

**STATE OF ILLINOIS
DEPARTMENT OF TRANSPORTATION**

In the Matter of

A C Pavement Striping Company

Respondent

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NOTICE OF SUSPENSION AND INTERIM SUSPENSION

To: A C Pavement Striping Company
695 Church Road
Elgin, Illinois 60123

The Chief Procurement Officer for the State of Illinois, Department of Transportation, pursuant to Section 50-65 of the Illinois Procurement Code (30 ILCS 500/50-65) and Title 44 Illinois Administrative Code, Section 6.520 and Section 6.610, in order to safeguard the public interest in the solicitation, execution, administration and performance of public contracts hereby notifies A C Pavement Striping Company (herein "ACPSC") that the Department proposes to suspend ACPSC from participating on any contract awarded by or requiring approval or concurrence of the Illinois Department of Transportation (herein "Department").

The basis for these actions includes one or more of the following allegations:

1. The Illinois Procurement Code ("Code"), Section 30-22 (6) provides as follows:

"To be considered a responsible bidder on a construction project for purposes of [the Procurement Code], a bidder must comply with all of the following requirements and must present satisfactory evidence of that compliance to the appropriate construction agency:

* * *

(6) The bidder and all bidder subcontractors must participate in applicable apprenticeship and training programs approved and registered with the United States Department of Labor's (USDOL) Bureau of Apprenticeship and Training."

This is commonly referred to as "the Responsible Bidder provision."

2. The Department has established policies and procedures for the implementation of this provision of the law to local agency construction contracts requiring the approval of the Department. These policies and procedures are found in Chapter Twelve, "Letting and Contract Award," of the IDOT Bureau of Local Roads and Streets (BLRS) Manual.
3. To bid on a particular local agency construction project requiring the approval of the Department and to be considered a responsible and responsive bidder, contractors are

required to prepare and return with the bid an Apprenticeship or Training Program Certification ("Certification"), copies of which are attached as Exhibits 1 through 4. The requirements of this certification and disclosure are a material part of the construction contract.

4. The Certification requires the bidder to certify that it is a participant "in an approved apprenticeship or training program *applicable to each type of work or craft that the bidder will perform with its own forces.*" *Id.* (emphasis added). The bidder must certify and list the "official name of each program sponsor holding the Certificate of Registration for all types of work or crafts in which the bidder is a participant and that will be performed with the bidder's employees." *Id.* (emphasis added). Also, types of work or crafts that will be subcontracted must be listed as subcontract work and the bidder must list any type of work or job craft category for which there is no applicable program. *Id.*
5. The Certification provides that the "bidder is responsible for a complete report and shall make certain that each type of work or job craft category that will be utilized on the project is accounted for and listed." *Id.*
6. ACPSC was the low bidder on a General Maintenance project on a Jo Daviess County letting. Specifically, ACPSC was the low bidder on the following project: 250215 (11-XX000-00-GM). ACPSC's bid documents, specifically the Apprenticeship or Training Program Certification, represented that ACPSC would only use Teamsters trade for these construction projects. ACPSC did not certify and disclose that it intended to use any other trade, craft or type of work for these construction projects or that it participated in an apprenticeship or training program for any other trade, craft or type of work. A copy of ACPSC's certification is attached as Exhibit 1.
7. ACPSC was the low bidder on a General Maintenance project on a Dekalb County, Town of Cortland, letting. Specifically, ACPSC was the low bidder on the following project: 10-00000-00-GM. ACPSC's bid documents, specifically the Apprenticeship or Training Program Certification, represented that ACPSC would only use Teamsters trade for these construction projects. ACPSC did not certify and disclose that it intended to use any other trade, craft or type of work for these construction projects or that it participated in an apprenticeship or training program any other trade, craft or type of work. A copy of ACPSC's certification is attached as Exhibit 2.
8. ACPSC was the low bidder on a General Maintenance project on a Kane County letting. Specifically, ACPSC was the low bidder on the following project: 11-00000-03-GM. ACPSC's bid documents, specifically the Apprenticeship or Training Program Certification, represented that ACPSC would only use Teamsters trade for these construction projects. ACPSC did not certify and disclose that it intended to use any other trade, craft or type of work for these construction projects or that it participated in an apprenticeship or training program for any other trade, craft or type of work. A copy of ACPSC's certification is attached as Exhibit 3.
9. ACPSC was the low bidder on a General Maintenance project on a Stephenson County letting. Specifically, ACPSC was the low bidder on the following project: 250083 (11-XX000-01-GM). ACPSC's bid documents, specifically the Apprenticeship or Training Program Certification, represented that ACPSC would only use Teamsters trade for these construction projects. ACPSC did not certify and disclose that it intended to use any other trade, craft or type of work for these construction projects or that it participated in an

apprenticeship or training program for any other trade, craft or type of work. A copy of ACPSC's certification is attached as Exhibit 4.

10. Further, for each Certification (Exhibit 1 through 4), no subcontract work was listed and the list did not include any type of work or craft job category for which there is no applicable apprenticeship or training program.
11. The Department received a protest, RB Protest No. 20104-20, for the trade of Laborer on Kane County project 1100000-03-GM, described in paragraph 8 above, within the allotted seven day protest period. The Department notified ACPSC in a letter dated April 18, 2011 that a protest for the trade of Laborer was received and that documentation supporting ACPSC's compliance with the Responsible Bidder provision was required, a copy of which is attached as Exhibit 5. The projects described in paragraphs 6, 7 and 9 were not protested.
12. ACPSC responded to the Department's April 18, 2011 letter with a twelve page communication, a copy of which is attached as Exhibit 6, dated April 21, 2011. Included in the communication were a letter and certificate indicating ACPSC was a current participant in the USDOL approved Illinois Teamsters/Employers Apprenticeship and Training Fund Affiliated with Joint Councils 25 & 65, Joliet, Illinois, for the trade of Construction Driver and a list of twelve employees currently participating in that program. Also included was a letter and certificate for subcontractor, SKC Construction, indicating SKC was a current participant in the USDOL approved ABC of Illinois, Inc. apprenticeship and training program for the trades of Carpenter, Electrician, Heavy Equipment Operator, Painter and Plumber with one employee currently enrolled for the craft of Operator. ACPSC again did not indicate that the trade of Laborer would be used on this project or provide evidence of participation in an approved training program for the trade of Laborer. ACPSC represented that the Operator work was subcontract work.
13. In the fax transmission cover sheet dated April 21, 2011, Scott Kline, President of ACPSC, stated as follows:

"Furthermore, if we were to require added employees on a project to do extra flagging for instance, we would only hire Union employees, as we are contractually obligated to do so by our Union Contract Agreement for which we are signature to, that is actively invested in a USDOL Approved Apprenticeship Program, for which we participate in, covering those crafts. We take our obligations in meeting the "responsible bidders" section of the aforementioned "Procurement Code" with serious responsibility."
14. Based on ACPSC's misrepresentations, the Department denied the protest and communicated that result to the protester, ACPSC and the Department's District BLRS office so that the contracts could be awarded to ACPSC, a copy of which is attached as Exhibit 7.
15. The Department requested that the Audit Unit of the Department's Office of Quality Compliance and Review to review the Certified Transcript Payrolls (CTP) submitted by ACPSC for the projects described in paragraphs 6, 7, 8 and 9 above and report its findings. The CPTs were collected by the Audit Unit and reviewed.

16. The Audit Unit submitted Audit report No. 12-03-001 entitled "A.C. Pavement Striping Co. Responsible Bidder Investigation", a copy of which is attached as Exhibit 8. This report covers a review of the CTP for projects 11-XX000-00-GM (Jo Daviess), 10-00000-00-GM (DeKalb), 11-00000-03-GM (Kane), and 11-XX000-01-GM (Stephenson) described in paragraphs 6, 7, 8 and 9 above.
17. The Audit Report concludes that several ACPSC employees on each week of payroll examined for the Stephenson, Kane and Jo Daviess projects were listed as and paid the prevailing wage for the trade of Laborer and Operator. (Note: Three of those employees on the Kane County project were included in the list of twelve participating in the Illinois Teamsters/Employers Apprenticeship and Training program for the trade of Construction Driver described in paragraph 8 above). The EEO Workforce Analysis for the Stephenson and Kane projects also indicate Laborers were utilized. The EEO Workforce Analysis for the Stephenson project also lists Equipment Operators.
18. The Audit Report concludes that several employees on the DeKalb project were listed as Truck Drivers with "Traffic Safety Workers" handwritten beside them and paid the prevailing wage for the trade of Laborer. Specifically, all employees were listed as "TSW," i.e. Traffic Safety Workers. Some were paid the prevailing wage for Truck drivers (\$32.55), two (2) the prevailing wage for Operating Engineer (\$38.35), and five (5) the prevailing wage for the trade of Laborer (\$28.91). The EEO Workforce Analysis for that project indicates only truck drivers were utilized.
19. ACPSC made material false statements, representations, omissions, claims or reports in its document submittals in support of its compliance with the Responsible Bidder provisions of the construction contracts and Procurement Code policy in one or more of the following ways:
 - (1) misrepresented the work to be performed by its own forces by failing to list all types of work or craft job categories, including the work or craft of Laborers, Operators and Traffic Safety Workers, that would be utilized on the project;
 - (2) misrepresented its compliance by failing to name and/or participate in an approved apprenticeship or training program for each type of work or job craft category, including the work or craft of Laborers, Operators and Traffic Safety Workers, utilized on the projects;
 - (3) misrepresented that for the Kane County projects the type of work or craft of Operator would not be performed by its own forces; and
 - (4) misrepresented that for the Kane County projects the type of work or craft of Operator was subcontract work.
20. ACPSC material false statements, representations, omissions, claims or reports in its documentation submittals in support of its compliance with the responsible bidder provisions of the construction contract and the responsible bidder policy announced in the Illinois Procurement Code (30 ILCS 500/30-22), did materially violate the Responsible Bidder provisions of the Illinois Procurement Code and the construction contracts, bringing into question the eligibility of ACPSC as the apparent low bidder for the above project.
21. ACPSC's submission of false records to the Department in relation to local roads project for Stephenson, Kane, Jo Daviess and DeKalb counties related to services performed by

its employees and compensated by the local governments appears to constitute theft in violation of the Illinois Criminal Code (720 ILCS 5/16-1).

22. ACPSC's submission of false records to Stephenson, Kane, Jo Daviess and Dekalb counties and the Department for the purpose of influencing in any way the actions of Stephenson, Kane, Jo Daviess counties in considering ACPSC's bid for the above local road project appears to violate the Illinois Criminal Code (720 ILCS 5/33E-14).
23. ACPSC's submission of false records and material misrepresentations constitutes fraud, theft or other misconduct and offenses prohibited by law, whether or not any such misconduct or offense is in connection with a Department contract or any contract requiring Department approval, and demonstrates a lack of responsible business integrity and honesty. 44 Ill. Admin. Code §6.520(a).
24. ACPSC's submission of false records and material misrepresentations materially violates a rule or procurement procedure of the Department and demonstrates a lack of responsible business integrity and honesty. 44 Ill. Admin. Code §6.520(c).
25. ACPSC's submission of false records, material false statements and representations respecting the character, quality, quantity, or cost of any work performed in connection with a contract administered or supervised by the Department demonstrates a lack of responsible business integrity and honesty. 44 Ill. Admin. Code §6.520(d).

INTERIM SUSPENSION

Pursuant to 44 Illinois Administrative Code, Section 6.530, I find that immediate action is necessary to safeguard the public interest in the solicitation, execution, administration and performance of public contracts. The reasons for the interim suspension are set forth in paragraphs (1) through (25) above. The interim period of suspension will continue for the duration of 120 days unless terminated sooner. The duration of the interim suspension will be extended pending completion of a hearing, if necessary. Therefore, until the completion of an investigation of the causes for suspension and hearing on the merits, if necessary, ACPSC is subject to an immediate suspension on all existing or pending contracts with the Department or subject to the approval of the Department. Further, ACPSC shall not be eligible for selection as a contractor, for approval as a subcontractor under prime contract proposals, or for approval in either capacity on a contract with the Department or subject to the approval of the Department during the period of interim suspension.

RESPONDENT'S RIGHTS UNDER THE CODE

1. Any contractor receiving a notice of suspension may, within thirty (30) days after receipt of a notice, file an appearance and request for hearing with the Chief Procurement Officer. A contractor that does not file an appearance and request a hearing within the thirty (30) days after receipt shall be deemed to have waived any hearing and will be subject to immediate suspension. (44 Ill. Admin. Code 6.620)
2. A contractor receiving an interim suspension may, within thirty (30) days of a notice that imposes an interim suspension, submit, in person, in writing, or through a representative, information, documentation and argument in opposition to the interim suspension for the Chief Procurement Officer's consideration. 44 Ill. Admin. Code 6.620(b).

3. Upon receipt of an appearance and request for hearing, the Chief Procurement Officer will set the matter for a hearing within thirty (30) days, and notify the contractor of the place, time and date of the hearing and the designated Hearing Officer. (44 Ill. Admin. Code 6.630)
4. The contractor may file a written notice for disqualification of a Hearing Officer, setting forth reasons of personal bias or conflict of interest, within three (3) days after the appointment of the Hearing Officer. (44 Ill. Admin. Code 6.630)
5. The contractor may file a written answer to a notice not later than twenty (20) days prior to the hearing date, but shall not be required to file an answer. The answer may include affirmative defenses. (44 Ill. Admin. Code 6.640)
6. A copy of any appearance, request for hearing, written notice for disqualification of Hearing Officer, or other document shall be served on the Department to Lance T. Jones, Office of Chief Counsel, 2300 S. Dirksen Parkway, Room 313, Springfield, IL 62764.

This Notice of Suspension and Interim Suspension is issued and served this 2 day of May, 2012 at Springfield, Illinois.

Department of Transportation



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