

STATE OF ILLINOIS  
DEPARTMENT OF TRANSPORTATION  
OFFICE OF THE CHIEF PROCUREMENT OFFICER

In the Matter of: )  
Carlson Bros., Inc. ) 2020-S-0001  
Respondent. )

**ADMINISTRATIVE SETTLEMENT AGREEMENT**

This Administrative Settlement Agreement, hereinafter referred to as the “Agreement” is made and entered into by and between the State of Illinois, acting by and through the Chief Procurement Officer, hereinafter referred to as “CPO” at the Illinois Department of Transportation, hereinafter referred to as the “Department”, and Robb Carlson, President, and Mark Carlson, Secretary, as representatives and owners of their company, Carlson Bros., Inc, hereinafter referred to as “Carlson”, with its principal place of business at 17250 New Lennox Road, Joliet, Illinois 60433, and collectively referred to as the “Parties” and individually referred to as a “Party”, under the authority of and in accord with the Illinois Procurement Code, 30 ILCS 500/1-1, et seq., and the implementing regulations found at 44 Ill. Adm. Code 6, Subpart I.

**RECITALS:**

WHEREAS, it is the purpose of the Illinois Procurement Code and the declared policy of the State of Illinois that the principles of competitive bidding and economical procurement practices shall be applicable to all purchases and contracts by or for any State agency (30 ILCS 500/1-5).

WHEREAS, a Responsible Bidder or Offeror is “a person who has the capability in all respects to perform fully the contract requirements and the integrity and reliability that will assure good faith performance.” 30 ILCS 500/1-15.80.

WHEREAS, it is a requirement and policy of the U.S. Department of Transportation and the Department that DBE, as defined in 49 C.F.R. Part 26 shall have the maximum opportunity to participate in the performance of agreements financed in whole or in part with federal funds.

WHEREAS, the rules for the DBE program are available to the public and published in 49 C.F.R. Part 26.

WHEREAS, in complying with 49 C.F.R Part 26 et seq, “a bidder must in order to be responsible and/or responsive, make sufficient good faith efforts to meet the [DBE] goal. The bidder can meet this requirement in either two ways. First, the bidder can meet the goal, documenting commitment for participation by DBE firms sufficient for this purpose. Second, even if it doesn’t meet the goal, the bidder can document adequate good faith efforts. This means the bidder must show that it took all necessary and reasonable steps to achieve a DBE goal or other requirement of this part which, by their scope, intensity, and appropriateness to the objective, could reasonably be expected to obtain sufficient DBE participation, even if they were not fully successful.”

WHEREAS, 49 C.F.R. Part 26 et seq. requires a DBE form 2025 to be submitted stating the “undersigned certify that the information included herein is true and correct, and that the DBE

firm listed below has agreed perform a commercially useful function in the work of the contract item(s) listed above..[and that] complete and accurate information regarding actual work performed on this project and the payment therefore must be provided to the [City of Joliet and the] Department.”

WHEREAS, 49 CFR 26.13 specifically states that “the contractor shall carry out applicable requirements of 49 CFR part 26 in the award and administration of [DOT] assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract...”

WHEREAS, the Illinois Procurement Code provides “Any contractor or subcontractor may be suspended for violation of this Code or for failure to conform to specifications or terms of delivery. Suspension shall be for cause and may be for a period of up to 10 years at the discretion of the applicable chief procurement officer.” 30 ILCS 500/50-65.

WHEREAS, Robb Carlson was the president and co-owner of Carlson Bros., Inc. and was in charge of, and directed the day-to-to-day operations, including bidding on and execution of contracts.

WHEREAS, Mark Carlson was the secretary and co-owner of Carlson Bros., Inc. and was in charge of, and directed the day-to-to-day operations, including bidding on and execution of contracts.

WHEREAS, on January 17, 2020, the City of Joliet let a project for improvements to its local transit system under Contract No. 2449-0120 in conjunction with the Department.

WHEREAS, the City of Joliet preliminarily awarded Contract No. 2449-0120 to Carlson.

WHEREAS, the Department funded the project and as part of the Department and Federal Disadvantaged Business Enterprise program, hereinafter referred to as DBE, Carlson had to achieve or make a good faith effort to achieve a 22% DBE participation goal.

WHEREAS, 49 C.F.R 26.53 provides that once a DBE goal is set, the Department must award the contract only to a bidder who makes good faith efforts to meet it.

WHEREAS, 49 CFR 26.53(a)(2) provides that if the DBE goal is not met, the bidder must: “...[d]ocument that it made adequate good faith efforts to meet the goal, even though it did not succeed in obtaining enough DBE participation to do so...”

WHEREAS, on February 28, 2020 the Department sent a notice to Carlson regarding the failure of its Utilization Plan to meet the DBE participation goal of 22%.

WHEREAS, the notice indicated Carlson was achieving 11.21% of the DBE goal on the project, leaving a financial deficiency of \$970,325 without documentation to support and explain the deficiency.

WHEREAS, the Department determined Carlson appears to have failed to make Good Faith Efforts toward meeting the requirements of 49 C.F.R. 26 on the City of Joliet’s contract 2449-0120.

WHEREAS, Carlson requested a Reconsideration Hearing to reconsider whether Carlson had achieved or made a good faith effort to achieve the DBE goal.

WHEREAS, on March 10, 2020, a Reconsideration Hearing was held via video conference between the Department, Carlson and the City of Joliet.

WHEREAS, those involved offered testimony, documents and arguments during the reconsideration hearing.

WHEREAS, on March 13, 2020 the Hearing Officer issued a Decision which stated “I find Carlson Brothers, Inc. failed to make Good Faith Efforts, as that term is defined in the law, toward meeting the DBE goal on this contract. The Company’s request for reconsideration and reversal of IDOT’s finding is denied.”

WHEREAS, pursuant to 44 Ill. Adm. Code 6.530, on March 26, 2020, the CPO issued a Notice of Suspension and Interim Suspension to Carlson stating Carlson is subject to an Interim suspension until the completion of an investigation of the causes for suspension and a hearing on the merits, if necessary.

WHEREAS, the Notice of Suspension and Interim Suspension stated "Carlson, through its acts, omissions and/or misconduct, whether or not any such misconduct or offense is in connection with a Department contract or any contract requiring Department approval, has failed to make Good Faith Efforts toward meeting the requirements of 49 C.F.R. 26 on the City of Joliet's contract 2449-0120. See, 44 Ill. Adm. Code 6.520 (a), (c) and (d)."

WHEREAS, the Notice of Suspension and Interim Suspension based the Interim Suspension on the following reasons:

1. Title 44, Illinois Administrative Code, Section 6.520, states in part, "A contractor or subcontractor may be suspended or debarred from participation due to acts or omissions that indicate that the contractor or subcontractor lacks integrity and honesty in the conduct of business or the performance of contracts. Acts or omissions that indicate the lack of business integrity and honesty include but are not limited to:
  - C) materially violating any rule or procurement procedure or making a material false statement in connection with any rules or procurement procedures of the Department;
  - D) making a material false statement, representation, claim or report respecting the character, quality, quantity, or cost of any work performed or materials furnished in connection with a contract or subcontract administered or supervised by the Department."
2. In complying with 49 CFR Part 26 *et seq.* and Appendix A to Part 26, "a bidder must, in order to be responsible and/or responsive, make sufficient good faith efforts to meet the [disadvantaged business enterprise "DBE"] goal. The bidder can meet this requirement in either of two ways. First, the bidder can meet the goal, documenting commitments for participation by DBE firms sufficient for this purpose. Second, even if it doesn't meet the goal, the bidder can document adequate good faith efforts. This means that the bidder must show that it took all necessary and reasonable steps to achieve a DBE goal or other requirement of this part which, by their scope, intensity, and appropriateness to the objective, could reasonably be expected to obtain sufficient DBE participation, even if they were not fully successful."
3. 49 CFR 26.13 specifically states that "the contractor shall carry out applicable requirements of 49 CFR part 26 in the award and administration of [IDOT]-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract..."
4. A requirement of 49 CFR 26 *et seq.* is to submit DBE form 2025 that states the "undersigned certify that the information included herein is true and correct, and that the DBE firm listed below has agreed perform a commercially useful function in the work of the contract item(s) listed above ... [and that] ... complete and accurate information regarding actual work performed on this project and the payment therefore must be provided to the [City of Joliet and the]Department."
5. In a March 10, 2020 hearing conducted pursuant to 49 CFR 26.53, Mr. Christopher Salomon, a Carlson Estimator who acted with authority from

Carlson Vice President Mr. Mark Carlson to prepare and submit a bid on behalf of Carlson for a project funded in large part through a grant agreement between the City of Joliet and IDOT, through the IDOT Office of Intermodal Project Implementation, admitted that he "had signed the form himself, indicating to be a DBE entity submitting a participation statement and generated the \$570,547.00 from calculations he made using rates charged by a DBE firm the Company hoped to subcontract with for the project - Devine Cement, Inc. Mr. Salomon testified he had "chased" Devine's owner, Lawrence Green, with many phone calls prior to the bid trying to secure the subcontractor's participation, but none of his calls were returned. After the bid was submitted containing the false Form 2025, Mr. Salomon spoke with Mr. Green who indicated he had no intention of submitting a subcontractor bid to the Company but had apparently done so with other general contractors who had bid on the project," as more thoroughly described in the written Decision of Reconsideration authored by Mr. Thomas Sonneborn, attached hereto and incorporated herein.

WHEREAS, on April 20, 2020 Carlson submitted a request for an administrative hearing under 44 Ill. Adm. Code 6.620(a).

WHEREAS, the hearing was scheduled for May 18, 2020 to be conducted via Webex; however, the parties agreed to continue the hearing to further discuss a settlement.

WHEREAS, the CPO has determined that in order to protect the public interest in the solicitation, execution, administration and performance of public contracts or subcontracts administered by the Department, it is in the best interest of the State to enter into this Agreement.

NOW THEREFORE, in consideration of the foregoing, it is hereby stipulated and the Parties agree as follows:

1. The recitals set forth above are incorporated into and are part of this Agreement.
2. Each of the Parties to this Agreement, and the individuals executing it on their behalf, warrant, covenant and agree that the person executing this Agreement is authorized to enter into and execute this Agreement for and on behalf of the Party or Parties he represents.
3. The Parties agree that if this case proceeded to hearing, the Department would provide evidence to support the Notice of Suspension and Interim Suspension allegations as stated above.
4. The Parties agree that the Hearing Officer would have made a report containing findings of fact and conclusions of law which would have been submitted to the CPO for review and final decision.
5. The Parties agree that the CPO could have rendered a final decision based on the record as a whole and an adequate evidence standard of proof, as required under 44 Ill. Adm. Code 6.690.
6. The Parties agree that the final decision of the CPO is that Carlson will be suspended for a period of eighteen (18) months.
7. Pursuant to 44 Ill. Adm. Code - Part 6, Section 6.530 any interim suspension shall be deducted from the period of final suspension.
8. Beginning on the date of the Interim Suspension, March 26, 2020, and continuing uninterrupted for a period of eighteen (18) months to and including, September 26, 2021, Carlson agrees to a suspension, hereinafter referred to as a "period of suspension".

9. During the period of suspension, Carlson agrees to not participate in any new contract or subcontract awarded by or requiring approval or concurrence of the Department, which includes any contract or subcontract in connection with a local agency project that is subject to the approval or concurrence of the Department.

10. During the period of suspension, the Department will not consider, select or approve Carlson for participation in any new contract or subcontract awarded by or requiring approval or concurrence of the Department, which includes any contract or subcontract in connection with a local agency project that is subject to the approval or concurrence of the Department.

11. During the period of suspension, Carlson will agree to be removed from all agencies, including the Department's, registration as a subcontractor and list of prequalified contractors. Beginning after September 27, 2021, Carlson will be eligible to register or renew a request for subcontractor registration or prequalification as a contractor by the Department. Any such request or application submitted by or on behalf of Carlson must meet all requirements for registration or prequalification in effect at the time of application.

12. It is understood the Department may disclose this Agreement to others to fulfill its legal obligations and governmental responsibilities and may be subject to disclosure under the Freedom of Information Act.

13. Carlson is executing this Agreement solely for the purpose of avoiding protracted legal proceedings and to facilitate a final resolution of the matters referenced herein.

14. While the intent of this Agreement is to settle and resolve the Parties' differences with respect to the allegations as stated in the Notice of Suspension and Interim Suspension, the Parties agree that the CPO reserves the right to pursue further administrative action that the CPO deems appropriate if the CPO becomes aware of facts to support a violation of this Agreement.

15. This Agreement also in no way restricts the authority, responsibility, or ability of the CPO to consider and institute, at any time, suspension or debarment proceedings against Carlson based on information discovered in the future which constitutes an independent cause for such proceedings. Grounds for future suspension/debarment proceedings include, but are not limited to, reliable evidence that Carlson has misrepresented any material fact in connection with this Agreement during either the investigation of the underlying events or the negotiation of this Agreement or that Carlson has engaged in any material breach or violation of this Agreement. In the event Carlson engages in any material breach or violation of this Agreement, Carlson will have ten (10) business days from the date of receipt of notice from the CPO of a material breach or violation to correct that breach or violation. If correction is not possible within ten (10) business days, for reasons beyond the control of Carlson, an acceptable plan for correction shall be submitted to the CPO. Any failure to correct the violation or present an acceptable plan, may constitute an independent cause for suspension or debarment.

16. Carlson does not, by this Agreement or otherwise, waive its rights to oppose any future disbarment or suspension.

17. No issues relating to any criminal charges or investigation are addressed in or resolved by this Agreement. Nothing in this Agreement shall bind the county, state or federal government from pursuing any criminal or civil case with respect to the actions of any person or entity, to the extent any such cause of action, whether criminal or civil, may be available. By entering into this Agreement, Carlson is not admitting to any criminal guilt or civil liability and expressly denies the same.

18. This Agreement may not be altered, modified or amended unless by written consent and agreement of all Parties.

19. This Agreement is not binding upon the Department until it is executed by the CPO and is effective on the date of the signature of the CPO.

20. The terms of this Agreement are terminated on September 27, 2021.

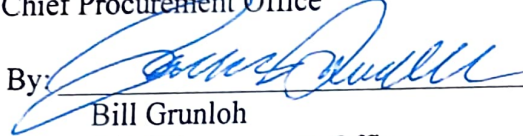
21. This Agreement constitutes the entire agreement between the Parties, superseding any prior agreements or understanding, oral or written, with respect to the subject matter of this Agreement.

22. This Agreement is the complete and exclusive statement of the Parties' agreement relating to the subject matter herein and shall bind and inure to the benefit of the Parties, Illinois State Agencies and their officers, directors and employees, their successors or assigns.

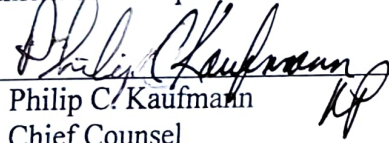
23. This Agreement shall be construed and interpreted in accordance with the laws of the State of Illinois.

24. Electronic copies of signatures are deemed acceptable, binding signature for purposes of this Agreement. This Agreement may be executed in counterparts, each of which will be deemed an original document, and all of which will constitute one and the same Agreement.

State of Illinois,  
Chief Procurement Office

By:  Date 9/14/2020  
Bill Grunloh  
Chief Procurement Officer

State of Illinois,  
Department of Transportation

By:  Date 9/17/20  
Philip C. Kaufmann  
Chief Counsel

Carlson Bros., Inc.

By:  Date 09/10/20

Printed Name: Robb Carlson