216 Va. 262

CLERK
SUPREME COURT OF VIRGINIA
RECEIVED
JAN 24 1975
RICHMOND, VIRGINIA

IN THE

SUPREME COURT OF VIRGINIA

AT RICHMOND

Record No. 740820

TIDEWATER-RAYMOND-KIEWIT,
a Virginia joint venture,

Appellant,

v.

THE CITY OF HAMPTON, VIRGINIA,

Appellee.

Appendix

TABLE OF CONTENTS


| | PAGE |
|---|---|
| Application for Correction of Erroneous Assessment of Tax, filed December 26, 1973 | 1 |
| Stipulation, filed April 2, 1974 | 5 |
| (a) Joint Venture Agreement | 7 |
| (b) Tunnel Contract | 17 |
| City Exhibit B (Hampton City License Tax Code), filed April 2, 1974 | |
| (a) Section 22-3 | 23 |
| (b) Section 22-15 | 24 |
| (c) Section 22-16 | 25 |
| (d) Section 22-17 | 26 |
| (e) Section 22-54 | 27 |
| Excerpts from Reporter's Transcript of Proceedings of April 2, 1974 | 28 |
| Final Order, filed May 24, 1974 | 36 |
| Applicant's Notice of Appeal and Assignments of Error | 38 |

IN THE CIRCUIT COURT OF THE CITY OF HAMPTON

APPLICATION FOR CORRECTION OF
ERRONEOUS ASSESSMENT OF TAX

Filed on December 26, 1973

TO THE HONORABLE JUDGES OF THE CIRCUIT
COURT OF THE CITY OF HAMPTON, VIRGINIA:

The Applicant, Tidewater-Raymond-Kiewit, a joint venture, by counsel, respectfully represents:

1. This Court has jurisdiction of this action by virtue of § 58-1145 of the Code of Virginia, 1950, as amended.

2. Since 1971, Applicant has been engaged in the construction of the north island, the tunnel, and the completion of the south island of Hampton Roads second bridge-tunnel crossing (hereinafter the "Tunnel").

3. On October 19, 1971, Applicant was formed for the sole purpose of bidding on the construction of the Tunnel. On November 12, 1971, Applicant's bid was accepted by the Virginia Department of Highways (such award being hereinafter referred to as the "Tunnel Contract"). Work under the Tunnel Contract commenced in 1971 and, as set forth in the Contract, was expected to extend over at least 960 days (i.e., over two and a half years). Total compensation to be received by Applicant under the contract was $47,610,000.

4. Applicant did not make any other bids, enter into any other contracts, or perform any other construction work during 1971 or 1972. Its Joint Venture Agreement, attached as Exhibit A hereto, specifically precludes the undertaking or performance of any other contracts by the Joint Venture.

5. For 1971, Applicant was assessed a City license tax as a contractor pursuant to Section 22-54 of the Hampton City Code, in the amount of $71,450, covering the gross amount of the Tunnel Contract (being $50 plus 15 cents per $100 on $47,600,000), and this tax was paid on December 29, 1971, as reflected in the copy of the receipt attached as Exhibit B.

6. Even though Applicant did not accept or offer to accept any contracts in 1972, nor engaged in any business other than under the Contract in the City or elsewhere, it was again assessed a contractor's license tax by the City with respect to the Tunnel Contract for calendar year 1972. Applicant paid this second $71,450 assessment under protest on January 31, 1972 as per the copy of the receipt attached as Exhibit C.

7. As of January 1, 1973, Applicant was continuing its work as contractor under the Tunnel Contract, and no further assessment of the City contractor's license tax was made for such year.

8. The assessment of the contractor's license tax against Applicant for 1972 by the City was erroneous because Applicant did not accept or offer to accept any orders or contracts during 1972, and did not hold itself out to accept or offer to accept any contracts

during 1972, and therefore Applicant was not a "contractor" as defined in Section 22-54 of the Hampton City Code.

9. The City contractor's license tax assessed against Applicant for 1972 was not authorized by the laws of the Commonwealth of Virginia, and was in fact in conflict with the definition of a contractor in § 58-297 of the Virginia Code, as amended, and with the prohibition against double taxation set out in § 58-299 of such Code; and, therefore, such assessment was beyond the taxing power of the City.

10. The City contractor's license tax, as administered by the City with respect to Applicant in this case, is not uniform in its application in that it unfairly discriminates against Applicant as compared with other contractors already in business and continuing to do business, since such contractors never pay more than one license tax on any contract made or accepted.

11. The erroneous tax assessment was not caused by the wilful failure or refusal of Applicant to furnish the City of Hampton, Virginia, with any necessary information as required by law.

WHEREFORE, Applicant is aggrieved by the assessment of the City contractor's license tax for the year 1972 and prays that the Court take jurisdiction of this Application and, pursuant to § 58-1147 and § 58-1148 of the Code, correct the erroneous assessment and enter an order directing the proper City officials to

refund to Applicant the $71,450 paid to the City for the year 1972, plus the costs of this proceeding and interest as may be provided by law; and Applicant further prays for such other further and general relief as to the Court may seem just and proper.

* * *

IN THE CIRCUIT COURT OF THE CITY OF HAMPTON

STIPULATION

Filed April 2, 1974

Tidewater-Raymond-Kiewit, a Virginia joint venture, and the City of Hampton, Virginia, by counsel, for the purpose of simplifying the issues presented by the Application for Correction of Erroneous Assessment of Tax filed in this case and set for hearing on April 2, 1974, hereby stipulate and agree to the following facts without further proof or certification:

(1) That this Court has jurisdiction of this action by virtue of Section 58-1145 of the Code of Virginia, 1950, as amended (the Code).

(2) That on October 19, 1971, Applicant was formed as per the Joint Venture Agreement, a true copy of which is attached hereto as Exhibit A and hereby made a part hereof.

(3) That Applicant is a Virginia joint venture consisting of Tidewater Construction Corporation, a Virginia corporation, Peter Kiewit Sons' Co., a Nebraska corporation, and Raymond International, Inc., a New Jersey corporation.

(4) That on November 12, 1971, Applicant's bid of $47,610,000 was accepted by the Virginia Department of Highways, and Applicant began work on the Tunnel Contract in 1971. A true copy of the

contract award is attached hereto as Exhibit B and made a part hereof.

(5) That for 1971, Applicant was assessed a City license tax as a contractor pursuant to Section 22-54 of the Hampton City Code (a true copy of which is attached hereto as Exhibit C and hereby made a part hereof), in the amount of $71,450 covering the gross amount of the Tunnel Contract (being $50 on the first $10,000 plus 15 cents per $100 on the remaining $47,600,000), and this tax was timely paid by Applicant.

(6) That for calendar year 1972 Applicant was again assessed a contractor's license tax in the amount of $71,450 by the City with respect to the Tunnel Contract based on the full amount of the contract award (i.e., $47,610,000), and this tax was timely paid by Applicant. It is the validity of this assessment that is a primary issue in this case.

(7) That Applicant is continuing work under the Tunnel Contract which is expected to be completed during the summer of 1974, but it was not assessed a contractor's license tax for either 1973 or 1974.

(8) That Exhibits A, B, and C referred to above have been agreed to by counsel as admissible exhibits to be filed in this case.

* * *

EXHIBIT A

# JOINT VENTURE AGREEMENT

THIS AGREEMENT, made and entered into this 19th day of October 1971, by and between TIDEWATER CONSTRUCTION CORPORATION, a Virginia Corporation, PETER KIEWIT SONS' CO., A Nebraska Corporation, and RAYMOND INTERNATIONAL, INC., A New Jersey Corporation.

WITNESSETH:

WHEREAS, The Virginia Department of Highways has advertised for bids for the construction of Contract T-2# for the construction of the tunnel, North Island and completion of the South Island of the Hampton Roads crossing, on which bids are to be submitted on October 20, 1971, and

WHEREAS, the parties hereto have agreed to form a joint venture to submit a joint bid for and, if possible, to obtain a contract with the Virginia Department of Highways for the performance of such work; and

WHEREAS, the parties desire to enter into a joint venture agreement in order to fix and define between themselves their respective responsibilities, interests and liabilities in connection with the submission of such bid and the performance of such construction contract in the event that it is awarded to them.

NOW, THEREFORE, in consideration of the mutual promises and agreements herein set forth, the parties hereby agree to constitute themselves as joint venturers for the purpose of submitting a joint bid to the Virginia Department of Highways for the performance of the construction contract hereinbefore described, and for the further purpose of entering into, performing and completing such construction contract in the event that it is awarded to them on such joint bid, and the parties hereby agree that such bid shall be filed and

and such construction contract, if awarded to them, shall be performed and completed by them as a joint venture subject to the following terms and conditions:

(1) The bid shall be filed and the construction contract, if awarded to the parties hereto, shall be entered into in the name of the parties as joint venturers, and the obligations of the parties under such bid and construction contract shall be joint and several. Such construction contract, if awarded to the parties hereto on their joint bid, shall be carried out and performed by them in the name of "Tidewater-Raymond-Kiewit" (TRK), A Joint Venture," and all money, equipment, materials, supplies and other property acquired by the joint venture shall be held jointly in that name.

(2) Except as otherwise provided in paragraphs (3) and (11) hereof, the interests of the parties in any profits and their respective shares in any losses and liabilities that may result from the filing of such bid and/or the performance of such construction contract, and their interests in all property and equipment acquired and all money received in connection with the performance of said construction contract shall be as follows:

| | |
|---|---|
| Tidewater Construction Corporation (Sponsoring Party) | 51% |
| Peter Kiewit Sons' Co. | 25% |
| Raymond International, Inc. | 24% |

(a) It is the intention of this agreement, and the parties hereby agree that in the event of any losses arising out of or resulting from the submission of said bid and/or the performance of said construction contract, each party hereto shall assume and pay its full proportionate share of such losses as such proportions are fixed in paragraph (2) hereof. If for any reason, any

of the parties her sustains any liabilities or is quired to pay any losses arising out of or directly connected with the submission of such bid and/or the performance of the construction contract, or the execution of any surety bonds or indemnity agreements in connection therewith, which are in excess of its proportionate share in the losses of the joint venture, as such proportions are fixed in paragraph (2) hereof, the other parties shall reimburse such party in such an amount or amounts as the losses paid and liabilities assumed by such party exceed its proportionate share in the total losses of the joint venture, so that such member of the joint venture will then have paid its full proportionate share of such losses; and to that end each of the parties hereto agrees to indemnify the other party or parties against, and to hold them and each of them harmless from any and all losses of said joint venture that are in excess of such party's proportionate share therein as fixed in paragraph (2) hereof. Provided, however, that the provisions of this subparagraph shall be limited to losses that are directly connected with, or arise out of the submission of such bid and/or performance of said construction contract and the execution of any bonds or indemnity agreements in connection therewith, and shall not relate to or include any incidental, indirect or consequential losses that may be sustained or suffered by any of the parties hereto.

(3) The parties, through the Managing Committee established as hereinafter provided, shall from time to time determine the amount of working capital required to carry out and perform said construction contract, and each party shall contribute its proportionate share, as fixed in paragraph (2) hereof, of such working capital whenever required to do so. Such contributions shall be made within ten days after request therefor.

If, at any time, any of the parties shall fail to contribute its share of working capital, the party or parties not in default shall have the right

(a) to exclude the party or parties from further participation in the Joint Venture, or

(b) require that the percentage of profits be changed so that the parties hereto shall share in the profits in the proportions which the actual contributions of each bears to the total working capital, provided, however, that the parties hereto shall continue to share in losses in proportion to the percentages set forth in paragraph 2.

In addition, if any party fails to contribute their share of capital when called for that party shall, for the time he is in default as to contributing his share, lose his vote on the Managing Committee. The remaining parties agree to increase their contributions in the proportion that their interests bear to the total interest (less that of the non-contributing party).

In the event that any party to the Joint Venture shall have failed to furnish his share of the working capital when requested, he shall be deemed to have waived his rights to any monies from the Joint Venture until the termination of the project and all monies held by the Joint Venture shall be used as follows:

First, to complete the project and payment of its obligations to third parties; Second, upon completion of the project, the repayment

of advances of the parties who have not failed to advance capital as required, together with interest at the prime rate plus 2% of all monies advanced after the failure of a party to make an advance; Third, the repayment of the advances of the defaulted party; Fourth, a distribution of any remaining funds in accordance with the other terms of this agreement.

(4) All contributions to the joint working fund made by the parties hereto and all other funds received by the joint venture in connection with the performance of said construction contract, shall be deposited in such bank or banks as the Sponsoring Party may designate. Withdrawals of such funds may be made in such form and by such persons as the Sponsoring Party may from time to time designate. All persons authorized to draw against the funds of the Joint Venture shall be bonded in such company or companies, and in such amounts as the Sponsoring Party shall determine.

(5) The parties shall from time to time execute such applications for bonds, indemnity agreements and other documents and papers as may be necessary in connection with the submission of said joint bid for, and the performance of, such construction contract. Provided, however, that the liability of each of the parties hereto under any agreements to indemnify a surety company or surety companies shall be limited to a percentage of the total liability assumed by such parties hereto under such agreements equal to the percentage of participation of each of said parties in the Joint Venture, as set out in paragraph (2) hereof.

(6) Separate books of account shall be kept of the transactions of the joint venture. Such books shall be available for inspection by any of the parties at any reasonable time. Periodic audits shall be made of such books at such times (at least yearly) and by such persons as the sponsoring party may designate, and copies of the audit reports shall be furnished to each party. Upon completion of the construction contract, a final audit shall be made and copies of such audit report shall be furnished to each of the parties.

(7) For the purpose of utilizing the "know how," the engineering and the planning talents of the 3 organizations, to determine general policy questions and to handle other matters requiring joint attention of the parties, there is hereby established a "Managing Committee" whose membership shall be as follows:

Tidewater Construction Corporation - _____, Chairm

Peter Kiewit Sons' Co. - _____

Raymond International, Inc. - _____

Each party hereto may, at any time, substitute an alternate in place of its above-named representative. In the administration of this venture each of the corporate members of the Managing Committee shall be accorded a vote that is proportional to its participation as set forth in Paragraph 2 hereof.

The Managing Committee shall have the following powers:

(a) To determine the time and place of holding its meetings and to establish procedures for conducting its affairs.

(b) To determine and to act upon the various matters, expressly or impliedly contained in other paragraphs of this agreement, which require decision by the Managing Committee.

(c) To determine and to act upon all other matters of joint interest to, or requiring joint action by, the parties hereto.

(d) To determine the rental rate for equipment owned by the parties hereto and made available for use on this project. Any equipment owned by others will be invoiced to the joint venture at actual rental costs.

Except to the extent hereinafter stated, the salaries and expenses of each member of the Committee shall be borne by the party hereto whom the member has been designated to represent, and shall not be an expense to the joint venture. The joint venture shall, however, pay or reimburse the travel expenses actually expended by Committee members and/or alternates for attendance at meetings regularly scheduled or called by the Managing Committee.

(8) Authority to act for and bind the parties to this joint venture in connection with all or any part of the performance of said construction contract, may from time to time be delegated by the Managing Committee to any of the parties and to any individual or individuals.

(a) Tidewater Construction Corporation is hereby designated as the Sponsoring Party, subject, however, to the superior authority and control of the Managing Committee. As such Sponsoring Party, said Tidewater Construction Corporation shall have direct charge over and supervision of all matters necessary to and connected with the performance of said contract, except as otherwise provided herein.

(b) Any authority delegated by the Managing Committee to any of the parties, or to any individual or individuals, including the delegation herein of the Sponsoring Party, may be revoked at any time by the Managing Committee.

(c) The Sponsoring Party shall appoint a Project Manager who shall report to the Sponsoring Party and who may be removed and replaced at the

discretion of the M ging Committee.

(9) No party hereto nor any other person shall have authority to act for or bind the other parties by any act or agreement except in connection with the submission of the bid and/or the performance of said construction contract, and then only in strict accordance with the terms and conditions of this agreement. All transactions between the parties, or their agents, and the joint venture shall be agreed upon by the Managing Committee.

(10) The interests and rights of each party in said contract and as a member of this joint venture shall not be transferable or assignable without written consent of the other parties, except that either party may assign its share in any money to be received by it from the joint venture for the purpose of obtaining a loan or loans from any bank or other lending agency.

(11) If any of the parties hereto shall dissolve, become bankrupt, or shall file a voluntary petition in bankruptcy, this joint venture shall terminate and the remaining parties shall do all things necessary to wind up its affairs, including the completion of said construction contract, the collection of all monies and property due to the joint venture, the payment of all debts and liabilities of the joint venture, and the distribution of its assets. Such dissolved or bankrupt party, or its legal representatives, shall have no further voice in the performance of said construction contract or in the management of the joint venture. The participation of such dissolved or bankrupt party, or its representatives, in the profits of the joint venture shall be limited to that porportion which the contributions of such party to the working fund of the joint venture bear to the total contributions to such working fund made by all of the parties, but such dissolved or bankrupt party and its representatives shall be charged with and shall be liable for its full share, as fixed in

paragraph (2) hereof, of any and all losses that may be suffered by the joint venture under said construction contract, or any additions or supplements thereto or modifications thereof.

(12) No payment shall be made by the joint venture to any of the parties hereto in reimbursement of expenses incurred by such party or parties in connection with the preparation of the bid for, and securing the award of, the construction contract except as mutually agreed to by all the parties.

(13) The Managing Committee may determine, from time to time during the life of the contract that some of the joint assets held and acquired by the Joint Venture may be divided among or paid to the parties, as the case may be, in accordance with their respective interests and shares in same, as hereinbefore provided. It is, however, understood and agreed that no distribution of cash in excess of the parties' investment shall be made during the life of the contract. In the event any of the parties desire funds in excess of its original investment, it may request a loan from the Joint Venture to be repaid no later than upon completion of the contract work. The Management Committee shall be empowered to make such loans as it deems proper at market interest rates and as determined by such Committee. Upon the consummation and completion of the construction contract the remaining assets of the joint venture and the profits or losses accrued in the performance of the construction contract shall be divided in like fashion. When final disposition and distribution of all assets and/or liabilities has been made, this agreement shall terminate. This agreement shall also terminate in the event that the construction contract described herein is not awarded to the parties hereto.

(14) It is the intent of the parties hereto that the joint bid contemplated and provided for herein shall be satisfactory and acceptable to all of the parties.

If the parties are una to agree upon a joint bid, th joint venture shall terminate.

(15) This agreement is entered into for the purpose of submitting a joint bid for the construction contract described herein and performing such construction contract and any additions thereto and modifications thereof in and for the economically feasible disposition of all equipment, property or other assets owned by the joint venture, and in the event such contract is awarded to the parties hereto on such joint bid and for no other purpose. It shall not be interpreted or construed so as to create any permanent partnership or permanent joint venture among the parties and shall not limit any of the parties in their right to carry on their individual businesses for their own benefit.

(16) In the event of any dispute whatsoever between the parties, they shall exhaust every effort to settle or dispose of the same. Any controversy or claim arising out of or relative to this agreement or the breach thereof, not adjusted or disposed of by mutual agreement shall be settled by arbitration under the rules of the American Arbitration Association.

(17) This contract shall be governed and construed pursuant to the laws of the State of Virginia.

IN WITNESS WHEREOF, the parties have caused this Joint Venture Agreement to be executed by their duly authorized officers or agents on the date first above written.

TIDEWATER CONSTRUCTION CORPORATION

ATTEST:

Secretary

President

ATTEST:

PETER KIEWIT SONS' CO.

Asst. Secretary

President

ATTEST:

RAYMOND INTERNATIONAL, INC.

Secretary

EXEC. Vice President

EXHIBIT B

Form C-18
Rev. 3-30-66

# CONTRACT

***This Contract,*** Made this 12th day of November, A.D., 1971, between the Commonwealth of Virginia by the Commissioner of the Department of Highways, hereinafter called the party of the first part, and

Tidewater Construction Corp. Peter Kiewit Sons' Company Raymond International, Inc.

P. O. Box 57 AND 1000 Kiewit Plaza AND 2 Pennsylvania Plaza

Norfolk, Va. 23501 Omaha, Neb. 68131 New York, N. Y. 10001

_____, or his, its or their successors, executors, administrators and assigns, hereinafter called the party of the second part;

***Witnesseth:*** That the said party of the second part agrees with the said party of the first part, for the consideration herein mentioned, and at his, its or their own proper cost and expense, to do all the work and furnish all the materials, equipment, teams and labor necessary to carry out this agreement in the manner and to the full extent as set forth in the specifications, special provisions, proposal, and plans, and under security as set forth in the attached contract bond, which are hereby adopted and made part of this agreement as completely as if incorporated herein, and to the satisfaction of the Department of Highways, who shall have at all times full opportunity to inspect the materials to be furnished and the work to be done under this agreement.

It is agreed that the work to be done under this contract is to construct or otherwise improve the road and/or bridge as shown by the standard specifications of the Department of Highways, referred to in the proposal, together with amendments thereto as shown by all errata sheets, and plans on file at the Richmond Office of the Department of Highways, together with special provisions and proposals, for North Island, Tunnel & Completion of South Island

Located ~~[illegible]~~ Hampton Roads, Second Bridge-Tunnel Crossing

and

In consideration of the foregoing premises, the party of the first part agrees to pay the party of the second part for all items of work performed and materials furnished at the unit prices and under the conditions set forth in the annexed proposal.

***In Witness Whereof,*** The party of the first part has hereunto subscribed by the Department of Highways, and the party of the second part has affixed his, its, or their name or names.

COMMONWEALTH OF VIRGINIA
Department of Highways

By _____
Deputy *Commissioner.*

***Contractor.***

TIDEWATER CONSTRUCTION CORP.

BY: _____
S. E. Liles, Jr. President.

PETER KIEWIT SONS' COMPANY

BY: _____ R. L. Covio Vice-President

RAYMOND INTERNATIONAL, INC.

BY: _____

Rev. 9/25/70 JOB DESIGNATION 121-71 PROJECT NO. 0064-114-101,B602 CONTR.T-2 Sheet 1 of 3

PROPOSAL TO THE VIRGINIA DEPARTMENT OF HIGHWAYS, SUBMITTED 10:AM, DST Wed., Oct. 20 19 71 FHWA NO. I-64-3(122)242 CONTR.2

FOR CONSTRUCTING OR IMPROVING North Island, Tunnel & Completion of South Island ROUTE NO. 64

Hampton Roads, Second Bridge-Tunnel Crossing City of Hampton

I/WE DECLARE THAT NO OTHER PERSON, FIRM OR CORPORATION IS INTERESTED IN THIS PROPOSAL; THAT I/WE HAVE CAREFULLY EXAMINED THE PLANS, CURRENT ROAD AND BRIDGE SPECIFICATIONS, FORM OF CONTRACT AND ALL OTHER DOCUMENTS PERTAINING THERETO AND THOROUGHLY UNDERSTAND THE CONTENTS THEREOF; THAT I/WE UNDERSTAND THAT THE PLANS AND CURRENT ROAD AND BRIDGE SPECIFICATIONS, AS DEFINED IN THE CURRENT ROAD AND BRIDGE SPECIFICATIONS, ARE A PART OF THIS PROPOSAL; THAT ALL THE QUANTITIES SHOWN HEREWITH ARE APPROXIMATE ONLY; THAT I/WE HAVE EXAMINED THE LOCATION OF THE PROPOSED WORK AND SOURCE OF SUPPLY OF MATERIALS; AND THAT I/WE AGREE TO BIND MYSELF/OURSELVES UPON AWARD OF THE STATE HIGHWAY COMMISSION UNDER THIS PROPOSAL TO A CONTRACT WITH NECESSARY SURETY BOND, TO START WORK ON THE DATE SPECIFIED IN THE NOTICE TO PROCEED, AND TO COMPLETE ALL WORK IN ACCORDANCE WITH THE PLANS AND CURRENT ROAD AND BRIDGE SPECIFICATIONS WITHIN THE TIME LIMIT SET FORTH IN THE CONTRACT WHICH IS: 960 CALENDAR DAYS.

NO MAJOR ITEMS

| ITEM NO. | SEC. | ITEMS | QUANTITIES | UNIT | UNIT BID PRICES IN WRITTEN WORDS | FIGURES DOLLARS | FIGURES CENTS | DOLLARS | CENTS |
|---|---|---|---|---|---|---|---|---|---|
| 1 | 515 | Mobilization | | L.S. | Two Million Dollars | - - - | - - | 2,000,000 | 00 |
| 2 | 801 | Dredging (Fixed Quantity) | 1,750,000 | C.Y. | One Dollar Eighty-five Cents | 1 | 85 | 3,237,500 | 00 |
| 3 | 802 | Rough Grading - South Island | | L.S. | Sixty Thousand Dollars | - - - | - - | 60,000 | 00 |
| 4 | 801 | Foundation Course (Fixed Quantity) | 24,500 | C.Y. | Fifty-eight Dollars | 58 | 00 | 1,421,000 | 00 |
| 5 | 801 | Special Fill (Fixed Quantity) | 185,000 | C.Y. | Fifteen Dollars | 15 | 00 | 2,775,000 | 00 |
| 6 | 801 | Ordinary Backfill (Fixed Quantity) | 873,000 | C.Y. | One Dollar Ten Cents | 1 | 10 | 960,300 | 00 |
| 7 | 803 | Quarry Tailings | 87,600 | Ton | Fifteen Dollars | 15 | 00 | 1,314,000 | 00 |
| 8 | 803 | Light Riprap | 14,300 | Ton | Eleven Dollars | 11 | 00 | 157,300 | 00 |
| 9 | 803 | Intermediate Riprap | 14,000 | Ton | Eighteen Dollars | 18 | 00 | 252,000 | 00 |
| 10 | 803 | Heavy Riprap | 1,200 | Ton | Nineteen Dollars | 19 | 00 | 22,800 | 00 |
| 11 | 803 | Filter Course | 73,000 | Ton | Nine Dollars | 9 | 00 | 657,000 | 00 |
| 12 | 803 | Chinking Stone | 12,100 | Ton | Fifteen Dollars | 15 | 00 | 181,500 | 00 |
| 13 | 803 | Armor Course Dike | 27,000 | Ton | Sixteen Dollars | 16 | 00 | 432,000 | 00 |
| | | | | | | | | | |
| | | | | | | | | | |
| | | | | | | | | | |

Rev. 9/25/70

ROUTE NO. 64 (121-71) FHWA NO. I-64-3(122)242 CONTR.2 SHEET 2 OF 3

CITY/COUNTY City of Hampton PROJECT NO. 0064-114-101,B602 CONTR.T-2

| ITEM NO. | SEC. | ITEMS | QUANTITIES | UNIT | UNIT BID PRICES IN WRITTEN WORDS | FIGURES DOLLARS | FIGURES CENTS | DOLLARS | CENTS |
|---|---|---|---|---|---|---|---|---|---|
| 14 | 801 | Hydraulic Fill(Fixed Quantity) | 175,000 | C.Y. | Eighty Cents | | 80 | 140,000 | 00 |
| 15 | 806 | Concrete Sea Wall | | L.S. | Sixty Thousand Dollars | - - - - | - - | 60,000 | 00 |
| 16 | 815 | Storm Drainage | | L.S. | Seventy-five Thousand Dollars | - - - - | - - | 75,000 | 00 |
| 17 | 804 | Compaction - North Island (Fixed Quantity) | 65,000 | C.Y. | Three Dollars Forty Cents | 3 | 40 | 221,000 | 00 |
| 18 | 805 | Structural Steel (Fixed Quantity) | 30,450,000 | Lb. | Thirty-eight Cents | | 38 | 11,571,000 | 00 |
| 19 | 806 | Structural Concrete Class "S" (Fixed Quantity) | 109,000 | C.Y. | One Hundred Five Dollars | 105 | 00 | 11,445,000 | 00 |
| 20 | 806 | Structural Concrete Class "S1" (Fixed Quantity) | 2,750 | C.Y. | One Hundred Thirty-five Dollars | 135 | 00 | 371,250 | 00 |
| 21 | 806 | Tremie Concrete Class "E" (Fixed Quantity) | 49,000 | C.Y. | Fifty Dollars | 50 | 00 | 2,450,000 | 00 |
| 22 | 806 | Tremie Concrete for Joints Class "E1" | 1,080 | C.Y. | One Hundred Seventy-five Dollars | 175 | 00 | 189,000 | 00 |
| 23 | | Deleted | | | | | | | |
| 24 | 806 | Pressure Grout - Annular Ring | | L.S. | Fifty Thousand Dollars | - - - - | - - | 50,000 | 00 |
| 25 | 807 | Reinforcing Steel (Fixed Quantity) | 4,120,000 | Lb. | Thirty Cents | | 30 | 1,236,000 | 00 |
| 26 | 809 | Rubber Joint Gaskets | | L.S. | Four Hundred Seventy-five Thousand Dollars | - - - - | - - | 475,000 | 00 |
| 27 | 810 | Launching, Towing, Sinking, Joining & Dewatering Tubes | | L.S. | Three Million Two Hundred Forty Thousand One Hundred Fifty Dollars | - - - - | - - | 3,240,150 | 00 |
| 28 | 808 | Miscellaneous Metals | | L.S. | Four Hundred Sixty Thousand Dollars | - - - - | - - | 460,000 | 00 |
| 29 | | Deleted | | | | | | | |
| 30 | 808 | Chesapeake & Potomac Telephone Co. Conduit Supports | | L.S. | Forty-eight Thousand Dollars | - - - - | - - | 48,000 | 00 |

PROJECT NO. (121-(1)) FHWA NO. I-64-3(122)242 CONTR.2 SHEET 3 OF 3

CITY/COUNTY City of Hampton PROJECT NO. 0064-114-101,B602 CONTR.T-2

| ITEM NO. | SEC. | ITEMS | QUANTITIES | UNIT | UNIT BID PRICES IN WRITTEN WORDS | FIGURES DOLLARS | FIGURES CENTS | DOLLARS | CENTS |
|---|---|---|---|---|---|---|---|---|---|
| 31 | 814 | Survey Tower Type A | 1 | Ea. | Twenty-one Thousand Dollars | 21,000 | 00 | 21,000 | 00 |
| 32 | 814 | Survey Tower Type B | 2 | Ea. | Seven Thousand Five Hundred Dollars | 7,500 | 00 | 15,000 | 00 |
| 33 | 814 | Survey Tower Type C | 1 | Ea. | Eleven Thousand Dollars | 11,000 | 00 | 11,000 | 00 |
| 34 | 811 | Electrical Work | | L.S. | Nine Hundred Thousand Dollars | - - - - | - - | 900,000 | 00 |
| 35 | 812 | Mechanical Work | | L.S. | Eight Hundred Sixty Thousand Dollars | - - - - | - - | 860,000 | 00 |
| 36 | 516 | Field Office, Type I | 1 | Ea. | Sixteen Thousand Dollars | 16,000 | 00 | 16,000 | 00 |
| 37 | 516 | Field Office, Type II | 2 | Ea. | Thirteen Thousand Dollars | 13,000 | 00 | 26,000 | 00 |
| 38 | Attd | Trainees (30) | 30,000 | Hr. | Eighty Cents | | 80 | 24,000 | 00 |
| 39 | 814 | Removal of Survey Tower Ty.A | 1 | Ea. | Two Thousand Dollars | 2,000 | 00 | 2,000 | 00 |
| 40 | 814 | Removal of Survey Tower Ty.B | 2 | Ea. | One Thousand Dollars | 1,000 | 00 | 2,000 | 00 |
| 41 | 814 | Removal of Survey Tower Ty.C | 1 | Ea. | One Thousand Two Hundred Dollars | 1,200 | 00 | 1,200 | 00 |
| 42 | 517 | Field Laboratory | | L.S. | Fifteen Thousand Dollars | - - - - | - - | 15,000 | 00 |
| 43 | 813 | Electrical Feeder - 13.2 KV | | L.S. | One Hundred Thousand Dollars | - - - - | - - | 100,000 | 00 |
| 44 | 816 | South Island Electrical Power Feeder - 13.2KV | | L.S. | One Hundred Fifteen Thousand Dollars | - - - - | - - | 115,000 | 00 |
| | | | | | | | TOTAL | 47,610,000 | 00 |

*DENOTES SPECIALTY ITEM **DENOTES MAJOR ITEMS

ATTACHED IS CHECK OR BOND CONFORMING TO THE REQUIREMENTS OF THE CURRENT ROAD AND BRIDGE SPECIFICATIONS, IT BEING UNDERSTOOD THAT SUCH CHECK OR BOND IS TO BE FORFEITED AS LIQUIDATED DAMAGES IF, UPON ACCEPTANCE OF THIS PROPOSAL, I/WE FAIL TO EXECUTE THE CONTRACT AND FURNISH BOND AS PROVIDED IN THE CURRENT ROAD AND BRIDGE SPECIFICATIONS.

TIDEWATER CONSTRUCTION CORP.,P.O.BOX 57,NORFOLK,VA. 23501 AND
(NAME OF INDIVIDUAL(S), FIRM(S) OR CORPORATION AND ADDRESS)
PETER KIEWIT SONS' COMPANY,1000 KIEWIT PLAZA,OMAHA,NEB. 68131 AND
(NAME OF INDIVIDUAL(S), FIRM(S) OR CORPORATION AND ADDRESS)
RAYMOND INTERNATIONAL,INC.,2 PENNSYLVANIA PLAZA,NEW YORK,N.Y. 10001
(NAME OF INDIVIDUAL(S), FIRM(S) OR CORPORATION AND ADDRESS)

BY: S.E. Liles, Jr., Pres.
7500 Ocean Ave.
Virg. Beach Va.
(NAME OF OFFICER) 517 South 72nd Street, Omaha, Nebraska.
BY: R. L. Covis Vice-President
(NAME OF OFFICER) 2 Penn Plaza, Manhattan, New York.
BY: Senior Vice President

Form C-11 (continued)

IN WITNESS WHEREOF, the above-bounden rties have executed this instrument under their several seals on the date indicated above, the name and corporate seal of each porate party being hereto affixed and th presents duly signed by its undersigned representative, pursuant to authority of its governing body.

| | |
|---|---|
| (Individual Principal) (SEAL) | (Individual Principal) (SEAL) |
| (Title) | (Title) |
| TIDEWATER CONSTRUCTION CORP. (Corporate Principal) | PETER KIEWIT SONS' COMPANY (Corporate Principal) |
| S. E. Liles, Jr. (AFFIX CORPORATE SEAL) | R. L. Coyne (AFFIX CORPORATE SEAL) |
| President (Title) | Vice-President (Title) |
| RAYMOND INTERNATIONAL, INC. (Corporate Principal) | (Corporate Principal) |
| (AFFIX CORPORATE SEAL) | (AFFIX CORPORATE SEAL) |
| (Title) | (Title) |
| Countersigned For Virginia: FEDERAL INSURANCE COMPANY (Corporate Surety) | FEDERAL INSURANCE COMPANY (Corporate Surety) |
| By: (Resident Agent) | By: (AFFIX CORPORATE SEAL) |
| William L. Holbert, Virginia Resident Agent Norfolk, Virginia (Address) | Richard S. Skewes, Attorney-in-Fact (Title) |
| Countersigned For Virginia: INSURANCE COMPANY OF NORTH AMERICA (Corporate Surety) | INSURANCE COMPANY OF NORTH AMERICA (Corporate Surety) |
| By: (Resident Agent) | By: (AFFIX CORPORATE SEAL) |
| William L. Holbert, Virginia Resident Agent Norfolk, Virginia (Address) | Walter La Forge, Attorney-in-Fact (Title) |
| Countersigned For Virginia: THE AETNA CASUALTY AND SURETY COMPANY (Corporate Surety) | THE AETNA CASUALTY AND SURETY COMPANY (Corporate Surety) |
| By: (Resident Agent) | By: Richard L. Larson, (AFFIX CORPORATE SEAL) |
| S.E. Waddill, Jr., Virginia Resident Agent (Address) Richmond, Virginia | Attorney-in-Fact (Title) |
| Countersigned For Virginia: (Corporate Surety) | (Corporate Surety) |
| By: (Resident Agent) | By: (AFFIX CORPORATE SEAL) |
| (Address) | (Title) |

Joint Venture Form

Date: NOV 12 1971

Route: 64

Project: 0064-114-101,B602 CONTR.T-2

Virginia Department of Highways
1221 East Broad Street
Richmond 19, Virginia

Attention: Mr. Thornhill Snoddy,
Highway Contract Engineer

Gentlemen:

This is to advise that we, the following Contractors, have entered into a joint venture and executed a contract for the construction of the above project.

It is mutually understood and agreed that all checks issued by Virginia Department of Highways in payment for monthly or final estimates covering work done on the above project, ~~to made payable to Contractors as shown in the contract document and mailed to~~ be made payable to --

TIDEWATER - RAYMOND - KIEWIT (A Joint Venture)

at the following address: P. O. Box 57

Norfolk, Virginia 23501

TIDEWATER CONSTRUCTION CORP.

Signed: S. E. Lilès, Jr./President.

PETER KIEWIT SONS' COMPANY

Signed: R. L. Coyne Vice-President

RAYMOND INTERNATIONAL INC.

Signed: Senior Vice President

NOTE:
THIS FORM MUST BE RETURNED WITH CONTRACT DOCUMENTS, OTHERWISE CONTRACT WILL NOT BE CONSIDERED PROPERLY EXECUTED.

Section 22-3. Construction and interpretation--Application and adoption of state law, etc., as to assessment, etc., of taxes.

As to all questions in regard to the duty and conduct of officers of the city in collecting and enforcing the taxes imposed in this chapter and in regard to questions of construction, and for definitions of terms used in this chapter and the rules and regulations applicable to putting the same in operation, reference is hereby made to the laws of the state for the assessment, levy, and the collection of taxes for the current year, or to so much thereof as is applicable to this chapter and is not inconsistent with it and the general ordinances of the city. For the conduct and guidance of the officers of the city and other parties affected by this chapter and for fixing their powers, rights, duties and obligations, the provisions of such laws, so far as applicable are hereby adopted, without being specifically herein quoted. (Ord. No. 8-, § 2.)

Sec. 22-15. Estimation of basis for tax to be paid by beginner.

For the purpose of ascertaining the tax to be paid by any person beginning a new business, employment or profession and whose license tax shall be based on gross receipts, gross sales, gross purchases, gross commissions, gross contracts or orders, the applicant for the license shall estimate the basis for measuring the license tax between the date of issuance of the license and the thirty-first of December following. (Ord. No. 80, § 11.)

Section 22-16. Estimation of basis for tax when licensee was not previously in business a full year.

The license tax of any person who was licensed at a definite place of business for only a part of the next preceding license year shall be computed for the then current license year on the basis of an estimate of the amount of gross receipts, gross sales or gross purchases which the licensee will make throughout the then current license year; provided, however, that any contractor, commission merchant or wholesale merchandise broker shall be licensed on the basis of gross contracts or orders or gross commissions of the next preceding license year or any parts thereof. (Ord. No. 80, § 12.)

Sec. 22-17. Underestimates and overestimates under sections 22-15 and 22-16.

Every underestimate under section 22-15 or 22-16 shall be subject to correction by the commissioner of the revenue, whose duty it shall be to assess such licensee with such additional taxes as may be found to be due after the close of the license year on the basis of gross receipts, gross sales, gross purchases, gross commissions, or gross contracts or orders. In case of an overestimate under either of such sections, the commissioner of the revenue will order a refund in the amount of the overpaid tax. (Ord. No. 80, § 13.)

Sec. 22-54. Contractors -- Generally.

Every person who accepts or offers to accept orders or contracts for doing any work on or in any building or structure, requiring the use of paint, stone, brick, mortar, wood, cement, structural iron or steel, sheet iron, galvanized iron, metallic piping, tin, lead, or other metal or any other building material, or who or which shall accept or offer to accept contracts to do any paving, curbing or other work on sidewalks, streets, alleys or highways, or public or private property, using asphalt, brick, stone, concrete, wood or any composition, or, who shall accept or offer to accept an order or to contract to excavate earth, rock or other materials for foundation or any other purpose, or who or which shall accept an or order or contract to construct any sewer of stone, brick, terra cotta or other material, shall be deemed to be a general contractor and shall pay a license tax of twenty-five dollars on the first five thousand dollars; over five thousand dollars but not exceeding ten thousand dollars of gross orders and contracts a license tax of fifty dollars; over ten thousand dollars the license tax shall be fifty dollars and in addition thereto fifteen cents per one hundred dollars on all contracts or orders in excess of ten thousand dollars. (Ord. No. 80, § 90.)

EXCERPTS FROM REPORTER'S TRANSCRIPT
OF PROCEEDINGS OF APRIL 2, 1974

Testimony of Taylor C. Wilson, Jr.
Direct Examination

[10] Q Please state your name and your present occupation.

[11] A Taylor C. Wilson, Jr., Commissioner of Revenue of the City of Hampton.

Q How long have you occupied that position?

A Since July the 1st, 1971.

Q Are you familiar with the matters which surround this application as to the assessment of a contractor's tax on this joint venture?

A Yes, sir.

Q Mr. Wilson, we have entered into a stipulation which covers certain areas that you would otherwise have had to testify to and now we're talking about -- let me go over some of this just to put it in a frame of reference for you. Do you recall when the first license was issued to this joint venture with respect to its work in the City of Hampton as a contractor?

A Yes, sir.

Q Would you state that year, please, or that date.

A December, 1971.

Q And what license year was covered?

[11]

A Seventy-one.

Q All right, sir. And was a license also issued for the following year?

A The next year, yes, sir, in January of '72.

Q January of '72. Has a license been issued for any subsequent work in 1973 or 19 --

A No, sir.

[12]

Q All right, sir. What was the basis of the 1971 assessment?

A The contract let to Tidewater-Raymond-Kiewit. It was their bidding on the bridge-tunnel.

Q Is it your practice to license on the basis of the bid or on the basis of an award?

A The code says attempted -- maybe that's not the word -- or, offering to accept or an offer to accept work.

Q Yes, sir.

A So, actually, just bidding, they would by the law need a license.

Q Is it the practice of your office to require a license for anyone who offers a bid?

A No, sir, no, sir, we haven't gone out as to everybody that bid on the job, no, sir.

Q And, so, if this joint venture had failed to win the award on the bid, you would not have expected them to - you would not have expected them to -- you would not have required them to obtain a contractor's license for 1971.

A No, sir.

Q All right, sir. Now, what was the basis of the license for 1972?

A It was -- the basis was the contract because it says, like I said, an offer to accept and we contracts --

[13] so this -- we used this as a basis for any more contracts that might be bid on or accepted. * * *

Q. * * * Has it been the

[14] practice of your office in a situation where a contract runs in its performance over a period of three or four years to tax a -- to levy a contractor's license tax with respect to the performance of that contract in the third or fourth year?

A No, sir, not unless more contracts are made.

Q All right, sir. Is the performance of the contract in any way reflected in the amount of tax that the contractor has to pay? Specifically, if this joint venture had defaulted shortly after it began performance in 1971 or early 1972, would it have in any way been entitled to a refund of its tax?

A No, sir, we're not interested, actually -- I mean, my office -- in performance.

Q In performance.

A No, sir.

* * *

Testimony of Taylor C. Wilson, Jr.

Cross Examination

* * *

[18] Q Okay. Mr. Wilson, along the lines of what Mr. Horsley has asked you here, in making the levy of the tax here in terms of the measure, have you ever levied a tax on the performance of a contract?

A No, sir.

* * *

Testimony of Bernard McCray

Direct Examination

[19] Q Please state your name and occupation.

A Bernard McCray. I'm secretary-treasurer of Tidewater Construction Corporation in Norfolk.

Q How are you connected with the applicant in this case, the Tidewater-Raymond-Kiewit joint venture?

A Tidewater Construction Corporation is the sponsoring contractor and because of that, the fiscal matters and affairs come under my jurisdiction.

Q You are, of course, familiar with the joint venture agreement which has now been filed as Exhibit A to the stipulation.

A I am.

Q This is the agreement of October 19. Mr. McCray, let me read you this statement from page 10, paragraph 15, of the joint venture agreement. "This agreement is entered into for the purpose of submitting a joint bid for the construction contract described herein and performing such construction contract and any additions thereto and modifications thereof in and for the economically feasible disposition of all equipment, property or other assets owned by the joint venture in the event such contract is awarded to the parties hereto on such joint bid and for no

[20]

other purpose."

Has any amendment been made to this joint venture agreement?

A No.

Q Has this joint venture entered into the performance of the contract for the construction of the second tunnel and other facilities -- I think it's sometimes referred to as contract T-2, is that correct? This is the highway department's classification. If we could call it that, might refer to it as that. Has this joint venture entered into any other contracts, accepted or offered to accept any other contracts --

A No.

Q -- than --

A T-2.

Q -- contract T-2?

A T-2.

Q And this is true for the year 1972?

A Yes.

* * *

Remarks By Hon. Nelson T. Overton, Judge
Circuit Court of the City of Hampton

[97]

THE COURT: All right, gentlemen. Certain issues, of course, are raised by the pleadings and the evidence which has been submitted. The factual stipulation made by the parties makes it, I think,

[98]

plain that this applicant, the petitioner, was in the classification, as far as the City of Hampton was concerned, in 1971 a beginner. It was taxed and made the proper reports, paid the required amount and that amount was computed on the basis of the contract which had been accepted in that year. And the evidence is uncontradicted that no other contracts were accepted by this particular entity and that no other contracts have since been accepted by this particular entity and the Court so finds. When the next year began a month or so after the first tax had been assessed, the commissioner again assessed a license tax upon this applicant based under the city ordinances on the contracts which have been accepted in the preceding year. And, of course, the issues involved in this proceeding are already developed when you get to that point because it does look to I suspect everyone in this courtroom as though this is what we may at least in a nontechnical sense call double taxation, stuck twice with the same thing, same rate. As far as the specific issues involved in the application of the applicant, the Court finds that the tax as applied and drawn is not violative of the applicable constitutional

[99]

provisions as being nonuniform. As far as the evidence thus far adduced, because that's all that's going to be adduced at this point, in this case is concerned, this tax bears evenly and equally on everybody, whether they begin life in Hampton, Virginia, and stay there forever or come from some other place in the state or some other place in the country or the world or the universe. So as far as any nonuniformity is concerned, I don't think that that exists. The Court so rules. The assessment as made by the commissioner, assuming the validity of the Hampton city code for purposes of this ruling, appears to have been a proper one. The Court so rules. That brings us to the question of whether this is really a double tax prohibited by the code of the state. Now, the fact that the present occupant of this bench may think that this is sort of a murderous way to go about taxation and that there's not in the, again, nontechnical sense a fair way to go about it doesn't have anything to do with it. The question is whether what has been done to this applicant under this ordinance is permissible under the general law of the state and the answer to those questions must, I think, come from the state code, state constitution.

[100]

The legislature doesn't undertake to apparently forbid requiring the payment of more than one license tax in section 58-299 and the next two ensuing sections the legislature has provided for license taxes imposed on the contractor who begins in the year of his beginning and then the same contractor in the year following which is structured and computed on the -- of course, the rates are different -- computed on the same approach or basis as the ordinances complained of in this proceeding. It would appear, gentlemen, that the procedure adopted by the City of Hampton and the ordinances adopted by the City of Hampton which, of course, are not any longer in effect but the ones which gave rise to this proceeding are not only not forbidden by the state code of this Commonwealth but specifically approved. The application of the applicant in this matter is refused, denied. I will ask you gentlemen to prepare an order which will fairly reflect this ruling, preserving all proper exception, of course, to the applicant.

* * *

IN THE CIRCUIT COURT OF THE CITY OF HAMPTON

FINAL ORDER

Filed May 24, 1974

This cause, which has been regularly matured, set for hearing and docketed, came this day to be heard on the Application For Correction of Erroneous Assessment of Tax, on the Answer of the City, on the evidence of Applicant and the City, including the testimony heard ore tenus, the Stipulation agreed to by the parties and the exhibits introduced by them, and on the Memoranda of Law submitted and argued by counsel. The Application was defended by the City Attorney for the City of Hampton, and the Commissioner of the Revenue of the City of Hampton was examined as a witness touching the Application.

Upon consideration whereof, the Court certifies the following findings of fact in addition to those stipulated and admitted by the parties:

1. The joint venture, Tidewater-Raymond-Kiewit, the Applicant in this case, did not accept any orders or contracts for doing any construction work in the City of Hampton within the meaning of § 22-54 of the Hampton City Code, as construed and applied by the City for the license tax year 1972.

2. During 1972, 1973 and 1974, Applicant continued in the business of performing construction work in the City of

Hampton pursuant to its 1971 contract with the State Highway Department.

3. The City's assessment was not caused by the wilful failure or refusal of Applicant to furnish the Commissioner of the Revenue with any necessary information, as required by law.

WHEREFORE, the Court ADJUDGES, ORDERS and DECREES as follows:

1. Sections 22-16 and 22-54 of the Hampton City Code, as applied to Applicant in this case, do not violate the provisions of the Virginia or United States Constitutions, and are applied by the City uniformly to and bear evenly and equally on all contractors similarly situated.

2. The 1972 contractor's license tax assessment against Applicant was authorized by § 22-16 of the Hampton City Code since Applicant was taxable in such year as a contractor (within the meaning of § 22-54 of such Code) not previously in business for a full year.

3. The assessment of the 1972 Hampton City contractor's license tax against Applicant is not prohibited by the laws of the Commonwealth of Virginia.

And the Court further ADJUDGES, ORDERS and DECREES that the claims for relief set out by Applicant in its Application For Correction Of Erroneous Assessment Of Tax are denied; and that the Applicant pay the costs of this proceeding.

Upon motion of Applicant, it is hereby directed that the transcript of the proceedings herein be made a part of the record when the transcript is filed in the office of the Clerk of this Court.

* * *

IN THE CIRCUIT COURT OF THE CITY OF HAMPTON

APPLICANT'S NOTICE OF APPEAL AND ASSIGNMENTS OF ERROR

Filed May 28, 1974

Applicant, Tidewater-Raymond-Kiewit, by counsel, hereby gives notice of its intention to appeal from the final judgment entered herein on the 24th day of May, 1974, whereby its Application for Correction of Erroneous Assessment of Tax filed against the City of Hampton for the year 1972 seeking the refund of $71,450 of erroneously assessed taxes was denied.

Applicant assigns as error the following:

1. The Circuit Court erred in ruling that the 1972 Hampton contractor's license tax assessed against the Applicant was not a double tax forbidden by the provisions of Title 58, Chapter 7, Article 5, of the Code of Virginia of 1950, as amended, and Applicant is not entitled to a refund thereof.

2. The Circuit Court erred in ruling that the Hampton City Code authorized the assessment of a 1972 contractor's license tax against Applicant, and Applicant is not entitled to a refund thereof.

* * *