Recently.

6 Q: But you did not see it prior to issuing the purchase

7 order?

8 A: Correct.

9 Q: And we talked about the general terms and conditions

10 which have been marked as Exhibit Three. Are these the

11 general terms and conditions that you believe you sent

12 with the purchase order?

13 A: Yes.

14 Q: And would that have gone in the same dispatch e-mail as

15 the purchase order?

16 A: It would have gone in the same e-mail that I sent to

17 Anson. They are not automatically dispatched, or

18 dispatched in the same method. This is a copy of this.

19 These are at the time where I approved the general

20 terms and conditions that were approved by our company.

21 And we had access to, we either had them on file that

22 we keep them electronically stored on file either on

23 our individual PC or we also have a central depository

24 to the legal department where we access those. I can't

25 remember if we had that at that time or not though.

1 That is the central depository. I think we did.

2 Q: What you're telling me then is they are attached to an
3 e-mail. You manually or physically attach them to an
4 e-mail as an attachment with the purchase order?

5 A: That is correct.

6 Q: It would be two separate attachments?

7 A: If that was the only documents -- yeah. There were two
8 separate attachments.

9 Q: Okay. Was that the end of your involvement with this
10 purchase order process in the Dock Street Theater job?

11 A: What do you mean by involvement?

12 Q: Well, did you, when you sent this PO and these general
13 terms and conditions --

14 A: Yes.

15 Q: -- was that the scope of your responsibility as far as
16 you were concerned or were you involved further between
17 the time the PO was issued and the time that the work
18 started?

19 A: No. I was not involved any further past that other
20 than anticipating possibly some sort of response from
21 Anson to the purchase order.

22 Q: When you say response from Anson, what do you mean?

23 A: Well, actually the purchase order under our general
24 terms and conditions.

25 Q: You issued the purchase order under your general terms

1 and conditions?

2 A: That's correct.

3 Q: But you say, when you say I anticipated a response from
4 Anson, what do you mean? By what type of response did
5 you anticipate?

6 A: If they had any exceptions to the way the purchase
7 order, they may, would might get in touch with me.

8 Q: Is this always how this happens with Anson is they send
9 you a proposal, you send them a purchase order and you
10 send them the general terms and conditions?

11 A: No. If we go through a routine bid process, no.
12 That's not the case. A lot, if we go through a routine
13 bid process then the, it's stated up front what our
14 general terms and conditions are and the other
15 conditions affecting the work.

16 Q: When you say a routine bid process --

17 A: Uh-huh (affirmative response).

18 Q: -- what do you mean by a routine bid process?

19 A: That means that we solicit bids from other companies or
20 contractors and then make a determination on how we
21 want to order the work based on the proposals that we
22 receive back.

23 Q: Are you responsible for submitting the routine bids?

24 A: Yes.

25 Q: And what do you do when you submit a routine bid?

1 A: Well, it depends. We try to develop the scope of work
2 which if, is this a document that defines what the
3 nature of the work is and identifies specifications and
4 the other general operating conditions that might may
5 affect the work. That goes out with an RFP
6 instructions that we put together which naturally would
7 determine, you know, state when we want the bids back
8 in and how we want the bids submitted. And the RFP
9 instructions document what our requirements are. And
10 it would include the general terms and conditions,
11 potentially our scope and any drawings and any other
12 requirements that are brought to my attention by
13 operations.

14 Q: Is that done every time?

15 A: A bid process?

16 Q: When you are dealing with a vendor for work that SCE&G
17 needs a sub-contractor for --

18 A: Uh-huh (affirmative response).

19 Q: -- is that the process you follow every time?

20 A: No.

21 Q: What dictates that you, whether you follow that process
22 or not?

23 A: Generally if operations or whoever the requester is can
24 give me a reason that meets with our corporate
25 procurement requirements is what we would determine, we

1 would define as the sole source situation. That could
2 cover anything that, someone that's an emergency type
3 situation we don't have time to solicit business.
4 Somebody else for whatever reason, you know, based on
5 our experience working with the contractor and their
6 knowledge of the area or something of that nature. And
7 time restrictions we're in due to whatever. Maybe a
8 situation where the, we're operating in an area such
9 as, you know, a metropolitan area that wants us to get
10 the work done right now, get it done because of some
11 certain event or whatever that doesn't allow us time to
12 go out and do bids. If we have particular contractors
13 in the area we've used on a routine basis that we are
14 familiar with and have experience with. You might do
15 those sole source.

16 Q: Is that dictated by an amount ever?

17 A: What?

18 Q: Whether you issue an RFP. Is there a guideline or rule
19 that says you have to issue an RFP if a contract is in
20 excess of a certain dollar amount?

21 A: The guideline is the sole source has to be, the sole
22 source justification has to be, it has to be approved
23 by the appropriate management levels to sole source it.
24 In this case it would have been, yeah, Bill Turner was
25 the district manager at that time in the Charleston

1 area. And he would have the approval authority from
2 the operations standpoint to approve sole sourcing. I
3 would have requested that.

4 Q: Do you know if Mr. Turner did approve this?

5 A: Yes. Pretty sure he did. It's very seldom that I do
6 not communicate with appropriate, well, can't ever
7 really remember any situations where I wouldn't have
8 communicated in some method that I needed bills
9 approved on something if it was required or even higher
10 up than that if it was needed within our guidelines.

11 Q: You mentioned guidelines. Are you familiar with
12 something called the Buyers Guidelines Manual?

13 A: It's been different versions of that over the years.
14 So yes. I should be.

15 Q: You should be. When was the last time you --

16 A: Really sat down and looked at it?

17 Q: (Nods head affirmatively.)

18 A: Probably been eight years to be honest with you.

19 Q: That would take us before this job; correct?

20 A: Yes.

21 Q: The Dock Street job?

22 A: Uh-huh (affirmative response).

23 Q: Does the Buyers Guidelines Manual set out a process for
24 SCE&G's -- let me back up. Let me rephrase that. Does
25 the Buyers Guidelines Manual set out the procurement

1 process for South Carolina Electric and Gas?

2 A: It is a guideline. Yes.

3 Q: When you say a guideline, it provides a, this is how we
4 should do it every time?

5 A: It's how we -- yes. It's how we would like to be able
6 to do it every time. There are always exceptions to
7 guidelines.

8 Q: Do you know if the manual has a page or section in it
9 that tells you when or what, when you can make those
10 exceptions?

11 A: It indicates if there are exceptions that it has to be
12 approved by the appropriate management levels within
13 the company either within my department or within
14 operations or within the company itself.

15 Q: If there are exceptions to the normal process it has to
16 be approved by a higher authority?

17 A: Some higher authority. Depends on what the exceptions
18 are.

19 Q: And can you make those exceptions?

20 A: In some cases. Yes.

21 Q: And does that depend on the amount?

22 A: It depends on the, it could depend on the amount. It
23 could depend on the, you know, the situation, what, my
24 understanding of what's needed and as far as, as far as
25 whether it's an emergency, time sequence or something

1 of that nature that we're dealing with.

2 Q: Okay.

3 A: But at some point in time, you know, I need to, you
4 know, make sure that I have, that it's outside of
5 something that I can approve that I'm getting the
6 appropriate approvals or getting the notifications to
7 the appropriate individuals.

8 Q: Okay. Do you, how many jobs has SCE&G and Anson worked
9 together on over the years?

10 A: I don't know the specific number. It's been several.

11 Q: Do they always follow a particular process, meaning
12 RFP?

13 A: No. Sometimes it's -- no. No. It does not.
14 Sometimes we have an opportunity to go through an RFP
15 process. And other times it has been sole sourced for
16 whatever reasons was requested at the time.

17 Q: Have you been involved in a lot of those?

18 A: I've been involved in several.

19 Q: Okay. And the process has been different every time
20 for you?

21 A: Pretty much. You know, sometimes when they were, when
22 we have time, we're able to, we're allowed time to bid
23 some of the work out. And sometimes depending on the
24 situation if it was they needed something right now and
25 they indicated to me they didn't have time to go

1 through a bid process, then it might not go through an
2 RFP process.

3 Q: It would just differentiate from what the manual tells
4 you to do, you would make an exception basically?

5 A: Then we go into a sole source situation. The manual
6 should cover sole source situations and what's required
7 in there, under what conditions we can do a sole
8 source. And if we do a sole source what, who has to
9 approve it, who has to be aware of it, things of that
10 nature.

11 Q: And that's laid out in the manual also you say?

12 A: Yes. To some degree. Not specifically within, I think
13 it refers to the appropriate, that you have to have the
14 appropriate, depending on the value of the job you have
15 to, or the value of the work or the purchase or
16 whatever, making sure that you have the appropriate
17 approval levels within -- it's like within the
18 operations area there are certain levels of, you know,
19 our local manager who might have certain approval
20 levels for requesting a purchase up to a certain dollar
21 amount. If it's above his level then we go to the
22 district manager. If it's above that district manager
23 then it goes to the vice-president. And within mine it
24 follows the same routine. It would go to, if it's
25 above my approval level it will go to my supervisor.

1 If it's above his, it would go to their manager. It's
2 not documented that it goes to each one of those. I
3 think if I remember correctly it has to go to the
4 appropriate approval levels established within the
5 company.

6 Q: Okay. Is a purchase order similar to this always
7 issued for work?

8 A: No.

9 Q: Has it always been issued to Anson for work?

10 A: Not that I'm aware of. And the reason I say that is
11 unless they come and they're requesting a purchase
12 order, I'm not familiar with what goes on. I haven't
13 seen, I don't recall seeing -- years ago we didn't
14 really have anything in place to identify what was
15 being done that wasn't covered by a purchase order so
16 we could look and see if it was really tied back. Back
17 during that time we didn't have that process in place.
18 And the only reason I'm talking about that process, we
19 have a process in place now where we can look at it and
20 identify the invoices that are paid on what we call is
21 a non-approval which means it's gone out and it's been
22 approved basically just on the invoices. There's no
23 purchase order associated with it. In the past several
24 years, I haven't seen Anson's name on that list that I
25 recall.

1 Q: Is the purpose of a purchase order number to get for a
2 vendor to get paid, is that how they reference getting
3 paid?

4 A: Yes. To identify the purchase order number on them,
5 all invoices. The purchase order and then the purchase
6 order number itself also is, from my viewpoint ties
7 that invoice back to our contract. That doesn't mean
8 that the vendor or the contractor is always, always
9 follows through and puts the purchase order on the
10 invoice. We have a lot of situations where we've got
11 work that's covered by a purchase order. The
12 contractor, supplier, vendor or whoever will forget to
13 put it on there. And then when it comes through our
14 process we are notified of the invoice on the
15 procurement side anyway. We can usually match it up on
16 the payment end anyway with a purchase order if we're
17 notified. But we don't see all invoices.

18 Q: Do you see on the bottom of this purchase order on
19 Exhibit Number Two a place where it says authorized
20 signature?

21 A: Yes.

22 Q: And I wanted to, is that a place for you to sign?

23 A: That's correct.

24 Q: Okay. Do you ever sign that block?

25 A: To be honest, not always. No.

1 Q: Okay.

2 A: Not, more than likely most of the time I, when I
3 initially send it to a contractor supplier I have not
4 been signing it.

5 Q: Have you signed it in the past?

6 A: Sure.

7 Q: Okay. Let's look back at the proposal which is Exhibit
8 Four Anson proposal. You say SCE&G and Anson have done
9 a significant amount of work together over the years
10 which you can't quantify?

11 A: Huh-uh (negative response).

12 Q: Have you ever seen an Anson proposal signed by an SCE&G
13 employee before?

14 A: No.

15 Q: Okay.

16 MR. CAVANAUGH: Okay. Can we just take just a few
17 minutes, John?

18 MR. MASSALON: Sure.

19 MR. CAVANAUGH: And I may be close with Randy
20 except for Rhett. He's --

21 (Break - 12:50 p.m.-12:52 p.m.)

22 Q: Mr. Morris, I only have a couple more questions for you
23 and then I'm going to turn you over to Mr. Massalon
24 just in case he has any questions, follow-up questions
25 for you. You mentioned earlier that you were waiting

1 on a response from Anson after you sent them the
2 purchase order --

3 A: (Nods head affirmatively.)

4 Q: -- and the general terms and conditions. Did you ever
5 receive a response from Anson?

6 A: No. Not -- well, when you say response, I think I
7 indicated this, was -- I just want to make sure we're
8 clear on what you're asking me.

9 Q: Okay.

10 A: The response I was looking for is if they were not
11 going to accept the requirements that I issued the
12 purchase order under which was our general terms and
13 conditions for the work, I would have expected that
14 they would have notified me. And so I knew, I wasn't
15 sure of when the work was going to start or anything.
16 But I just never saw anything.

17 Q: Okay. And you also mentioned, we were talking about
18 your signature down here. But if you look on this, on
19 Exhibit Number Two on the purchase order there's also a
20 place for the vendor to sign.

21 A: Correct.

22 Q: Has Anson ever signed?

23 A: Yes.

24 Q: They have?

25 A: (Nods head affirmatively.)

1 Q: Have you, have you ever seen a copy of this purchase
2 order that was signed by Anson?

3 A: No.

4 Q: Okay. We talked a little bit about the entire bid
5 process, the procurement process.

6 A: (Nods head affirmatively.)

7 Q: Why weren't bids solicited for this particular project,
8 the Dock Street Theater job project?

9 A: From what I recall they just didn't feel like they had
10 sufficient time. They needed to go ahead and get the
11 work started like now. I don't remember the details at
12 that point in time on why. I know it involved
13 something with the city. I do recall that. But they
14 just felt that they had a certain time frame that they
15 could get in there and get the work started and get it
16 completed by.

17 Q: And you talked about if there was a sole source
18 situation. And you said this was a sole source
19 situation.

20 A: Yes.

21 Q: And that you would have to get approval for a sole
22 source situation?

23 A: Yes.

24 Q: Did you get approval for this particular sole source
25 situation?

1 A: Typically what I would have done was e-mail at that
2 time probably Bill and ask him if he was okay with me.

3 Q: Do you remember if you e-mailed Bill this time?

4 A: Not specifically. But I'm pretty sure I did.

5 Q: Do you remember getting a response back from Bill?

6 A: No. Not specifically.

7 Q: And when you say Bill, you mean Bill Turner?

8 A: Bill Turner.

9 Q: Okay.

10 A: When I say I remember, I'm pretty sure I wouldn't have
11 moved forward with issuing the purchase order unless I
12 had confirmation back from Bill that he was okay with
13 it.

14 Q: Okay.

15 A: Okay?

16 Q: Okay. I think that's all I have unless Mr. Massalon
17 has some follow-up.

18 EXAMINATION BY MR. MASSALON:

19 Q: I think just a few. You took a look at Exhibit Number
20 Two?

21 A: That would be Two?

22 Q: Purchase order.

23 A: Okay.

24 Q: All right? Okay. And under the purchase order, does
25 the contractor have the responsibility to know the

1 terms and conditions?

2 MR. KENDALL: Object to the form.

3 MR. CAVANAUGH: Object to the form. Sorry.

4 MR. MASSALON: Either one will do.

5 MR. KENDALL: I know.

6 Q: Subject to that objection you can answer the question.

7 A: Okay. Yes.

8 Q: And it actually says that in the purchase order?

9 A: Yes, it does.

10 Q: Now, have you ever negotiated deviations from the terms
11 and conditions with Anson?

12 A: Yes. But it's been several years. Many years.
13 Probably over ten years --

14 Q: Have you ever --

15 A: -- since I had to.

16 Q: I'm sorry. Have you ever negotiated a change in the
17 terms and conditions with Anson that excluded the
18 indemnity paragraph?

19 A: No.

20 Q: Would you have authority to negotiate the indemnity
21 clause out of the terms and conditions?

22 A: No.

23 Q: If you got a request by a contractor to take out the
24 the terms and conditions, is there somebody that has
25 authority to agree to take that out?

1 A: I would have to get approval from legal and probably a
 2 senior officer in that situation.

3 Q: And a senior officer would be like who?

4 A: Today that would be, a senior officer would be somebody
 5 like Keller Kissam.

6 Q: Who's in Columbia?

7 A: Yes.

8 Q: Nobody here in Charleston?

9 A: Correct.

10 Q: Okay. But that didn't happen on the Dock Street job;
 11 right?

12 A: No.

13 Q: Okay.

14 A: The only time I've ever really been approached about,
 15 from anybody as far as I can say this, any type of
 16 negotiations on indemnification clauses is mainly when
 17 they want it to be mutual. It's not that they want to
 18 have it excluded.

19 Q: Can you ever remember a contractor or sub-contractor at
 20 SCE&G agreeing to completely take out the indemnity
 21 clause?

22 A: No.

23 Q: Now the, were you involved in approving payment for
 24 this contract?

25 A: No.

1 Q: Who would have done that?

2 A: Let's see. This would have been as far as the
3 invoices, the invoices, as long as they meet the, they
4 don't hit any variances on our system as far as what
5 I've set up on the purchase order, I never see
6 anything.

7 Q: Okay.

8 A: As long as the invoices come within the dollar limits
9 and the pricing that's set up on the order. In this
10 particular case it would, the invoices would have been
11 routed to like a clerk in the, probably the, what we
12 refer to as the Charleston Metro office.

13 Q: Okay.

14 A: And then she would initiate the approval process to the
15 next level which would be the local manager. In this
16 situation, if the invoice came in at the full amount it
17 would have had to go probably to Bill for his approval.
18 And then that would have been it.

19 Q: All right. I think those are all the questions that
20 I've got for you.

21 A: Okay.

22 MR. CAVANAUGH: We're done. Thank you, Mr.
23 Morris.

24 Further deponent sayeth not.

25 (There being no further questions, the deposition concluded

1 at 1:00 p.m.)

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1 CERTIFICATE OF REPORTER

2 I, Lyn Allen Hudson, Court Reporter and Notary Public
3 in and for the State of South Carolina, do hereby certify
4 that I reported the deposition of Randy M. Morris on the
5 17th day of May, 2012, that the witness was first duly sworn
6 by me, and that the foregoing 36 pages constitute a true and
7 correct transcription of the said deposition.

8 I FURTHER CERTIFY that I am neither attorney nor
9 counsel for, nor related to or employed by, any of the
10 parties connected with this action, nor am I financially
11 interested in said cause.

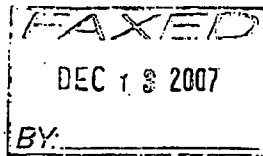
12 I FURTHER CERTIFY that the original for said
13 transcript shall be hereafter sealed and delivered to Sweeny
14 Wingate & Barrow, P.A., 1515 Lady Street, Columbia, South
15 Carolina. This sealed original transcript shall be retained
16 by the above party, who shall be responsible for filing same
17 with Court prior to trial or any hearing which might result
18 in a final order on any issue.

19
20
21

Lyn Allen Hudson, Court Reporter
Notary Public for South Carolina

22 My commission expires: February 8, 2016
23
24
25

Tuesday, December 11, 2007



2:40 PM

Anson Construction Company, Inc.

Post Office Box 31979
Telephone (843) 556-4411

Charleston, South Carolina 29417-1979
ansonconstruction.com Facsimile (843) 889-3178

TELECOPIER TRANSMITTAL COVER SHEET

PLEASE DELIVER THE FOLLOWING PAGE(S) TO:

TO: South Carolina Electric & Gas Company (SCE&G) Danny Hyland

FROM: P. F. Stutsman

RE: Church Street Conduit Duct System and Pre-cast Vault

TOTAL NUMBER OF PAGES INCLUDING COVER SHEET: 2

TELEPHONE FACSIMILE E-MAIL: 576-8490

SHOULD YOU NOT RECEIVE THE TOTAL TRANSMISSION, PLEASE CONTACT US IMMEDIATELY

Quotation

Please accept our lump sum utility construction quotation for work per supplied South Carolina Electric & Gas Company plan sheets as listed. A quantity sheet is attached.

Conduit Duct System and Pre-Cast Concrete Vault \$ 36,200.00

Conditions:

1. Permits, fees, meters, etc. as required by any public service agency are the responsibility of others.
2. This proposal is subject to execution of a non-modified AIA form or subcontractor approved equal.
3. This proposal confines insurance coverage(s) to Anson Construction Co., Inc. and its employees.
4. This proposal includes no waiver of insurance subrogation rights to any party.
5. Payment terms include all retainage release within 30 days of above utility construction completion.
6. Construction staking is excluded. "As Built" documents limited to marked/returned plan sheets.
7. Native trenched earth bid as non-contaminated and suitable for all backfill requirements.
8. SCE&G to provide concrete vault.
9. Church Street to be closed to through traffic for two month time duration.
10. All work bid to be performed from 7:30 am to 4:30 pm weekdays.
11. All bonds are excluded. Performance and Payment bonds are available 2% separate invoice.

Please feel free to call should you have any questions.

ANSON00060

Tuesday, December 11, 2007

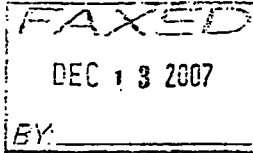


Anson Construction Company, Inc.

Post Office Box 31979
Telephone (843) 556-4411

Charleston, South Carolina 29417-1979
ansonconstruction.com

2:40 PM
Facsimile (843) 889-3178



TELECOPIER TRANSMITTAL COVER SHEET

PLEASE DELIVER THE FOLLOWING PAGE(S) TO:

TO: South Carolina Electric & Gas Company (SCE&G) Danny Hyland

FROM: P. F. Stutzman

RE: Church Street Conduit Duct System and Pre-cast Vault

TOTAL NUMBER OF PAGES INCLUDING COVER SHEET: 2

TELEPHONE FACSIMILE E-MAIL: 576-8490

SHOULD YOU NOT RECEIVE THE TOTAL TRANSMISSION, PLEASE CONTACT US IMMEDIATELY

Quotation

Please accept our lump sum utility construction quotation for work per supplied South Carolina Electric & Gas Company plan sheets as listed. A quantity sheet is attached.

Conduit Duct System and Pre-Cast Concrete Vault \$ 36,200.00

Conditions:

1. Permits, fees, meters, etc. as required by any public service agency are the responsibility of others.
2. This proposal is subject to execution of a non-modified AIA form or subcontractor approved equal.
3. This proposal confines insurance coverage(s) to Anson Construction Co., Inc. and its employees.
4. This proposal includes no waiver of insurance subrogation rights to any party.
5. Payment terms include all retainage release within 30 days of above utility construction completion.
6. Construction staking is excluded. "As Built" documents limited to marked/returned plan sheets.
7. Native trenched earth bid as non-contaminated and suitable for all backfill requirements.
8. SCE&G to provide concrete vault.
9. Church Street to be closed to through traffic for two month time duration.
10. All work bid to be performed from 7:30 am to 4:30 pm weekdays.
11. All bonds are excluded. Performance and Payment bonds are available 2% separate invoice.

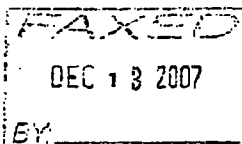
Please feel free to call should you have any questions.

January 3, 2008

Contractor Labor	\$	12,000.00
Contractor Equipment		15,200.00
Contractor Supplied Materials		5,000.00
Subcontractors		4,000.00
Total	\$	36,200.00

ANSON00059

Tuesday, December 11, 2007



2:40 PM

**Anson Construction Company, Inc.**Post Office Box 31979
Telephone (843) 556-4111Charleston, South Carolina 29417-1979
ansonconstruction.com

Facsimile (843) 889-3178

TELECOPIER TRANSMITTAL COVER SHEET**PLEASE DELIVER THE FOLLOWING PAGE(S) TO:****TO:** South Carolina Electric & Gas Company (SCE&G) Danny Hyland**FROM:** P. F. Stutzman**RE:** Church Street Conduit Duct System and Pre-cast Vault**TOTAL NUMBER OF PAGES INCLUDING COVER SHEET:** 2**TELEPHONE FACSIMILE E-MAIL:** 576-8490**SHOULD YOU NOT RECEIVE THE TOTAL TRANSMISSION, PLEASE CONTACT US IMMEDIATELY****Quotation**

Please accept our lump sum utility construction quotation for work per supplied South Carolina Electric & Gas Company plan sheets as listed. A quantity sheet is attached.

Conduit Duct System and Pre-Cast Concrete Vault	\$	36,200.00
---	----	-----------

Conditions:

1. Permits, fees, meters, etc. as required by any public service agency are the responsibility of others.
2. This proposal is subject to execution of a non-modified AIA form or subcontractor approved equal.
3. This proposal confines insurance coverage(s) to Anson Construction Co., Inc. and its employees.
4. This proposal includes no waiver of insurance subrogation rights to any party.
5. Payment terms include all retainage release within 30 days of above utility construction completion.
6. Construction staking is excluded. "As Built" documents limited to marked/returned plan sheets.
7. Native treached earth bid as non-contaminated and suitable for all backfill requirements.
8. SCE&G to provide concrete vault.
9. Church Street to be closed to through traffic for two month time duration.
10. All work bid to be performed from 7:30 am to 4:30 pm weekdays.
11. All bonds are excluded. Performance and Payment bonds are available 2% separate invoice.

Please feel free to call should you have any questions.

January 3, 2008

Contractor Labor	\$	12,000.00
Contractor Equipment		15,200.00
Contractor Supplied Materials		5,000.00
Subcontractors		<u>4,000.00</u>
Total	\$	36,200.00

James A. Stutzman, Jr. 1/4/08

Anson00001

Purchase Order



SCANA Services, Inc.
as buying and paying
agent for:
SC ELECTRIC & GAS CO
1426 Main Street
MC 198
Columbia SC 29201

Dispatch via Print

Purchase Order	Date	Revision	Page
RE-0400018212	01/04/2008		1
Payment Terms	Freight Terms	Ship Via	
NET 30	DEST-NO FREIGHT	See Detail	
Buyer	Phone	Fax	
Morris, Randy M	803/217-9659	803/933-8129	

Vendor: Fax: 843/889-3178 Phone: 843/556-4411
0000003884
ANSON CONSTRUCTION COMPANY INC
4879 SAVANNAH HWY
RAVENEL SC 29470-5452

Ship To: SC ELECTRIC & GAS CO
3591 LEEDS AVENUE
Charleston SC 29405

Bill To: SCANA SERVICES INC.
P.O. BOX 11849
COLUMBIA SC 29211

Tax Exempt? Y		Tax Certificate No. 1440572-000					
Line-Sch	Item Id	Description/Comments	Quantity	UOM	Unit Price	Extended Amt	Due Date

Anson Construction Company, Inc. ("Contractor") shall provide all labor, supervision, equipment and materials required to complete the installation of concrete vault for the Dock Street Theater project (herein after "Work") for South Carolina Electric & Gas Company ("SCE&G"). The Work shall be performed in accordance with applicable SCE&G drawings, SCE&G Distribution Construction Standards, requirements of any permitting authorities and the attached General Terms & Conditions, dated 02/28/2006 (herein after "Requirements"). It shall be the Contractor's responsibility to make itself aware of all Requirements of the Work.

The Work shall be performed at the Contractor's quoted Price indicated below and in Contractor's quotation dated December 11, 2007.

SCE&G shall provide concrete vault. All other materials required to complete the Work are to be provided by the Contractor.

1- 1	Labor and Equipment	31,200.00	DO	1.00000	31,200.00	01/11/2008
2- 1	Material provided by Contractor	5,000.00	DO	1.00000	5,000.00	01/11/2008

IN ORDER TO EXPEDITE PAYMENT,
VENDOR INVOICES MUST BE ITEMIZED TO
CORRESPOND WITH THE APPROPRIATE
PURCHASE ORDER LINE ITEMS. INVOICES
NOT PROPERLY ITEMIZED MAY BE
RETURNED TO THE VENDOR FOR
CORRECTION.

VENDOR IS REQUIRED TO ACKNOWLEDGE
ITS ACCEPTANCE OF THE PURCHASE
ORDER/CONTRACT BY HAVING ITS
AUTHORIZED REPRESENTATIVE SIGN IN
THE SPACE BELOW AND RETURN THE
SIGNED COPY TO THE BUYER.

VENDOR REPRESENTATIVE SIGNATURE

DATE

VENDOR REPRESENTATIVE NAME
(PRINTED)

Authorized Signature

OMISSION OF PURCHASE ORDER NUMBER FROM THE INVOICE MAY
RESULT IN DELAY OF PAYMENT. ALSO FOR INVOICES TO BE PAID
THEY MUST BE ITEMIZED TO CORRESPOND WITH THE PO LINE ITEMS.

By accepting this Order, Vendor acknowledges that it has read and accepted SCANA Corp. General Terms and Conditions (last revised 6/27/01)
available at "http://www.scana.com/en/vendors-and-suppliers/process-and-policies/terms-and-conditions/default.htm" or by calling the number listed
above. If this is a Change Order, the Terms and Conditions in effect when the original Order was issued will apply unless otherwise mutually agreed.



Anson00002

Purchase Order



SCANA Services, Inc.
as buying and paying
agent for:
SC ELECTRIC & GAS CO
1426 Main Street
MC 198
Columbia SC 29201

Dispatch via Print			
Purchase Order	Date	Revision	Page
RE-0400018212	01/04/2008		2
Payment Terms	Freight Terms	Ship Via	
NET 30	DEST-NO FREIGHT	See Detail	
Buyer	Phone	Fax	
Morris, Randy M	803/217-9659	803/933-8129	

Vendor: Fax: 843/889-3178 Phone: 843/556-4411
0000003884
ANSON CONSTRUCTION COMPANY INC
4879 SAVANNAH HWY
RAVENEL SC 29470-5452

Ship To: SC ELECTRIC & GAS CO
3691 LEEDS AVENUE
Charleston SC 29405

Bill To: SCANA SERVICES INC.
P.O. BOX 11849
COLUMBIA SC 29211

Tax Exempt? Y		Tax Certificate No. 1440572-000					
Line-Sch	Item Id	Description/Comments	Quantity	UOM	Unit Price	Extended Amnt	Due Date
Total PO Amount						36,200.00	

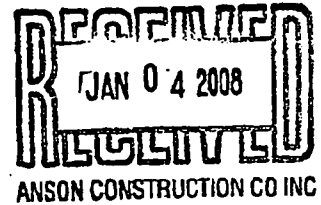
OMISSION OF PURCHASE ORDER NUMBER FROM THE INVOICE MAY
RESULT IN DELAY OF PAYMENT. ALSO FOR INVOICES TO BE PAID
THEY MUST BE ITEMIZED TO CORRESPOND WITH THE PO LINE ITEMS.

By accepting this Order, Vendor acknowledges that it has read and accepted SCANA Corp. General Terms and Conditions (last revised 6/27/01)
available at "http://www.scana.com/en/vendors-and-suppliers/process-and-policies/terms-and-conditions/default.htm" or by calling the number listed
above. If this is a Change Order, the Terms and Conditions in effect when the original Order was issued will apply unless otherwise mutually agreed.

Authorized Signature

Anson00003

GENERAL TERMS AND CONDITIONS



1:01 Definitions

As used throughout the CONTRACT, the following terms shall have the meanings set forth hereinafter:

1. COMPANY shall mean South Carolina Electric & Gas Company, Inc., a subsidiary of SCANA Corporation, for itself and as agent for its affiliated SCANA Corporation companies.
2. CONTRACTOR shall mean the successful bidder awarded the CONTRACT for the performance of the WORK.
3. WORK shall mean the material, equipment, labor, supervision and all other requirements necessary to complete the CONTRACT.
4. CONTRACT shall mean the agreement between COMPANY and CONTRACTOR as set forth in the Purchase Order, the General Terms and Conditions and Attachments, and any Drawings, Procedures or Specifications contained or referenced herein and all modifications to any of the foregoing mutually agreed upon in writing. This CONTRACT shall constitute the entire agreement between the parties unless modified in writing by the parties. These General Terms and Conditions shall supersede the preprinted "Conditions Under Which Order Is Given..." on the back of the Purchase Order and conflicting terms in any other CONTRACT document.
5. PROCUREMENT AGENT shall mean COMPANY'S representative or his/her designee through whom commercial matters shall be channeled and who shall have sole authority to approve modifications of the CONTRACT.

1:02 Laws and Regulations

1:02.1 The CONTRACT shall be governed by the laws of the State of South Carolina.

1:02.2 CONTRACTOR shall comply with all laws, ordinances, codes and regulations applicable to its responsibilities under this CONTRACT. Should CONTRACTOR become aware of any violations of any laws, ordinances, codes or regulations, it shall promptly notify COMPANY in writing. If CONTRACTOR, or any of its employees, agents, subcontractors or suppliers of any tier, violates any of such laws, ordinances, codes and regulations, it shall save, defend, indemnify and hold harmless COMPANY from any and all liabilities, claims, fines, penalties,

forfeitures, suits, losses, damages and the costs and expenses incident thereto (including, but not limited to, costs of defense, settlement and attorneys' fees) arising from any such violation.

- 1:02.3 CONTRACTOR represents and warrants that all articles and services covered by the CONTRACT meet or exceed the safety standards established and promulgated under the Federal Occupational Safety and Health Law (Public 91-956) and its regulations in effect or proposed as of the date of the CONTRACT. CONTRACTOR shall be solely responsible for supervision of its employees and their compliance with OSHA regulations, whether or not on premises owned or controlled by COMPANY. CONTRACTOR shall indemnify COMPANY for any fine, penalty, loss or damages (including, but not limited to, costs and attorney's fees associated therewith) incurred by or assessed against COMPANY because CONTRACTOR's WORK is in violation of the aforesaid Act.
- 1:02.4 CONTRACTOR represents and warrants that all articles and services furnished by it under the CONTRACT meet or exceed any applicable standards established and promulgated under the Federal Consumer Safety Products Act.
- 1:02.5 CONTRACTOR shall comply with the requirements of all Federal and State Worker's Compensation, Unemployment, Wage and Hour, and Social Security Regulations pertaining to the WORK involved in this CONTRACT and any special state or municipal licenses or permits required for the specified operations. It shall file the necessary reports and pay the required taxes thereunder.
- 1:02.6 CONTRACTOR shall obtain, and at all times during the term of this CONTRACT maintain as current, any and all licenses or permits required by the South Carolina Licensing Board for Contractors, as required by Sections 40-11-10, et seq., South Carolina Code of Laws, 1976, and regulations promulgated thereunder by said Board, which are on file with the Office of the Secretary of State. Such licenses shall apply to the proper classifications required for undertaking the scope of work defined herein. CONTRACTOR shall, upon request by COMPANY, furnish satisfactory evidence of being so licensed.
- 1:02.7 CONTRACTOR shall comply with the Immigration Reform and Control Act of 1986.
- 1:02.8 Pursuant to Section 12-9-310 of the Code of Laws of South Carolina (1976), as amended, on contracts of \$10,000 or more which involve labor, any nonresident contractor must register with the South Carolina Department of Revenue or Secretary of State or have 2% of each payment made to the nonresident contractor withheld, unless the nonresident contractor is considered by the S. C. Department of Revenue to be exempt from this requirement. If CONTRACTOR is a nonresident contractor, in lieu of having the 2% withheld COMPANY requires CONTRACTOR to register with the S. C. Department of Revenues or Secretary of State and furnish

COMPANY a properly completed Nonresident Taxpayer Registration Affidavit Form I-312 (6/94), signed by CONTRACTOR's officer, or provide to COMPANY a letter from the S. C. Department of Revenue certifying that CONTRACTOR is exempt. This Affidavit will remain in effect for three years from receipt of the copy.

1:02.9 For any substance which is or contains a hazardous chemical as defined in 29CFR §1910.1200, as amended from time to time, or any successor regulation thereto, CONTRACTOR shall furnish to COMPANY at no extra cost at the time of delivery or prior to delivery, a Material Safety Data Sheet stating, in English, the information described in 29CFR §1910.1200(g)(2) in the form of OSHA Form 20, pertaining to such chemical.

1:02.10 It shall be the obligation of CONTRACTOR to inform itself of the requirements of the law.

1:03 Permits and Licenses

CONTRACTOR shall acquire and comply with and maintain in good standing all contractor's registrations, licenses, or permits required to be held by it by federal, state and local laws, regulatory authorities, or commissions. CONTRACTOR shall be responsible for any costs incurred for the aforesaid. COMPANY may require further proof of proper licensing. It shall be the obligation of CONTRACTOR to inform itself of the requirements of the law.

1:04 Taxes

COMPANY shall have no liability for any payroll or employment compensation tax, Social Security tax, excise tax, ad valorem tax or any income or revenue based tax or any similar tax, local, state or Federal, for CONTRACTOR or any employee of CONTRACTOR; and CONTRACTOR agrees that it shall pay, as required by law, all such taxes as are applicable to it and its employees and to save, defend, indemnify and hold harmless COMPANY against any claim or liability therefor. Unless otherwise agreed by the parties in writing, CONTRACTOR shall **exclude** any South Carolina sales and use tax in any submitted CONTRACT price and on any resulting invoices to the COMPANY. COMPANY shall be responsible for the payment to the South Carolina Department of Revenue of any sales and use taxes applicable to equipment and material furnished by CONTRACTOR and shall have furnished CONTRACTOR a copy of COMPANY's Direct Pay Certificate hereunder. When required by the COMPANY, CONTRACTOR shall itemize each invoice to show as separate items, labor, material and equipment, freight, and other separable charges for the WORK hereunder.

1:05

Employment Policies

CONTRACTOR shall comply (unless exempted) with the provisions attached hereto in Attachment I with respect to equal employment opportunity, affirmative action, and the utilization of small and small disadvantaged businesses. The provisions in Attachment I are made a part of the CONTRACT by reference. CONTRACTOR agrees to save, defend, indemnify and hold harmless COMPANY from any fine, penalty, claim, suit, loss or damages (including, but not limited to, costs and attorneys' fees associated therewith) arising from any violation of the employment laws referred to herein by CONTRACTOR or its subcontractors or agents.

1:06

Worker's Compensation

CONTRACTOR shall accept, in connection with the CONTRACT, the provisions of the Worker's Compensation Act and any re-enactments and supplements thereto; and CONTRACTOR shall insure its liability thereunder including an "all-states" endorsement.

1:07

Safety

1:07.1

CONTRACTOR shall take all necessary or advisable precautions for the safety of all persons and property at, on, or near its WORK. CONTRACTOR shall comply with all applicable provisions of federal, state, and local safety laws and building codes and any safety regulations of COMPANY. CONTRACTOR shall erect and maintain all necessary or advisable safeguards, as required by the conditions and progress of its WORK, for the protection of workers and the public and shall post danger signs warning against the hazards created by its WORK. In the event any situation arises which may involve danger to persons or property, CONTRACTOR shall act with good judgment to prevent or minimize injury to persons and damage to property.

1:07.2

In the event CONTRACTOR encounters in the performance of the WORK materials or substances which CONTRACTOR recognizes or suspects may be hazardous or toxic, including, but not limited to, asbestos, and the presence of which was not specifically contemplated by CONTRACTOR and recognized in the scope of WORK herein, CONTRACTOR will immediately cease that part of the WORK which is affected and give notice to COMPANY so that COMPANY can give CONTRACTOR further direction.

1:07.3

CONTRACTOR shall not permit or suffer the introduction of alcoholic beverages or liquors nor any narcotics upon the WORK embraced in the CONTRACT nor upon any grounds owned or controlled by COMPANY. CONTRACTOR shall not permit entry to the WORK areas or to COMPANY's grounds of any employee of CONTRACTOR or of any subcontractor of CONTRACTOR who is under the

influence of any alcoholic beverage or liquor or any narcotic (whether or not medically prescribed) or any non-narcotic drug or medication where the fact of such influence may be dangerous to the employee, to the public, to the WORK or to COMPANY's grounds, facilities, or personnel.

1:07.4 COMPANY shall have the right to require CONTRACTOR employees on premises owned or controlled by COMPANY to undergo substance abuse testing and shall also have the right to search CONTRACTOR employees' persons and personal property with regard to controlled substances and alcohol at all times and without prior notice. CONTRACTOR personnel testing positive for controlled substances or alcohol shall not be used in performance of the WORK. All WORK performed by the rejected personnel shall be subject to inspection and rejection by COMPANY and rejected WORK shall be reperformed by CONTRACTOR at no additional charge to COMPANY. CONTRACTOR shall inform all of its employees of their being subject to testing and/or search and shall require each employee performing WORK on COMPANY's premises to sign a form, prior to being engaged in the WORK, acknowledging COMPANY's policies with regard to substance abuse and consenting to testing and/or search at any time as allowed herein.

1:08 Operation of Equipment

The CONTRACTOR's employees shall not operate or attempt to operate any valve, switch, or other control device on any portion of the existing facilities or utilities owned or controlled by COMPANY unless expressly made a part of the WORK as defined in the CONTRACT or as directed by the COMPANY. Failure to abide by this requirement shall be considered sufficient cause for the immediate removal of the employee or employees involved.

1:09 Protection of WORK and Property

CONTRACTOR shall protect all WORK and property from damage or loss that may result from the performance of the CONTRACT. Should its WORK be suspended temporarily, CONTRACTOR shall take such steps as may be necessary or advisable to protect it against damage or loss. WORK or property destroyed, damaged, or lost by act or omission of CONTRACTOR shall be replaced or repaired to COMPANY's satisfaction at CONTRACTOR's expense. Should any WORK or property require such replacement or repair prior to final payment, and CONTRACTOR fails or refuses to replace or repair it in accordance with the CONTRACT, COMPANY may replace or repair such WORK or property, or in case of damage to the property of a third party reimburse the owner thereof, and deduct the cost of such replacement, repair or reimbursement from any funds due or to become due to CONTRACTOR under the CONTRACT; or, if final payment has been made, CONTRACTOR shall reimburse COMPANY such amounts.

1:10

Signs

The premises shall be maintained free from any and all advertising and CONTRACTOR's signboards of every kind, except those approved by COMPANY. CONTRACTOR shall place no temporary sign, except those qualified under "Safety", or other advertising pertaining to the WORK on any part of the premises of COMPANY without permission of COMPANY.

1:11

Publications

Publications and advertisements concerning the subject matter of the CONTRACT shall not at any time be made by or on behalf of CONTRACTOR, its subcontractors, or suppliers, unless prior written authorization therefor is obtained from COMPANY. Cameras or picture taking shall not be allowed on the site except with written permission of COMPANY.

1:12

Reports

CONTRACTOR shall furnish COMPANY periodic reports of WORK progress, if required by COMPANY. Such reports shall be made as frequently as required and in the form prescribed by COMPANY.

1:13

Records and Retentions

CONTRACTOR shall comply with COMPANY's requirements for records, documentation, and retentions thereof in connection with the WORK.

1:14

Audits

1:14.1

CONTRACTOR's and subcontractors' books, records, correspondence, bids, purchase orders, invoices, accounting procedures and practices and any other supporting evidence relating to this CONTRACT (all the foregoing hereinafter referred to as "Records") shall be open to inspection and subject to audit and/or reproduction, during normal working hours, by COMPANY to the extent necessary to adequately permit evaluation and verification of any invoices, payments or claims based on CONTRACTOR's or subcontractor's actual costs incurred directly in the performance of WORK under this CONTRACT for the purpose of evaluating or verifying actual costs expended. COMPANY shall have access to said Records from the effective date of this CONTRACT, for the duration of the WORK, and until three (3) years after the date of final payment by COMPANY to CONTRACTOR pursuant to this CONTRACT. COMPANY shall have access, during normal working hours, to all necessary CONTRACTOR and subcontractor facilities, and shall be provided adequate and appropriate work space, in order to conduct audits in compliance with the provisions of this Article. COMPANY shall

give CONTRACTOR or subcontractor reasonable advance notice of intended audits.

1:14.2 CONTRACTOR shall require subcontractors to comply with the provisions of this Article by insertion of the requirements hereof in any subcontract pursuant to this CONTRACT.

1:14.3 CONTRACTOR shall cooperate fully with COMPANY in any such inspection or audit, as well as in any inspection, audit or investigation conducted by governmental authority or conducted by COMPANY at the direction of any governmental authority.

1:15 Scheduling of WORK

All WORK shall be scheduled by CONTRACTOR subject to the approval of COMPANY and within the completion date(s) required by COMPANY, if any. Any WORK performed without COMPANY's authorization will be done at CONTRACTOR's risk and expense and shall be subject to rejection.

1:16 Inspection of WORK

All WORK shall be subject to inspection by COMPANY. COMPANY's authorized personnel shall have reasonable access to the WORK at all times for the purpose of inspection. CONTRACTOR shall provide proper facilities for such access and inspection. The presence of COMPANY's personnel shall not in any way alter, modify, or lessen the obligation of CONTRACTOR to comply with the requirements of the CONTRACT. Any inspection by COMPANY's personnel shall not be considered as an acceptance or waiver of warranty or other rights of the WORK inspected. If the inspection results in a determination of unsatisfactory performance on the part of CONTRACTOR, the nonconforming WORK shall be corrected in accordance with "Warranty" below.

1:17 Approval of WORK

All WORK shall be subject to the approval of COMPANY. CONTRACTOR shall perform all WORK in such a manner as to comply with the CONTRACT. COMPANY shall have the authority to stop the WORK without cost or liability whenever such stoppage is necessary to ensure proper compliance with the CONTRACT.

1:18 Independent Contractor Status

It is the intention of the parties to create between themselves the relationship of owner and independent contractor. CONTRACTOR shall control the manner and details of performance of the WORK hereunder, subject to compliance with

specifications, drawings, plans, and the reasonable rules, regulations and procedures of COMPANY governing the operation of COMPANY's facilities, COMPANY's interest being in the result. No employees, contractors, subcontractors, or agents of CONTRACTOR shall at any time be deemed or have the rights of employees of COMPANY, and neither CONTRACTOR nor any of the employees, contractors, subcontractors, or agents of CONTRACTOR, shall be eligible to participate in any employee benefit plan sponsored by or participated in by COMPANY. CONTRACTOR shall require any employee, contractor, subcontractor or agent of CONTRACTOR (CONTRACTOR's personnel) performing any portion of the WORK on premises owned or controlled by COMPANY to comply with COMPANY's Corporate Security procedures and to execute the Form IC-1, Attachment II hereof, in all circumstances where an individual badge of CONTRACTOR's personnel is required under COMPANY's Corporate Security procedures. The executed Form IC-1 shall be provided to COMPANY's Corporate Security prior to start of any WORK. CONTRACTOR shall notify COMPANY's Corporate Security when each of CONTRACTOR's personnel, previously approved by COMPANY's Corporate Security for admittance to perform WORK at a specified COMPANY premises, is no longer performing WORK for CONTRACTOR at such premises.

1:19

Retirees

The CONTRACTOR specifically agrees that in furtherance of the WORK contemplated by this CONTRACT neither it, nor any of its subcontractors, will employ, hire, contract with, or utilize the services (consulting, managerial or otherwise) of a retiree of SCANA Corporation or any of its subsidiaries ("SCANA Retiree") where CONTRACTOR's retaining of the SCANA Retiree is predominantly motivated by, and the services performed and to be performed by the SCANA Retiree are predominantly limited to, the performance of WORK for COMPANY under this CONTRACT. Without limiting the foregoing, the terms of the "Independent Contractor Status" provision contained in this CONTRACT shall apply for any SCANA Retiree utilized for any portion of the WORK.

1:20

Security

CONTRACTOR shall comply with all of COMPANY's security programs and requirements.

1:21

Subcontractors

No portion of the WORK shall be subcontracted without first securing the prior written consent of COMPANY. CONTRACTOR shall disclose any intent to subcontract any part of the WORK, prior to the execution of the CONTRACT. Requests for consent shall include the names and addresses of all subcontractors and nature and extent of the WORK to be performed. When required by COMPANY,

CONTRACTOR shall provide COMPANY a copy of the agreement with each subcontractor which shall be complete in every detail, including prices. CONTRACTOR agrees to bind every subcontractor and every subcontractor shall be bound by terms essentially the same as the terms of the CONTRACT so far as they apply to the work to be performed by the subcontractor, unless specifically noted to the contrary in a subcontract approved by COMPANY. Consent by COMPANY to any such subcontracting shall not relieve CONTRACTOR of full responsibility for the WORK to be performed by the subcontractor.

1:22 Cooperation with other Contractors

COMPANY may employ other firms or individuals for those portions of related work which are not included as a part of the WORK herein. CONTRACTOR shall cooperate with other firms or individuals working at or near the site of CONTRACTOR's operations and shall afford them reasonable opportunity for the delivery and storage of their materials in the execution of their work, shall coordinate its WORK with theirs, and shall follow any directions given by COMPANY in that regard. Where CONTRACTOR's WORK depends on proper execution or the completion of a job or jobs by other firms or individuals, CONTRACTOR shall promptly report to COMPANY any defects or deficiencies in such other work that renders it unsuitable for proper execution of the WORK included in the CONTRACT.

1:23 Demurrage

Demurrage on material furnished by COMPANY caused by CONTRACTOR's acts or omissions shall be paid by CONTRACTOR.

1:24 Force Majeure

Neither party shall be liable to the other for any loss or damage due to any failure or delay in performance hereunder resulting from any cause beyond such party's reasonable control, including, but not limited to, acts of God; acts or omissions of civil or military authority; acts or omissions of the other party hereto; fires; floods; epidemic; quarantine restrictions; strikes or other labor disputes; wars or warlike circumstances; or compliance with changes in applicable regulations or directives of national, state or local governments or any department thereof effective after the date of the CONTRACT. The party asserting the force majeure as an excuse from performance shall give the other party notice verbally within twenty-four hours of the occurrence of a force majeure event, confirmed in writing within ten days thereafter, such notice to state the nature of the event and the anticipated length of delay. Such party shall take all reasonable steps to mitigate the effects of any force majeure event (provided, however, that this shall not require settlement of labor disputes negotiated in good faith).

1:25

Insurance by CONTRACTOR

1:25.1

Without limiting any of the other obligations or liabilities of CONTRACTOR and until the WORK is completed and accepted by COMPANY, CONTRACTOR agrees to furnish and maintain for itself and to require any approved subcontractor to furnish and maintain at all times during the course of the WORK to be performed hereunder policies of insurance, including Worker's Compensation, liability insurance, and other minimum insurance coverages in accordance with the requirements established in the "Insurance Requirements", Attachment III hereof. None of the liability policies shall have any "other insurance" clause or language which would jeopardize the primacy of CONTRACTOR's insurance with respect to COMPANY's self-insured retention or excess insurance policies. Before any WORK is started under the CONTRACT, CONTRACTOR shall provide COMPANY an insurance certificate evidencing coverages as required herein and in a form satisfactory to COMPANY. Such certificate shall provide that at least ten (10) days written notice be given to COMPANY prior to any material change or cancellation of the insurance. Copies of the insurance policies signed by the insurance companies or other authorized representatives shall be provided upon request. All insurance shall be with sound insurance companies, satisfactory to COMPANY, and authorized to do business in the state where the WORK is performed. Neither a failure of CONTRACTOR to provide the required certificate of insurance nor CONTRACTOR's submission of a certificate of insurance not in conformance with the insurance requirements stated herein shall relieve CONTRACTOR from the obligation to have in force the required insurance coverages. The insurance requirements stated herein may be changed only by specific written agreement by COMPANY.

1:25.2

None of CONTRACTOR's personnel shall be deemed for any purpose to be solely or dually employed by COMPANY. If any employee of CONTRACTOR shall recover benefits under COMPANY's Worker's Compensation as a result of injury or disease sustained in, or Unemployment Insurance coverage resulting from, performing WORK under the CONTRACT while on CONTRACTOR's payroll, CONTRACTOR shall reimburse COMPANY for the full amount of such benefits and any cost or expenses incurred by COMPANY related thereto.

1:26

Indemnification

CONTRACTOR hereby agrees to save, defend, indemnify and hold harmless COMPANY from any and all liabilities, claims, suits, actions, proceedings, fines, penalties, forfeitures, losses, damages and the costs and expenses incident thereto (including, but not limited to, costs of investigation, defense, settlement and attorney's fees) arising directly or indirectly out of any act or failure to act on CONTRACTOR's part, or the part of any agent, servant, or subcontractor of CONTRACTOR, whether independent or otherwise, in connection with the WORK undertaken under the CONTRACT.

1:27

Performance and Payment Bond

If required by COMPANY, prior to undertaking any WORK hereunder, CONTRACTOR shall secure and maintain while the WORK is being performed a performance and payment bond, in a form and with sureties acceptable to COMPANY, insuring the full, proper performance of the CONTRACT and the completion of the WORK in a skillful and professional manner, and the payment of all obligations arising thereunder. Such bond shall be in an amount equal to one hundred percent (100%) of the total price of the WORK. The determination of whether CONTRACTOR has failed to perform the CONTRACT shall be made solely by COMPANY. COMPANY reserves the right to terminate the CONTRACT in the event such a bond is not procured or is not maintained in effect until final acceptance of the WORK.

1:28

Liens

1:28.1

CONTRACTOR shall, whenever requested to do so, furnish COMPANY, in such detail as may be required by COMPANY, statements in writing of all sums owed by CONTRACTOR or subcontractors for services rendered, labor performed or materials, supplies, tools or equipment furnished or used or to be used, or services rendered, in the performance of the CONTRACT.

1:28.2

CONTRACTOR shall neither file nor cause to be filed any lien with respect to the WORK to be performed or materials furnished hereunder and hereby waives any right to file or cause such a lien to be filed.

1:28.3

In the event any claim has been asserted against CONTRACTOR or COMPANY or any lien has been filed with respect to the WORK, further payment under the CONTRACT shall not become due until all such claims or liens have been satisfied, released and/or discharged of record without cost or expense to COMPANY. If any lien is filed or remains unsatisfied after all payments are made, CONTRACTOR shall refund to COMPANY all monies that the latter may be compelled to pay in discharging such a lien, including, but not limited to, all costs and attorney's fees associated therewith. At COMPANY's option and upon request by COMPANY, CONTRACTOR shall discharge any lien filed with respect to the WORK by posting a bond as provided in Section 29-5-110 of the South Carolina Code of Laws, 1976, as amended, at CONTRACTOR's expense. If CONTRACTOR fails to do so, COMPANY may procure the release, satisfaction and/or discharge of any such claim or lien and deduct all costs and expense of COMPANY associated therewith from any money due or to become due to CONTRACTOR on any account.

1:28.4

The final payment shall not become due until CONTRACTOR delivers to COMPANY a complete release of all liens arising out of its WORK, or receipts in

full in lieu thereof, and an affidavit showing that, so far as it has knowledge or information, the releases and receipts include all labor, materials, supplies and services for which a lien can be filed. CONTRACTOR may, where a complete release of liens is impracticable or receipts in full cannot be furnished, provide a bond satisfactory to COMPANY to indemnify it against any lien or claim.

1:29

Patent, Trademark and Copyright Rights

CONTRACTOR shall assume at its sole expense the defense of and shall save, indemnify and hold harmless COMPANY from any and all claims, demands, costs, suits, actions, proceedings, fines and penalties (and interest thereon) resulting from the infringement, or claim of infringement by CONTRACTOR of any patent, trademark, copyright or any other similar intellectual property protection in connection with any WORK or equipment furnished by CONTRACTOR hereunder, except where the same resulted from following directions, specifications, drawings, plans or procedures prepared by COMPANY or by third parties for COMPANY and selected by COMPANY. In the event WORK or equipment so defended is held to constitute infringement or its use is enjoined, CONTRACTOR shall, at its own expense, either: (a) procure for COMPANY the right to continue to use such WORK and/or equipment; (b) reperform the WORK or replace the equipment with substantially equivalent noninfringing WORK or equipment; or (c) modify the WORK and/or equipment so that it becomes noninfringing; provided, however, that such WORK reperformed and equipment replaced or modified conforms to the requirements of this CONTRACT.

1:30

Proprietary Interests

All originals of engineering and related data, plans, maps, drawings, computer programs and specifications furnished by COMPANY or produced by the CONTRACTOR specifically for COMPANY in connection with the WORK shall remain COMPANY's property. The CONTRACTOR agrees not to use or release to others any of such property for purposes other than the WORK performed hereunder unless prior written consent to the contrary is given by COMPANY. The CONTRACTOR shall give COMPANY a receipt for property furnished by COMPANY and shall be responsible for safekeeping and return to COMPANY upon request, upon termination of the CONTRACT or upon termination of the WORK to which such property applies. All originals of data, plans, specifications, computer programs, maps and drawings prepared and furnished by the CONTRACTOR which are not specifically prepared for use in the WORK shall remain the property of the CONTRACTOR, but COMPANY shall be provided copies of same without exception. COMPANY agrees not to use said copies for purposes other than the WORK to which such property relates; licensing, construction, maintenance or operation of COMPANY's plant or facilities; internal procedures and controls; and compliance with governmental laws, orders, regulations and rules; and the CONTRACTOR grants to COMPANY the right to

disclose such property to a third party on a proprietary basis for such purposes provided, however, that COMPANY enters into a written agreement with such party to hold such property in confidence, the terms of which are consistent with those set forth in this Article. The provisions of this Article shall not apply to property, notwithstanding any confidential designation thereof, which is known to COMPANY without any restriction as to disclosure or use at the time it is furnished, which is or becomes generally available to the public without breach of any agreement, or which is received from a third person without limitation or restriction on said third party or COMPANY at the time of disclosure.

1:31

Warranty

By accepting this CONTRACT, CONTRACTOR hereby expressly warrants that all WORK performed pursuant to this CONTRACT for a period of one (1) year from the date of acceptance shall be in full conformity with the CONTRACT; shall comply with all applicable codes, standards, laws, rules and regulations including, but not limited to, those required by or pertaining to OSHA, Equal Employment Opportunity, and EPA/SCDHEC at the time of performance; shall be performed with the ordinary skill and care which would be exercised by those who perform this type of WORK at the time the WORK is performed and in accordance with accepted industry practice; shall be free from defects in design, material and workmanship; shall conform to the applicable specifications, instructions, drawings, data, and samples; shall be fit and sufficient for the purposes intended by COMPANY; and shall be free from all liens and encumbrances. Said warranties shall be in addition to all other warranties, express, implied or statutory. Warranties shall survive acceptance of payment for any and all WORK required pursuant hereto and shall run to COMPANY. Every claim by COMPANY that CONTRACTOR's WORK is defective shall be presented in writing to CONTRACTOR within one (1) year of the expiration of the warranty period or the same shall be deemed waived by COMPANY. However, if the defect complained of is latent and not reasonably discoverable during such period, the claim shall be presented in writing within one (1) year of the date of discovery, or the time when it might reasonably have been discovered, if earlier. If CONTRACTOR's WORK is defective and COMPANY presents a claim as required above, CONTRACTOR shall, at no cost to COMPANY, reperform the defective WORK to the extent necessary to correct the deficiency therein and any resulting deficiencies in other WORK of CONTRACTOR and CONTRACTOR shall, at COMPANY's option, either repair, restore or replace, F.O.B. the WORK site, any equipment or structure damaged as a result of such defective WORK or shall reimburse COMPANY for such damage. In addition CONTRACTOR shall reimburse COMPANY for any and all other damages and costs arising from CONTRACTOR's failure to perform in accordance with the standard set forth herein. In the event of a remedial action to correct defective WORK as provided herein, the warranty period for that portion of the WORK affected by such remedial action shall be one (1) year after completion of the remedial work.

1:32

Payment

Unless otherwise mutually agreed in writing, payment of the undisputed amount of the invoice, shall be made within thirty (30) days after date of invoice. When required by COMPANY, invoices shall be itemized to show separate charges for material and equipment supplied to COMPANY, and labor, freight and/or other services not subject to sales and use taxes.

1:33

Formation of CONTRACT

CONTRACTOR and COMPANY shall be bound by this CONTRACT and its terms and conditions when CONTRACTOR executes and returns the unaltered, purchase order acknowledgement or when CONTRACTOR renders for COMPANY any of the services or delivers to COMPANY any of the items required herein.

1:34

Assignment

CONTRACTOR shall not assign the CONTRACT without written consent of COMPANY; nor shall CONTRACTOR assign any monies due or to become due to him hereunder without the previous written consent of COMPANY.

1:35

Termination

1:35.1

COMPANY may terminate this CONTRACT for its own convenience, in whole or in part, at any time by written notice to CONTRACTOR. In the event of termination by COMPANY for convenience, COMPANY shall pay CONTRACTOR for costs incurred under this CONTRACT up to the date of termination.

1:35.2

COMPANY may, by written notice to CONTRACTOR terminate this CONTRACT for default if CONTRACTOR voluntarily files a petition in bankruptcy, is adjudicated as bankrupt in an involuntary bankruptcy proceeding, makes an assignment for the benefit of creditors, or has a receiver appointed for some or all of CONTRACTOR's property; or if CONTRACTOR fails to take action to cure a default within the time specified in such notice or a reasonable amount of time if not specified; or if CONTRACTOR refuses or fails to prosecute the WORK or any part thereof with such diligence as will ensure its completion within the time specified or any extension thereof or fails to complete said WORK within such time. In such event, COMPANY may take over the WORK and prosecute the same to completion by contract or otherwise, and CONTRACTOR and its sureties shall be liable to COMPANY for any excess cost occasioned COMPANY thereby; and COMPANY may take possession of and utilize in completing the WORK such materials, appliances and plant as may be on the site of the WORK and necessary therefor. In

the event of default by CONTRACTOR, COMPANY shall retain any and all rights available to it under the law.

1:36 Waiver

The failure of COMPANY to pursue any rights open to it by virtue of any breach of the CONTRACT terms by CONTRACTOR shall not be construed as a waiver of any right by COMPANY to exercise such rights at a later date for the same or any other breach of the CONTRACT.

1:37 Changes, Alterations and Modifications

1:37.1 COMPANY may, at any time, by written order to CONTRACTOR and without notice to CONTRACTOR's sureties or assigns make changes in the WORK covered by this CONTRACT, the drawings, the specifications or other descriptions herein, or the time of completion. The written order authorized by this article shall be effective notwithstanding the absence of CONTRACTOR's formal written acceptance thereof. Promptly upon the receipt of the details of any such changes, CONTRACTOR shall either advise that the change will not affect its costs, or furnish: (1) a detailed breakdown of estimated cost and changes in the CONTRACT price attributable to the change in the WORK, and (2) a statement of any necessary changes in the schedule for performance of the WORK. CONTRACTOR's failure to advise COMPANY within ten (10) days of the effect of any change hereunder shall constitute CONTRACTOR's consent to conform to the change without increase in the CONTRACT price and without change in the other terms and conditions of the CONTRACT.

1:37.2 In addition to COMPANY required changes as described in the preceding paragraph, CONTRACTOR shall notify COMPANY in writing as soon as possible after determination of any changes in the scope of WORK necessary or advisable to properly or more effectively perform the WORK. COMPANY shall advise CONTRACTOR if it agrees that any such changes were outside of the agreed upon scope of WORK and should be incorporated in the scope of WORK; in which case such changes would be handled as an COMPANY required change as provided herein.

1:37.3 If the change causes a material increase or decrease in costs, then an equitable adjustment of the CONTRACT price herein to be paid to CONTRACTOR shall promptly be negotiated by CONTRACTOR and the PROCUREMENT AGENT and incorporated in a revision to this CONTRACT. Such adjustments in price shall be determined based on changes in costs to CONTRACTOR directly related to the change in the scope of the WORK. CONTRACTOR shall furnish the PROCUREMENT AGENT a detailed breakdown of the changes in cost accompanied by sufficient supporting documentation. All costs, compilations and proposals concerning changes submitted by CONTRACTOR to COMPANY shall

be based upon prices, units of costs and/or cost estimates that formed the basis of CONTRACTOR's initial, approved proposal. COMPANY shall have access to and the right to audit CONTRACTOR's records for the purpose of verifying to COMPANY's reasonable satisfaction the accuracy of CONTRACTOR's assessment of changes in cost.

1:37.4 Except in situations where life or property may be endangered, no additional work or change involving time or cost not provided for in the CONTRACT shall be performed unless in pursuance to a CONTRACT revision which will state the location and character of the WORK, the amount and method of compensation, and changes in any of the other CONTRACT terms and conditions which may be affected. No claim for an addition to the CONTRACT price or an extension of the time of completion will be valid unless so ordered.

1:38 Kickbacks

1:38.1 Definitions - "Kickback," as used in this clause, means any money, fee, commission, credit, gift, gratuity, thing of value, or compensation of any kind which is provided, directly or indirectly, to CONTRACTOR, CONTRACTOR employee, subcontractor, or subcontractor employee for the purpose of improperly obtaining or rewarding favorable treatment in connection with a contract or subcontract. "Person," as used in this clause, means a corporation, partnership, business association of any kind, trust, joint-stock company, or individual.

1:38.2 CONTRACTOR and all subcontractors are prohibited from:

- (1) providing or attempting to provide or offering to provide any kickback;
- (2) soliciting, accepting or attempting to accept any kickback; or
- (3) including, directly or indirectly, the amount of any kickback in the CONTRACT price charged by CONTRACTOR to COMPANY or in the contract price charged by a subcontractor to CONTRACTOR or higher tier subcontractor.

1:38.3 CONTRACTOR shall have in place and follow reasonable procedures designed to prevent and detect possible violations described in paragraph 1:38.2 above in its own operations and direct business relationships.

1:38.4 When CONTRACTOR has reasonable grounds to believe that a violation described in paragraph 1:38.2 above may have occurred, CONTRACTOR shall promptly report in writing to the COMPANY the possible violation. Such reports shall be made to COMPANY's General Manager, Strategic Sourcing and Manager, Security.

1:38.5 Regardless of the contract tier at which a kickback was provided, accepted or charged under the CONTRACT in violation of paragraph 1:38.2 above, the COMPANY may:

- (1) offset the amount of the kickback against any monies owed by the COMPANY under the contract; and/or
- (2) direct that CONTRACTOR withhold from sums owed the subcontractor, the amount of the kickback. The COMPANY may order that monies withheld under this subparagraph be paid over to the COMPANY.

1:38.6 CONTRACTOR agrees to incorporate the substance of this clause, including this paragraph 1:38.6, in all subcontracts.

1:39 Gratuities

1:39.1 The right of CONTRACTOR to proceed may be terminated by the COMPANY if CONTRACTOR, its agent, or another representative:

- (1) Offered or gave a gratuity (e.g., an entertainment or gift) to an officer, official, or employee of the COMPANY; and
- (2) Intended, by the gratuity, to obtain a contract or favorable treatment under a contract.

1:39.2 If this CONTRACT is terminated under paragraph 1:39.1 above, the COMPANY is entitled:

- (1) To pursue the same remedies as in a breach of the contract; and
- (2) In addition to any other damages provided by law, to exemplary damages.

1:39.3 The rights and remedies of the COMPANY provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under this CONTRACT.

1:40 Creditworthiness

This CONTRACT is conditioned upon and subject to COMPANY and CONTRACTOR maintaining the financial creditworthiness required to perform their responsibilities according to the CONTRACT. At any time during this CONTRACT, either party may request financial information to support their financial due diligence procedures. The COMPANY and CONTRACTOR agree to assist each other in this reasonable financial review. If reasonable grounds for insecurity of payment and/or performance arises that affect the creditworthiness of

the COMPANY or CONTRACTOR, either COMPANY or CONTRACTOR may demand satisfactory adequate assurance of payment and/or performance from the other.

1:41

Right of Off-set

As a condition precedent to COMPANY's contracting with CONTRACTOR for WORK performed in accordance with this CONTRACT, CONTRACTOR acknowledges and agrees that COMPANY has and reserves the right to off-set any amount(s) owed by COMPANY to CONTRACTOR for WORK performed in accordance with this CONTRACT by any amount(s) which COMPANY otherwise regards as payable by CONTRACTOR to COMPANY for which COMPANY has legal and/or equitable grounds for recovery against CONTRACTOR and as to which demand therefor has previously been made by COMPANY. This right to off-set includes any amounts owed by COMPANY to CONTRACTOR under this CONTRACT, any other agreements with CONTRACTOR, and any agreements with any affiliates of CONTRACTOR which likewise include this Right Of Off-Set provision.

1:42

The Contractor shall be responsible for all property damage, including any damage resulting from environmental contamination and/or herbicide application, caused by Contractor's operations and shall resolve, in an expeditious manner, all complaints and claims arising from his Work without cost to SCE&G. Should it be necessary for SCE&G to handle or resolve such complaints or claims, then the Contractor shall be billed, in addition to any and all other amounts they may be liable for because of the complaints or claims, an administrative fee in a minimum amount of \$150.00 per case by SCE&G. Should the extent of involvement by SCE&G in resolving the complaint or claim result in administrative costs in excess of \$150.00, then the actual administrative costs shall be charged. The Contractor shall inform the local SCE&G representative within twenty-four (24) hours of all complaints, claims, property damage, personal injuries, accidents, and line outages and follow up with a written report to the local SCE&G representative within five (5) business days.

ATTACHMENT I

All applicable government regulations concerning equal employment, affirmative action and the utilization of small, small disadvantaged and women-owned businesses are incorporated into this CONTRACT by reference, including but not limited to, the following federal regulations, executive orders, and the statutory authority for these regulations as referenced in the regulations:

If this CONTRACT is in the amount of \$10,000.00 or more and not otherwise exempt:

1. 41 CFR 60-1.4, Equal Opportunity Clause.
2. 41 CFR 60-250-5, Vietnam Era Veterans' Readjustment Act of 1974, Affirmative Action and Nondiscrimination Obligations of Contractors and Subcontractors Regarding Special Disabled Veterans and Veterans of the Vietnam Era.
3. 41 CFR 60-741.4, Section 503 of the Rehabilitation Act of 1973 and 41 CFR 60-741.5, Affirmative Action and Nondiscrimination Obligations of Contractors and Subcontractors Regarding Individuals with Disabilities.
4. 15 USC 631 et seq., Small Business Act, Executive Orders 11458 and 11625, Public Law 95-507, and 15 USC 637 et seq., Small Business Investment Act of 1958, as amended.

If this CONTRACT is in an amount which may exceed \$500,000.00 and is not otherwise exempt:

1. 13 CFR 125, Government Contracting Programs, 48 CFR 52.219-8, Utilization of Small Business Concerns.
2. 48 CFR 52.219-9, Small Business and Small Disadvantaged and Women-Owned Small Business Subcontracting Plan Clause.

To the extent required by law, executive order or regulation:

1. 29 CFR Part 1625, Executive Order 11141 (Discrimination on the Basis of Age), Public Law 90-202 (Age Discrimination in Employment Act of 1967) and the Age Discrimination in Employment Act.

CONTRACTOR and its subcontractors hereunder by virtue of any or all of the above-referenced statutory, regulatory, or executive order requirement, or other requirements, may be required to comply with certain record keeping, reporting or affirmative action requirements, and those requirements are incorporated herein by reference. It shall be the obligation of CONTRACTOR and its subcontractors to make themselves aware of and to understand the legislative, executive, and regulatory requirements that apply to their performance of obligations under this CONTRACT. Failure to do so shall not excuse their application to this CONTRACT.

**ATTACHMENT II
ACKNOWLEDGMENT AND AFFIRMATION BY EMPLOYEE
OR CONTRACTOR OF INDEPENDENT CONTRACTOR**

FORM IC-1

(SSN# _____)
(Contractor Employee SSN)

I, _____, hereby acknowledge and agree that,
(Contractor Employee Name)

with respect to my provision of services to _____
(SCANA Company)

of the SCANA affiliated group of companies, which services are performed
pursuant to the contract between _____ and
(SCANA Company)

_____, an independent contractor
(Contractor Company)

retained by _____, I am either an
(SCANA Company)

employee or contractor of _____ and am
(Contractor Company)

not eligible to participate in any employee benefit plan sponsored by or
participated in by _____.
(SCANA Company)

_____/_____/_____
Contractor Employee Date of Birth

Contractor Employee Signature

Date

Witness

Date

ANSON00024

ATTACHMENT III

INSURANCE REQUIREMENTS

If the WORK is performed on the property of COMPANY and/or its affiliates, or the property of any of their customers, please submit copies of all applicable insurance certificates on Acord forms showing the certificate holder as:

**SCANA Corporation and/or its subsidiaries
c/o Supplier Strategy - MC 43G
Columbia, SC 29218.**

If the certificate of insurance is not on the Acord 25s form, the certificate **MUST** show Contractual Liability spelled out. In addition, it must name "SCANA Corporation and its subsidiaries" as an additional insured.

CONTRACTOR must provide and maintain, until the WORK is completed and accepted, minimum insurance coverage as follows:

1. Commercial General Liability Coverage

- (a) \$1,000,000 Bodily Injury and Property Damage
- (b) Contractual Liability
- (c) Including the following coverages:
 - Products and Completed Operations
 - Explosion, Collapse and Underground Hazard (ECU)
 - Independent Contractors
 - Broad Form Property Damage

2. Automobile Liability Coverage - \$500,000

All owned, hired, & non-owned automotive equipment used in connection with the insured operation.

3. Workers' Compensation - Statutory

Employers' Liability - \$500,000

Including coverage under U.S. Longshoremen's and Harbor Workers Act where applicable.

4. Environmental Impairment Liability - \$1,000,000 Each Occurrence & Aggregate

Neither a failure to provide the required certificate of insurance nor submission of a certificate of insurance not in conformance with the insurance requirements stated herein shall relieve CONTRACTOR from the obligation to have in force the required insurance coverage. The insurance requirements stated herein may be changed only by specific written agreement by COMPANY. Coverage provided by CONTRACTOR shall be primary and non-contributory.



Anson Construction Company, Inc.

Post Office Box 31979

Telephone (843) 556-4411

ansonconstruction.com

Invoice #5240

Charleston, SC 29417-1979

Facsimile (843) 889-3178

INVOICE

March 25, 2008

TO: SCANA Services, Inc. P. O. Box 11849 Columbia, SC 29211	RE: Purchase Order RE-0400018212 Dock Street Theatre Vault and Conduit installation Estimate Number Two
---	--

Work performed on Original Agreement:

			<u>% Complete</u>	
Traffic Control		\$1,000.00	50%	\$500.00
Rental	Trench Box	\$1,000.00	100%	\$1,000.00
Dispose Spoil		\$2,000.00	100%	\$2,000.00
Transport Equipment		\$2,000.00	100%	\$2,000.00
Mobilize and Stage		\$1,000.00	100%	\$1,000.00
Rmv Pavement	Asphalt	\$1,000.00	100%	\$1,000.00
	Concrete	\$2,000.00	100%	\$2,000.00
Core Existing Vault		\$2,000.00		
Duct System		\$5,000.00		
Concrete Encasement		\$4,000.00		
Vault Installation		\$5,000.00		
Rpl Pavement	Asphalt	\$2,000.00	100%	\$2,000.00
	Concrete	\$3,000.00	100%	\$3,000.00
Pull String		\$2,000.00		
Select Fill		\$200.00		
Granite Curb	Remove	\$1,000.00	100%	\$1,000.00
	Re-install	\$2,000.00	100%	\$2,000.00

Costs outside Original Agreement due to City of Charleston Stop-Work Order

Trench Box Rental - extended beyond one week required by original project scope	\$1,490.00
Steel Plate Rental - not required in original project scope	\$788.00
Replacement costs for 2 steel plates left in excavation at SCE&G direction	\$5,396.32

Notice is hereby given that in accordance with section 29-6-50 South Carolina Code, payment of sums due on this request for payment are to be made within twenty-one days of receipt. If full payment is not made by the twenty-first day, interest at the rate of one percent (1%) per month will begin and continue to be added to the unpaid balance until payment is received.

SUB-TOTAL	\$25,174.32
LESS RETAINAGE	
SUB-TOTAL	\$25,174.32
LESS PREVIOUSLY INVOICED	\$9,778.00
TOTAL	\$15,396.32

SCE&G/ 067

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

J. C. Nicholson, Jr., Circuit Court Judge

Appellate Case No. 2013-001623

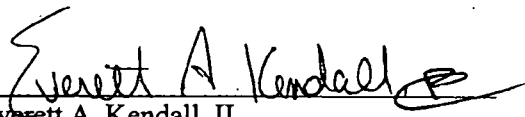
South Carolina Electric & Gas Co., ...Respondent,

v.

Anson Construction Co., ...Appellant.

CERTIFICATE OF COUNSEL

Pursuant to Rule 210(c) of the South Carolina Rules of Appellate Procedure, I certify that the Record on Appeal only contains matter that was presented to the lower court or tribunal. Additionally, pursuant to Rule 209(c), I certify that the Record does not contain matter which is irrelevant to the appeal. Furthermore, and with the exception of the Deposition Transcript of Deborah Fisher, which was not considered by the lower court or tribunal, I also certify that the Record contains all material proposed to be included by any of the other parties and not any other material.


Everett A. Kendall, II
J. Eric Cavanaugh
Sweeny, Wingate & Barrow, P.A.
1515 Lady Street
Columbia, South Carolina 29201
(803)256-2233
**Attorneys for Appellant Anson
Construction Company**