

**STATE OF ILLINOIS
DEPARTMENT OF TRANSPORTATION**

IN THE MATTER OF:)
)
Chester Bross Construction Company) 11-S-003
)
Respondents)
)

AMENDED NOTICE OF SUSPENSION AND CONTINUING INTERIM SUSPENSION

Attorneys for Respondent:	Chester Bross Construction Company
Jeffrey A. Risch	P.O. Box 430
Jonathon D. Hoag	Hannibal, MO 63401
Sara S. Zorich	
Smith Amundsen LLC	
3815 East Main Street, Suite A-1	
St. Charles, IL 60174	
Facsimile (630) 587-7437	

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 660.520 and Section 660.610, in order to safeguard the public interest in the solicitation, execution, administration and performance of public contracts hereby notifies Chester Bross Construction Company ("Bross"), that the Department proposes to suspend Bross 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:

COUNT I

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

"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. To bid on a particular State construction project and to be considered a responsible and responsive bidder, contractors are required to prepare and return with the bid a STATE REQUIRED ETHICAL STANDARDS GOVERNING CONTRACT PROCUREMENT: ASSURANCES, CERTIFICATIONS AND DISCLOSURES; III. Certifications; K. Apprenticeship and Training Certification (Does not apply to federal aid projects), a copy of which is attached as Exhibit Y. The requirements of this certification and disclosure are a material part of the construction contract.

3. Bross was the low bidder on several General Maintenance projects on the IDOT June 11, 2010 Letting. Specifically, Bross was the low bidder on the following projects:

- Contract # 72C43, Pike County
- Contract # 72B45, Pike County
- Contract # 72D14, Adams County
- Contract # 93503, Adams County
- Contract # 72D69, Scott County

Bross's bid documents did not certify and disclose that it intended to use the Trade of Laborer for these construction projects or that it participated in an apprenticeship or training program for the Trade of Laborer.

4. For Contract #72D14, Bross included a Office of Apprenticeship Certificate of Registration of Apprenticeship Program indicating the Program Sponsor is Associated Builders & Contractors of Illinois, Inc., For the Trades—Carpenter, Electrician, Heavy Equipment Operator, Painter & Plumber; a letter dated March 26, 2010, from Associated Builders & Contractors of Illinois indicating that Chester Bross Construction Co. was a member in good standing; and a letter dated June 10, 2010, from Chester Bross Construction Company certifying that its membership in Associated Builders and Contractors satisfied Section 30-22 of the Illinois Procurement Code. See Exhibit Y.

5. The Department received a protest on these projects within the allotted seven day protest period and notified Bross that a protest for the Trade of Laborer was received by the Department (Exhibit A).

6. Bross responded with a communication dated July 2, 2010, misrepresenting to the Department that the Trade of Laborer would not be used on these projects (Exhibit B).

7. Based on Bross's misrepresentation, the Department denied the protest and communicated that result to the protester, International Union of Operating Engineers, Local Union No. 965 and the Department's District BLRS office so that the contracts could be awarded to Bross (Exhibit C).

8. The Audit Unit submitted Audit report No. 11-13-006 entitled "Chester Bross Construction Company, Responsible Bidder Investigation/Audit" (Exhibit D). This report covers a review of the CTP for the following projects:

- Contract # 72C43, Pike County
- Contract # 72B45, Pike County
- Contract # 72D14, Adams County
- Contract # 93503, Adams County
- Contract # 72D69, Scott County

9. The Audit Report concludes that several employees were listed as and paid the prevailing wage for the Trade of Laborer on Contract # 72D14.

10. Bross made material false statements, representations, claims or reports in its documentation submittals in support of its compliance with the responsible bidder provisions of the Illinois Procurement Code (30 ILCS 500/30-22), and, in doing so, did

materially violate the Responsible Bidder provisions of the Illinois Procurement Code and bring into question the eligibility of Bross as the apparent low bidder for the above projects.

11. Bross's submission of false records to the Department in relation to Department State projects related to services performed by its employees and compensated by the State may constitute theft in violation of the Illinois Criminal Code (720 ILCS 5/16-1).
12. Bross's submission of false records to the Department for the purpose of influencing in any way the action of the Department in considering Bross's bid for the above contract #72D14 may have violated the Illinois Criminal Code (720 ILCS 5/33E-14 and/or 5/17-24).
13. Bross'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 §660.520(a).
14. Bross'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 §660.520(c).
15. Bross'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 §660.520(d).

COUNT II

- 16.- The Department restates paragraphs 1 through 10 found in Count I and adopts said
25. paragraphs from Count I as allegations in this Count II as if fully restated herein as paragraphs 16 through 25 of Count II.
26. Respondent has claimed that his company's participation in an apprenticeship program for Heavy Equipment Operator is interposed as a defense to the Notice of Suspension and Interim Suspension and/or evidence of mitigation.
27. In the Department's Request to Produce directed to Respondent, the Department requested Respondent to produce for inspection, copying, reproduction or photocopying the following written documents:

"As to each project identified in the Notice of Suspension, a copy of any and all documents bearing on Respondent's participation in an apprenticeship or training program approved by the United States Department of Labor for each type of work or craft stated in the Respondent's Apprenticeship or Training Program Certification, including but not limited to the following:

 - a) Cancelled checks to the program;
 - b) Program materials, manuals, tests, etc.;
 - c) Attendance sheets; and
 - d) Certification of employee completion."

28. Respondent provided copies of a check number 68124, written on the account of Respondent, dated Oct 19/10, and payable to Associated Builders and Contractors in the amount of \$3,730.00 as evidence of its participation in a group apprenticeship program sponsored by Associated Builders and Contractors of Illinois.

29. In response to a bid protest, counsel for Respondent sent a letter dated July 2, 2010, addressed to Ellen M. Erhardt, Assistant Chief Counsel, IDOT, wherein counsel for Respondent stated in part on page two of the letter the following:

With respect to the specific allegations regarding participation in a registered apprenticeship program, my client is a member in good standing with Associated Builders and Contractors of Illinois ("ABC"). As you know, ABC has an established apprenticeship and training program approved by and registered with the United States Department of Labor's Bureau of Apprenticeship and Training. My client enclosed supporting documentation with its bid (i.e. a participation letter from ABC and a copy of USDOL registration certificate) and I am enclosing a current letter of participation from ABC and USDOL registration certificate for your convenience. These documents are attached hereto as Exhibit A and the documents are incorporated herein by reference. Additionally, the projects at issue do not involve the work of Laborers and in no way did the bid contemplate any need for Laborers by the prime contractor. The protest with respect to "Laborers" is moot, completely unfounded and should be treated accordingly with no further review. The protest concerning "Operating Engineers" is completely unfounded. (July 2, 2010 letter and attachments are attached as Exhibit B)

30. Respondent has provided to the Department a copy of Associated Builders and Contractors, Inc., Illinois Chapter, 2011-2012 Apprenticeship Training Catalog (Attached as Exhibit E) which requires written documentation of events in apprenticeship training as follows:

- a) Application for Apprenticeship Registration with DOL/OAT. Students must fill out an application to become a registered apprentice with the U.S. Department of Labor, Office of Apprenticeship (OAT). This is a separate form and must be filled out in addition to the ABCIL registration form. This type of registration is necessary for those contractors who will be performing prevailing wage jobs. (See page CB-00022 of Exhibit E)
- b) Attendance. Par. 3. Attendance reports will be mailed out at the conclusion of each semester. (See page CB-00024 of Exhibit E)
- c) Work Process/On-The -Job Training. All apprentices are required to maintain a record of their on-the-job training experience on the "Apprentice Monthly Training Record" (OJT record) which is provided by the ABCIL office, and submit this record monthly to the ABC office. The forms are due by the 10th of each month for work done during the preceding month, and must be verified and signed by the apprentice's supervisor. (See page CB-00026 of Exhibit E)
- d) Responsibility of the Participating Employer. * * * Employers who wish their apprentices to be registered with the Office of Apprenticeship must also complete an Employers Acceptance Agreement and Wage Determination Form. * * * (See page CB-00028 of Exhibit E)

31. An approved apprenticeship and training program requires a written apprenticeship agreement which must include all of the provisions outlined in 29 C.F.R. Section 29.7. Section 29.7 provides in part:

The apprenticeship agreement must contain, explicitly or by reference:

- (a) Names and signatures of the contracting parties (apprentice, and the program sponsor or employer), and the signature of a parent or guardian if the apprentice is a minor.
- (b) The date of birth and, on a voluntary basis, Social Security number of the apprentice.
- (c) Contact information of the Program Sponsor and Registration Agency.
- (d) A statement of the occupation in which the apprentice is to be trained, and the beginning date and term (duration) of apprenticeship.

32. Respondent has failed to produce a copy of any written apprenticeship agreement that is mandated by 29 C.F.R. Section 29.7.

33. An approved apprenticeship and training program must meet the standards outlined in 29 C.F.R. Section 29.5 which requires at Section 29.5 (b) (4); Section 29.5 (b) (6); Section 29.5 (b) (11); Section 29.5 (b) (14); and at Section 29.5 (b) (23) as follows:

(4) Provision for organized, related instruction in technical subjects related to the occupation. A minimum of 144 hours for each year of apprenticeship is recommended. This instruction in technical subjects may be accomplished through media such as classroom, occupational or industry courses, electronic media, or other instruction approved by the Registration Agency.

(6) Periodic review and evaluation of the apprentice's performance on the job and in related instruction; and the maintenance of appropriate progress records.

(11) The placement of an apprentice under a written Apprenticeship Agreement that meets the requirements of Section 29.7 or the State apprenticeship law of a recognized Registration Agency. The agreement must directly, or by reference, incorporate the standards of the program as part of the agreement.

(14) Assurance of qualified training personnel and adequate supervision on the job.

(23) Recording and maintenance of all records concerning apprenticeship as may be required by the Office of Apprenticeship or recognized State Apprenticeship Agency and other applicable law.

34. Other than the items in Exhibit Y which are referenced in paragraphs 2 and 17 of this Amended Notice of Suspension and Continuing Interim Suspension, and other than the 2011-2012 Apprenticeship Training Catalog that Respondent has provided, Respondent has failed to provide copies of the records referenced in paragraph 33; i.e.,

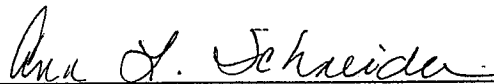
- Records showing 144 hours of related instruction completed by an apprentice as required by 29 C.F.R. Section 29.5 (b) (4);
 - Records showing review and evaluation of an apprentice's performance on the job and in related instruction as required by 29 C.F.R. Section 29.5 (b) (6);
 - Records showing the placement of an apprentice under a written apprenticeship agreement as required by 29 C.F.R. Section 29.5 (b) (11) and 29 C.F.R. Section 29.7; records showing the on the job supervision of the apprentice by a journeyman as required by 29.5 C.F.R. Section 29.5 (b) (14);
 - Records showing the Monthly Apprentice Record Sheet that is sent to US Department of labor as required by 29.5 (b) (23); and, the absence of these mandated records raises a presumption that the mandated records do not exist and that Respondent has misrepresented to the Department the respondent's participation in applicable apprenticeship and training programs.
35. With regard to the written documentation of events referenced in paragraph 30 herein, Respondent has failed to provide to the Department copies of apprentice attendance reports which are mailed out at the conclusion of each semester, as provided on page CB-00024 of the 2011-2012 Apprenticeship and Training Catalog in paragraph 3 (Exhibit E); and, the absence of these specified records raises a presumption that the records do not exist and that Respondent has misrepresented to the Department the Respondent's participation in applicable apprenticeship and training programs.
36. Respondent's failure to provide the relevant mandated records and the relevant requested records indicates that Respondent has made material misrepresentations as to its actual participation in applicable apprenticeship and training programs approved by and registered with the United States Department of Labor's Bureau of Apprenticeship and Training, as required by the responsible bidder requirements found in both the Procurement Code, 30 ILCS 500/30-22 (6), and found in the terms and conditions of the contracts that Respondent entered into.
37. Respondent's material misrepresentations as to its actual participation in applicable apprenticeship and training programs approved by and registered with the United States Department of Labor's Bureau of Apprenticeship and Training, as evidenced by the non-existence of mandated records and documents, is a material misrepresentation made to the Department and demonstrates a lack of responsible business integrity and honesty. 44 Ill. Admin. Code §660.520(c).
38. Respondent's material misrepresentations as to its actual participation in applicable apprenticeship and training programs approved by and registered with the United States Department of Labor's Bureau of Apprenticeship and Training, as evidenced by the non-existence of mandated records and documents, materially violates a rule or procurement procedure of the Department and demonstrates a lack of responsible business integrity and honesty. 44 Ill. Admin. Code §660.520(d).

CONTINUING INTERIM SUSPENSION

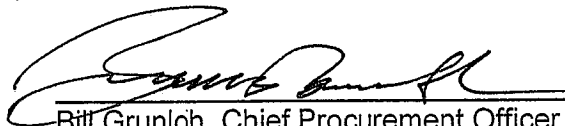
Pursuant to 44 Illinois Administrative Code, Section 660.530, an INTERIM SUSPENSION was imposed upon Respondent on June 8, 2011. The INTERIM SUSPENSION imposed on June 8, 2011, is still in full force and effect. I find that the immediate action taken on June 8, 2011, was necessary and continues to be necessary to safeguard the public interest in the solicitation, execution, administration and performance of public contracts. The reasons for the interim suspension imposed on June 8, 2011, continue to be those matters set forth in paragraphs (1) through (15) above and enhanced by those matters set forth in paragraphs (16) through (38) above. The interim period of suspension will continue for the duration of 120 days from June 8, 2011, unless terminated sooner. The duration of the interim suspension may 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, Chester Bross Construction Company continues to be subject to an immediate suspension on all existing or pending contracts with the Department or subject to the approval of the Department, as subsequently modified in part. Further, Chester Bross Construction Company 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.

This Amended Notice of Suspension and Continuing Interim Suspension is issued and served this ___ day of _____ 2011 at Springfield, Illinois.

Department of Transportation



Ann L. Schneider, Acting Secretary of
Transportation



Bill Grunloh, Chief Procurement Officer

Department Attorney: Lance T. Jones, Deputy Chief Counsel
2300 S. Dirksen Parkway, Room 313
Springfield, IL 62764
(217) 782-3215
(217) 524-0823 - Fax