

20319

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY

Thomas L. Hughston, Jr., Circuit Court Judge

Appellate Case No. 2012-209046
Case No. 2009-CP-10-6185

Henry W. Frampton, IIIRespondent,

v.

South Carolina Department of Transportation.....Appellant.

RECORD ON APPEAL
Volume III
(Supplement)

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SC Court of Appeals

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Trial Exhibit, selected pages from construction contract, SCDOT and Cape Romain Contractors

.....711

RESIDENT ENGINEER

Name

Cape Romain Contractors, Inc.

Address

Wando, South Carolina

**SOUTH CAROLINA
DEPARTMENT
OF
TRANSPORTATION
COLUMBIA**

**PROPOSAL, CONTRACT AND BOND
FOR
HIGHWAY CONSTRUCTION**

BIDS RECEIVED
December 12, 2006

AWARD DATE
January 9, 2007

DESCRIPTION OF CONTRACT

BRIDGE AND APPROACH REPLACEMENT OVER JAMES ISLAND CREEK (CONSTRUCTION OF JOLLY ROAD)
CHARLESTON COUNTY

Type RC FLAT SLAB SPANS, WIDENING, GRADING, PAVING, UTILITY RELOC., SIGNALS, PAINT AND DRAINAGE

Length, 0.289 Miles - Roadway
210 Feet - Bridge

S. C. File Number 10-1469

Project Number BR10(C19)

Project Identification Number 027810B & 027840P

RECEIVED

JAN 9 2007

Charleston Bridge Construction

INSTRUCTIONS TO BIDDERS -- FEDERAL PROJECTS
DBE REQUIREMENTS

This project is partially funded with federal-aid highway funds, and is subject to the requirements for participation of Disadvantaged Business Enterprises (DBEs) set forth in 49 CFR Part 26. Therefore, there may be a goal set for participation of DBEs in this contract. If there is a DBE contract goal, it will be shown in Section 1 below. If there is a DBE contract goal, the Contractor is subject to the requirements set forth in the Supplemental Specifications in this contract entitled "Disadvantaged Business Enterprises (DBE) -- Federal Projects (hereinafter referred to as the "DBE Supplemental Specifications"). The Contractor must report DBE participation to the South Carolina Department of Transportation (SCDOT) quarterly by filing a Quarterly Report form (see Section 5 of the DBE Supplemental Specifications.)

Regardless of whether a contract goal is specified in Section 1, the Contractor shall not discriminate on the basis of race, color, national origin, or gender in the performance of this contract.

1. DBE CONTRACT GOAL

The Department's overall DBE program goal is 10.5%, and the Contractor is encouraged to use all available and reasonable means to assist the SCDOT in meeting this goal. The goal for DBE participation for this contract is shown below as the percentage of the total contract amount bid by the Contractor.

Disadvantaged Business Enterprises Contract Goal **4 %**

The Contractor shall exercise all necessary and reasonable steps to ensure that DBEs perform services or provide materials on this contract in an amount that meets or exceeds the DBE contract goal. Submitting the electronic bid proposal shall constitute an agreement by the bidder that it will meet or exceed the DBE contract goal or make good faith efforts to meet the goal. Failure to meet the contract goal or make good faith efforts to meet the contract goal, may result in the sanctions listed in Section 2 of the DBE Supplemental Specifications.

2. DBE COMMITMENT

Each bidder shall enter all the information regarding how it intends to meet the DBE goal in the electronic bid folder entitled "DBE List". The listing of DBEs shall constitute a commitment by the bidder to utilize the listed DBEs, subject to the replacement provisions in Section 3 of the DBE Supplemental Specifications. Failure to utilize the listed DBE subcontractor(s) may result in the sanctions listed in Section 2 of the DBE Supplemental Specifications.

In meeting the DBE contract goal, the bidder shall use only certified DBEs included in the "Directory of Certified Disadvantaged Business Enterprises" (hereinafter referred to as the "DBE Directory"), which is contained in the electronic file entitled "DBE BIN." The DBE BIN file for the letting can be found on and can be downloaded from the electronic bidding service web site, *Bid Express* (see Section 6 below).

Failure to provide all information required in the electronic bid may result in the contract being awarded to the next lowest responsible bidder.

The DBE BIN file listed for the letting must be downloaded for each particular letting because it is the data source for the DBEs listed in the DBE Directory designated for use in the letting. ALL DBE data such as Name, Company ID, and Address must be selected from drop-down lists provided by the DBE BIN file. If the DBE BIN file is not downloaded, no data for the drop-down lists will be available.

SPECIAL PROVISIONS

(77) SEEDING AND EROSION CONTROL MEASURES:

See attached Supplemental Specification date **August 15, 2001** on page **181**.

(78) ROLLED EROSION CONTROL PRODUCTS:

See attached Supplemental Specification dated **February 14, 2005** on page **183**.

(79) SEEDING:

SECTION 810.04

Section 810.04 is hereby amended as follows: The words "Annual Rye Grass" shall be substituted for the words "Rye Grain". The use of Italian Annual Rye Grass shall be prohibited on all projects.

SECTION 810.19

Section 810.19 is hereby amended as follows: The use of Annual Sudan Grass for temporary vegetation shall be prohibited statewide.

(80) SEDIMENT TUBES:

See attached Supplemental Specification dated **November 4, 2004** on page **191**.

(81) INLET STRUCTURE FILTERS:

See attached Supplemental Specification date **July 5, 2005** on page **195**.

(82) SILT FENCE:

See attached Supplemental Specification dated **May 5, 2005** on page **207**.

(83) MAINTENANCE OF SILT FENCE

DESCRIPTION:

Maintain the silt fence until its capacity has been reached or erosion activity in the area has stabilized.

MATERIALS:

See Supplemental Specification entitled "Silt Fence" dated May 5, 2005 for material requirements

CONSTRUCTION:

Inspect the silt fence immediately after each rainfall and at least daily during prolonged rainfall. Immediately correct any deficiencies.

Remove and dispose of accumulated silt when the depth reaches 1/3 the height of the silt fence.

Remove filter fabric and replace whenever it has deteriorated to such extent that it reduces the effectiveness of the silt fence. Ensure that silt fence is reconstructed in accordance with the specifications and Standard Drawings.

SPECIAL PROVISIONS

MEASUREMENT:

The quantity for Repair/Replace Silt Fence is measured to the nearest the linear foot (LF) of silt fence repaired.

The quantity for Removal of Silt Retained by Silt Fence is measured to the nearest the linear foot (LF) of silt fence cleaned of accumulated silt and debris.

PAYMENT:

Payment will include full compensation for all labor, materials, tools, equipment, and incidentals, necessary for maintaining silt fence herein described in a workmanlike and acceptable manner.

ITEM NUMBER	DESCRIPTION	UNIT
8153090	REPAIR/REPLACE SILT FENCE	LF
8154050	REMOVAL OF SILT RETAINED BY SILT FENCE	LF

(84) ASBESTOS REPORT:

An asbestos inspection has been performed on the existing bridge and the report is included on page 467. The results of the asbestos survey indicated that asbestos containing material was found to be present in the structure. A copy of the asbestos report and a notification of demolition or renovation forms must be submitted to the South Carolina Department of Health and Environmental Control at last ten working days prior to demolition of existing bridge. The Contractor is responsible for obtaining all required permits to proceed with the work. The Contractor is responsible for required containment and disposal of the asbestos. All costs associated with the asbestos permitting, removal and disposal shall be included in the lump sum price bid for "Removal and Disposal of Existing Bridge". The Contractor shall have no claim against the Department for any delays resulting from this work.

(85) SOUTH CAROLINA OFFICE OF COASTAL RESOURCE MANAGEMENT PERMIT:

South Carolina Office of Coastal Resource Management Permit No. OCRM-05-048-J

A copy of the permit is attached and made part of this Contract on page 511. The Contractor shall comply with all provisions and requirements of the permit.

Failure to adequately comply with the provisions of these permits or any other requirements from these permitting agencies will result in the stoppage of all contract operations until corrective actions have been taken.

Fines assessed by these agencies to the Department as the result of the Contractor's non-compliance or violation of said permit provisions will be paid by the Department and subsequently deducted from the Contractor's monthly pay estimate.

(86) SUBSECTION 104.01 - INTENT OF CONTRACT:

Subsection 104.01 is amended to include the following:

When bridge replacement or rehabilitation plans provide for the maintenance of traffic by using staged construction, constructing a temporary bridge, or constructing the replacement bridge on a relocated alignment, the Department will not consider any Contractor request that would require roadway closure and detouring of traffic.

SUPPLEMENTAL SPECIFICATIONS

May 5, 2005

SILT FENCE

DESCRIPTION

Silt fence is used as a temporary perimeter control around sites where there will be soil disturbance due to construction activities. Silt fence consists of geotextile fabric stretched across steel posts. The lower edge of the fence is vertically trenched into the ground and covered by compacted backfill.

MATERIALS

Silt fence is composed of geotextile filter fabric and steel posts. The steel posts must meet the following minimum physical requirements:

- Be composed of high strength steel with minimum yield strength of 50,000 psi
- Have a standard "T" section with a nominal face width of 1.38-inches and nominal "T" length of 1.48-inches.
- Weigh 1.25 pounds per foot ($\pm 8\%$).
- Have a soil stabilization plate with a minimum cross section area of 17-square inches attached to the steel posts.
- Be painted with a water based baked enamel paint.

The geotextile filter fabric must meet the following minimum physical requirements:

Physical Property	Test Method	Required Value
Tensile Strength	ASTM D 4632	90 lbs.
Elongation	ASTM D 4632	<50 % - fabric self supporting
Apparent Opening Size (AOS)	ASTM D 4751	0.60 mm (minimum)
Permittivity	ASTM D 4491	0.05 sec ⁻¹
Ultraviolet Stability (retained strength after 500 hrs of ultraviolet exposure)	ASTM D 4355	70%

Only fabric appearing on the Department's current approval sheet for Filter Fabric and meeting the requirement of the most current edition of the SCDOT Standard Specifications for Highway Construction shall be used. Filter fabric shall be composed of fibers consisting of long chain synthetic polymers composed of at least 85% by weight of polyolefins, polyesters, or polyamides. The fibers shall be formed into a network such that the filaments or yarns retain dimensional stability relative to each other. The filter fabric shall be free of any treatment or coating which might adversely alter its physical properties after installation. The fabric shall be free of defects or flaws that significantly affect its physical and/or filtering properties. The fabric shall have a minimum width of 36 inches.

Only steel posts may be used. Use steel posts with a minimum length of 5 feet, weighing 1.25 pounds per linear foot ($\pm 8\%$) with projections to aid in fastening the fabric. Except when heavy clay soils are present on site, steel posts will have a metal soil stabilization plate welded near the bottom such that when the post is driven to the proper depth, the plate will be below the ground level for added stability. The soil plates should have the following characteristics:

- Be composed of minimum 15-gauge steel
- Have a minimum cross section area of 17-square inches

SUPPLEMENTAL SPECIFICATIONS

Soil stabilization plates should be attached to the steel according to the following table.

Post Length (feet)	Top of Soil Stabilization Plate Relative to Bottom of Steel Post (Inches)
5.0 and 5.5	13.0
6.0, 6.5, and 7.0	15.25
8.0	17.5
10.0	19.5

In areas where conditions warrant, larger steel posts or reduced post spacing may be required to provide an adequate fence to handle the stress from sediment handling.

CONSTRUCTION REQUIREMENTS

INSTALLATION

Install silt fence as a temporary perimeter control around sites where there will be soil disturbance due to construction activities. The fence should be placed perpendicular to the direction of flow and should be located the proper distance from the toe of steep slopes to provide sediment storage and access for maintenance and cleanout.

Height of Fill (ft)	Fill Slope	Minimum Silt Fence Offset from Toe of Slope (ft)	Minimum Right of Way Offset From Toe of Slope (ft)	Check Length (ft)**
< 6	2:1	2	3	2
	4:1			
	6:1			
6-10	2:1	12*	13*	5
	4:1	3	4	3
	6:1			
> 10	2:1	12*	13*	5
	4:1	4	5	4
	6:1			

* These minimum offsets may be reduced when curb and gutter or some other feature reduces the flow of water down the slope. The smaller offsets of each group of height of fill cannot be reduced.

**Silt fence checks will have a maximum length of five (5) feet or until they tie back into the slope.

Install steel posts to a minimum depth of 2 feet. Posts should protrude 1 to 2 inches minimum above the fabric, but no more than 3 feet of the post should protrude above the ground. Space steel posts on 6 feet centers.

Attach fabric to the steel posts using heavy-duty plastic ties that are evenly spaced and placed in a manner to prevent sagging or tearing of the fabric. In all cases, ties should be affixed in no less than 4 places.

The fabric shall be a minimum of 24 inches above the ground. When necessary, the height of the fence above ground may be greater than 24 inches. In tidal areas, extra silt fence height may be required. The steel post height will be twice the exposed post height. Steel post spacing will remain the same and extra height fabric will be 4, 5, or 6 feet.

When placing fabric by hand, a trench approximately 6-inches wide and 6-inches deep should be excavated. Place 12-inches of geotextile fabric into the 6-inch deep trench, extending the remaining 6-inches towards the upslope side of the trench. Backfill the trench with soil or gravel and compact. 12 inches of fabric should be buried into the ground when pneumatically installing silt fence with a slicing method.

SUPPLEMENTAL SPECIFICATIONS

Geotextile fabric should be purchased in continuous rolls and cut to the length of the barrier to avoid joints. When joints are necessary, the fabric should be wrapped together at a support post with both ends fastened to the post, with a 6-inch minimum overlap.

Silt fence checks must be located every 100 feet maximum and at low points.

MAINTENANCE

Inspect silt fence every seven (7) days. Check for sediment buildup and fence integrity. Check where runoff has eroded a channel beneath the fence, or where the fence has sagged or collapsed by fence overtopping.

If the fence fabric tears, begins to decompose, or in any way becomes ineffective, replace the section of fence immediately.

Sediment accumulated along the fence must be removed when it reaches approximately 1/3 the height of the fence, especially if heavy rains are expected. Trapped sediment should be removed or stabilized on site.

Silt fence should be removed within 30 days after final stabilization is achieved or after temporary best management practices (BMPs) are no longer needed. Disturbed areas resulting from fence removal should be permanently stabilized.

ACCEPTANCE CRITERIA

The Resident Engineer will approve all silt fence installations.

METHOD OF MEASUREMENT:

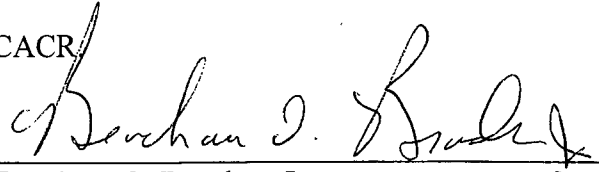
The installation of silt fence will be measured by the length of material used. Quantities are to be computed to the nearest LF (Linear Foot).

BASIS OF PAYMENT:

Silt fence will be paid for by the LF (linear foot) of material used. The installation must be accepted and certified by the Resident Engineer prior to payment. The price will include full compensation for all labor, materials, tools, equipment, and incidentals, necessary for constructing and maintaining silt fence, complete in place, as shown on the plans, herein described in a workmanlike and acceptable manner.

Bid Item Number	Description	Units
8153000	Silt Fence	LF

The undersigned counsel for Appellant certifies that Volume III (Supplement) to the Record on Appeal complies with Rule 211 SCACR.



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