

**STATE OF ILLINOIS
DEPARTMENT OF TRANSPORTATION**

IN THE MATTER OF:)

Glenn McCann Company)

11-S-001

Respondents)

AMENDED NOTICE OF SUSPENSION AND CONTINUING INTERIM SUSPENSION

Attorneys for Respondent:
Jeffrey A. Risch
Jonathon D. Hoag
Sara S. Zorich
Smith Amundsen LLC
3815 East Main Street, Suite A-1
St. Charles, IL 60174
Facsimile (630) 587-7437

Glenn McCann Company, Inc.
P.O.Box 11
Ransom, IL 60470

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 Glenn McCann Company, Inc. ("Glenn McCann"), that the Department proposes to suspend Glenn McCann 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. The Department has established policies and procedures for the implementation of this provision of the law. 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 construction project 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, a copy of which is attached as Exhibit X.

The requirements of this certification and disclosure are a material part of the construction contract.

4. Glenn McCann was the low bidder on several General Maintenance projects on the Kendall County April 14, 2009 letting. Specifically, Glenn McCann was the low bidder on the following projects:

- 09-05000-00-GM
- 09-04000-00-GM
- 09-03000-00-GM
- 09-01000-00-GM

Glenn McCann'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.

5. The Department received a protest on these projects within the allotted seven day protest period and notified Glenn McCann that a protest for the Trade of Laborer was received by the Department (Exhibit A-1).
6. Glenn McCann responded with a communication dated April 30, 2009, misrepresenting to the Department that the Trade of Laborer would not be used on these projects (Exhibit B-1).
7. Based on Glenn McCann's misrepresentation, the Department denied the protest and communicated that result to the protester, Glenn McCann and the Department's District BLRS office so that the contracts could be awarded to Glenn McCann (Exhibit C-1).
8. Glenn McCann was the low bidder on a General Maintenance project on the Kendall County letting on September 8, 2009 for work in the Village of Kinsman: Project No. 09-0000-01-GM. Glenn McCann's bid documents did not certify that it intended to use the Trade of Laborer for this construction project or that it participated in an apprenticeship or training program for the Trade of Laborer.
9. The Department received a protest on this project within the allotted seven day protest period and notified Glenn McCann that a protest for the Trade of Laborer was received by the Department (Exhibit A-2).
10. Glenn McCann responded with a communication dated September 23, 2009 to the Department stating that they were a participant in a USDOL approved and registered program for the Trade of Paving Asphalt Machine Operator and Heavy Truck Driver and that these were the Trades to be used on this project (Exhibit B-2). Glenn McCann intentionally omitted that it intended to use Laborers and failed to demonstrate that it participated in an approved apprenticeship or training program for the Trade of Laborer.
11. Based on Glenn McCann's misrepresentation, the Department denied the protest and communicated that result to the protester, Glenn McCann and the Department's District BLRS office so that the contracts could be awarded to Glenn McCann (Exhibit C-2).

12. Glenn McCann was the low bidder on the Kendall & Grundy County letting on May 3, 2010 for several General Maintenance projects. Specifically, Glenn McCann was the low bidder on the following projects:

- 10-16000-00-GM
- 10-00000-00-GM
- 10-06000-00-GM
- 10-13000-00-GM
- 10-15000-00-GM

Glenn McCann's bid documents did not certify 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.

13. The Department received a protest on these projects within the allotted seven day protest period and notified Glenn McCann that a protest for the Trade of Laborer was received by the Department (Exhibit A-3).

14. Glenn McCann responded with a communication dated May 17, 2010, misrepresenting to the Department that the Trade of Laborer would not be used on these projects (Exhibit B-3).

15. Based on the representations of Glenn McCann, the Department denied the protest and communicated that result to the protester, Glenn McCann and the Department's District BLRS office so that the contracts could be awarded (Exhibit C-3).

16. In August 2010 the Department requested that the Audit Unit of the Department's Office of Quality Compliance and Review to review the Certified Transcript of Payroll (CTP) submitted by Glenn McCann for the above projects and report its findings. The CTPs were collected by the Audit Unit and reviewed.

17. The Audit Unit submitted Audit report No. 11-13-004 entitled "Glenn McCann Co., Inc. Responsible Bidder Investigation" (Exhibit D). This report covers a review of the CTP for the following projects:

- 09-05000-00-GM, 09-04000-GM, and 09-01000-00-GM
- 09-0000-01-GM
- 10-16000-00-GM, 10-00000-00-GM, 10-06000-00-GM, 10-13000-00-GM, and 10-15000-00-GM

18. The Audit Report concludes that several employees on each week of payroll examined were listed as and paid the prevailing wage for the Trade of Laborer.

19. Glenn McCann 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 Glenn McCann as the apparent low bidder for the above projects.

20. Glenn McCann submission of false records to the Department in relation to local roads projects for Kendall County and Grundy County related to services performed by its employees and compensated by the local governments may constitute theft in violation of the Illinois Criminal Code (720 ILCS 5/16-1).
21. Glenn McCann's submission of false records to Kendall County, Grundy County and the Department for the purpose of influencing in any way the action of Kendall County and Grundy County in considering Glenn McCann's bid for the above local road projects may have violated the Illinois Criminal Code (720 ILCS 5/33E-14 and/or 5/17-24).
22. Glenn McCann'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).
23. Glenn McCann'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).
24. Glenn McCann'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

- 25.- The Department restates paragraphs 1 through 13 found in Count I and adopts said
37. paragraphs from Count I as allegations in this Count II as if fully restated herein as paragraphs 25 through 37 of Count II.
38. Glenn McCann responded with a communication dated May 17, 2010, misrepresenting to the Department that the Trade of Laborer would not be used on these projects. The response also included a United States Department of Labor, Office of Apprenticeship Certificate of Registration of Apprenticeship Program, For the Trades: Asphalt Paving Machine Operator, Truck Driver, Heavy (Exhibit B-3).
39. Based on the representations of Glenn McCann, the Department denied the protest and communicated that result to the protester, Glenn McCann and the Department's District BLRS office so that the contracts could be awarded (Exhibit C-3).
40. The NOTICE OF SUSPENSION AND INTERIM SUSPENSION which precedes this Amended Notice of Suspension was issued by the Department on June 8, 2011; and on June 9, 2011, Respondent sent via telephone facsimile transmission ("fax") a five page "fax" (Exhibit E) to IDOT wherein Respondent stated in part:

"Enclosed you will find the outline from our training programs. This program was set up through Ronda Kliman with the US Department of Labor, Office of Apprenticeship. Please see the enclosed outline pages for Asphalt Paving Machine Operator page 17 # 5 under traffic, and Truck Driver Heavy under Traffic."

41. Respondent has claimed that his apprenticeship program for Asphalt Paving Machine Operator and for Truck Driver, Heavy is interposed as a defense to the Notice of Suspension and Interim Suspension and/or evidence of mitigation.
42. In a telephone facsimile transmission on September 23, 2009, Respondent sent to the Department a nineteen (19) page Manual entitled "Standards of Apprenticeship, Developed by Glenn McCann Company, 119 North Cartier Street, Ransom, Illinois 60470, For the Occupation of Truck Driver, Heavy, and Asphalt Paving Machine Operator (Stone Spreader Operator) In Cooperation with Office of Apprenticeship, U.S. Department of Labor (attached hereto as Exhibit F), and Exhibit F requires, in part the following:
- a) " * * * the apprentice will be covered by a written apprenticeship agreement signed by the Sponsor and the apprentice and approved by and registered with the Registration Agency. * * * " (Section V, page 2 of Exhibit F).
 - b) "All applicants selected for apprenticeship will serve a probationary period of not less than 3 months / 900 hours of OJL [On-the-Job Learning]. * * * The records for each probationary apprentice will be reviewed prior to the end of the probationary period. Records may consist of periodic reports regarding progression made in both the OJL and related instruction, and any disciplinary action taken during the probationary period." (Section VIII, pages 2-3 of Exhibit F).
 - c) "During each segment of training each apprentice is required to participate in coursework related to the job as outlined in Appendix A. For each occupation, the recommended term of apprenticeship will include no less than 144 hours of related instruction for each year of apprenticeship. * * * " (Section XIII, page 4 of Exhibit F).
 - d) "The supervisor of apprentice(s) designated by the employer will be responsible for the apprentice's work assignments ensuring the apprentice[s] are working under the supervision of a skilled journey worker, evaluation of work performance, and completion and submittal of progress reports to the Sponsor." (Section XV, page 5 of Exhibit F).
 - e) "Each apprentice may be responsible for maintaining a record of his/her work experience/training on the job and in related instruction and for having this record verified by his/her supervisor at the end of each week. The apprentice will authorize an effective release of their completed related instruction records from the local school authorities to the Sponsor. The record cards and all data, written records of progress evaluations, corrective and final actions pertaining to the apprenticeship, will be maintained by and the property of the Sponsor. The record will be included in each apprentice's record file maintained by the Sponsor. (Section XVI, page 5 of Exhibit F).
 - f) "The Sponsor will maintain for a period of five (5) years from the date of last action, all records relating to apprentice applications (whether selected or not), the employment and training of apprentices, and any other information relevant to the operation of the program. This includes, but is not limited to, records on the recruitment, application and selection of apprentices, and records on the apprentice's job assignments, promotions, demotions, layoffs, terminations, rate of pay, or other forms of compensation, hours of work and training, evaluations, and other relevant data. The records will permit identification of minority and female (minority and non-minority)

participants. These records will be made available on request to the Registration Agency." (Section XVII, page 6 of Exhibit F).

43. At an earlier time, prior to the Request to Produce, Respondent supplied to the Department a letter dated May 8, 2009, from Ronda Kliman, U.S. Department of Labor, Office of Apprenticeship, to Respondent (Exhibit G) wherein the letter states in part:

On behalf of the U.S. Department of Labor, Bureau of Apprenticeship and Training, enclosed is the following for your registered apprenticeship program:

Certificate of Registration
Apprenticeship Standards
Apprentice Monthly Record Sheet (2)
1 (one) Signature Sheet.

44. Respondent has failed to provide completed copies of Apprenticeship Monthly Record Sheets and completed copies of Signature Sheets which are referenced in Ronda Kliman's letter (Exhibit G) as stated in paragraph 43 herein.
45. Respondent's failure to provide completed copies of Apprenticeship Monthly Record Sheets and completed copies of Signature Sheets raises a presumption that the mandated records do not exist and that Respondent has misrepresented to the Department its participation in applicable apprenticeship and training programs.
46. 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."

47. 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.
48. Respondent has failed to produce a copy of any Apprenticeship Agreement that is mandated by 29 C.F.R Section 29.7 and by Section V, page 2 of Exhibit F.
49. 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.
50. Respondent has failed to produce a copy of apprenticeship records demonstrating that each apprentice has completed no less than 144 hours of related instruction for each year of apprenticeship as mandated by 29 C.F.R. Section 29.5 (b) (4) and Section XIII, page 4 of Exhibit F.
51. Respondent has failed to produce a copy of apprenticeship records demonstrating OJL (On-the-Job Learning) working under the supervision of a skilled journey worker, the number of hours each apprentice has completed in each category of the On-the-Job Learning Outline found at pages 12 through 15 of Exhibit F, the number of hours each apprentice has completed in each category of the On-the-Job Learning Outline found at pages 17 through 18 of Exhibit F, evaluations of On-the-Job Learning work performance, or records of the completion and submittal of progress reports to the Sponsor as mandated by 29.5 (b) (14) and Section XV, page 5 of Exhibit F.

52. Respondent has failed to provide copies of mandated records required by STANDARDS OF APPRENTICESHIP (Exhibit F) and required by the relevant Federal Regulations as stated in paragraphs 38, 43, 45 and 49 herein; 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 its participation in applicable apprenticeship and training programs.
53. An approved apprenticeship and training program must meet Program Performance Standards outlined at 29 C.F.R. Section 29.6 (a) which provides:
- (a) Every registered apprenticeship program must have at least one registered apprentice, except for the following specified periods of time, which may not exceed 1 year:
 - (1) Between the date when a program is registered and the date of registration for its first apprentice(s); or
 - (2) Between the date that a program graduates an apprentice and the date of registration for the next apprentice(s) in the program.
54. Respondent has failed to produce any documents or records to demonstrate that Respondent itself is conducting apprenticeship programs under its U.S. Department of Labor "Certificate of Registration of Apprenticeship Program" (Exhibit F) or under its "Standards of Apprenticeship Developed by Glenn McCann Company" (Exhibit F).
55. Respondent's failure to provide the relevant mandated 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.
56. 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).
57. 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 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, as subsequently modified in part, 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 (24) above and enhanced by those matters set forth in paragraphs (25) through (52) 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, Glenn McCann Company, Inc., 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, Glenn McCann Company, Inc., 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