STATE OF ILLINOIS
DEPARTMENT OF TRANSPORTATION

IN THE MATTER OF:	)	
McDonough Associates, Inc.	)	**2012-S-001**
Respondent.	)	

FINAL DETERMINATION OF SUSPENSION

I. INTRODUCTION

A Notice of Suspension dated January 12, 2012 was issued to McDonough Associates Inc. ("Contractor"). An objection to the suspension was received by the Chief Procurement Office and a hearing officer, Mr. Thomas Wetzler, was assigned to hear evidence on the matter. The hearing was held on April 25 and 26, 2012 where both the Department and Contractor presented evidence. On May 18, 2012 Mr. Wetzler issued a recommendation to the Chief Procurement Officer. As explained and set forth in detail herein, I concur only in part with the hearing officer's recommended findings of fact and conclusions of law. Further, I reject the hearing officer's recommended term of suspension.

II. FINDINGS OF FACT

1. Contractor provided consulting services to the Department, and as such was required to adhere to requirements found in the Illinois Procurement Code (30 ILCS 500/1 *et seq.*), the Illinois Administrative Code (44 ILL. ADM. CODE 6.10 *et seq.*), Federal Acquisition Regulations, and other guidelines and pronouncements of the Department and governing accounting pronouncements.
2. Department auditors conducted an audit of the books and records of Contractor for the period of 2000-2009, the results of which are set forth in Audit Report No. 11-22-001, dated July 22, 2011 ("Audit").
3. The audit makes a number of findings with regard to improper accounting entries and procedures, of which Findings No. 1 through No. 5 form the basis of the Notice of Interim Suspension and Action to Seek Suspension issued by Chief Procurement Officer Bill Grunloh on January 12, 2012.
4. Finding No. 1 alleges $46.5 million was improperly included by Contractor in its overhead computation arguing those amounts were disguised dividends.
5. Finding No. 2 alleges several expenses should have been charged to "direct labor" but were instead charged to overhead accounts resulting in an inflated overhead rate to be paid by the Department.
6. The exhibits attached to the audit show that several million dollars in overhead charges should be disallowed as a result of Finding No. 2.
7. Finding No. 3 alleges Contractor improperly allocated costs that should have been allocated to specific projects to the transportation overhead account.
8. Finding No. 4 alleges Contractor included $490,000 in specific settlement costs which should have been attributed to two specific projects, not to the overhead account.
9. The Contractor conceded the allegations in Finding No. 4 during the hearing.
10. Finding No. 5 alleges post-it notes were found on expense reports of one employee which contradicted the information on the actual expense report.

11. A hearing was conducted by a duly appointed Hearing Officer on April 25 and April 26, 2012 to take testimony with regard to the charges alleged in the Notice of Interim Suspension and Action to Seek Suspension.
12. After the hearing, both parties submitted proposed findings of fact and conclusions of law.
13. The hearing officer found the allegations in Finding No. 2 to be founded and "more than adequate" to justify a suspension.
14. The hearing officer recommended a six month suspension of Contractor with respect to the conduct proven in Finding No. 2.
15. The hearing officer found the remaining allegations in Finding No. 1, 3-5, to not be proven by adequate evidence.
16. Neither Contractor nor the Department filed objections to the hearing officer's recommendation.

III. ANALYSIS

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." 30 ILCS 500/50-65. The Code provides "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." *Id.* The applicable procurement rules provide "it is the policy of the Department to conduct business only with contractors or subcontractors of responsible business integrity and honesty." 44 ILL. ADMIN. CODE 6.500. Where the Department finds "acts or omissions that indicate that [a] contractor or subcontractor lacks integrity and honesty in the conduct of business or the performance of contracts," that contractor or subcontractor may be suspended or debarred. 44 ILL. ADMIN. CODE 6.520. The Rules includes an inexhaustive list of examples of "acts or omissions that indicate the lack of business integrity and honesty" including "fraud, bribery, embezzlement, theft, collusion, conspiracy, anti-competitive activity or other misconduct and offenses prohibited by law . . ." as well as the "making [of] 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." 44 ILL. ADMIN. CODE 6.520. The CPO "will determine the suspension action to be taken" based upon "the record as a whole and an adequate evidence standard of proof." 44 ILL. ADMIN. CODE 6.690. The suspension "will be for a period commensurate with the seriousness of the cause or causes, of up to 10 years." 44 ILL. ADMIN. CODE 6.550.0

As proscribed by the Rules, a hearing was held at which "the parties [were] afforded the opportunity to present, examine and cross-examine witnesses." 44 ILL. ADMIN. CODE 6.680(d). Hearing officer, Mr. Thomas Wetzler, presided over the hearing. *See generally* 44 ILL. ADMIN. CODE 6.680. The Department bore the burden of proof. The Rules provide the Department must present evidence to establish the Contractor has engaged in acts or omissions that indicate that it lacks integrity and honesty in the conduct of business or the performance of contracts. 44 ILL. ADM. CODE 6.520. In so doing, the Department relied on the July 22, 2011 Audit by the Department's Financial Review and Investigations Section. *See* Department Exhibit 1. While there are multiple issues addressed in the Audit, the parties agreed that only five are the subject of the suspension proceedings, namely, Finding Nos. 1-5. Evidence was only admitted as to these five findings.

The hearing officer found the allegations in Finding No. 2 (discussed herein) to be founded and a suspension warranted. Indeed, the hearing officer found "the actions of [Contractor] as aforesaid constitute theft . . . [and] indicates that [Contractor] lacks integrity and honesty in the conduct of business or the performance of contracts." The hearing officer further found with respect to this

allegation "the actions of [Contractor] in submitting the inaccurate overhead amounts constitutes making a material false statement, representation, claim or report . . . [and] indicate that [Contractor] lacks integrity and honesty in the conduct of business or the performance of contract." The hearing officer did not find the other alleged Findings to have been proven by adequate evidence. Although the hearing officer notes based upon the allegations of proven Finding No. 2, "a significant suspension of [Contractor] is appropriate in view of the seriousness of the violation" only a six month suspension beginning on the date of the Interim suspension was recommended, making Contractor eligible to resume contracts with the State as of July 2012. The hearing officer based this recommendation on the likelihood that "a suspension beyond 6 months . . . [would] result in the bankruptcy and dissolution of [Contractor]."

A. Finding No. 2

Finding No. 2 alleges several expenses should have been charged to "direct labor" but were instead charged to either the "office" or "precontract" accounts, both of which are overhead accounts. As a result, the overhead rate was inflated, and IDOT paid Contractor more than appropriate. The hearing officer determined the testimony and exhibits left no doubt Contractor had a policy violative of applicable accounting guidelines and that policy resulted in significant inflation of overhead costs which were then paid by the Department. The hearing officer found Contractor's actions constituted theft. The hearing officer determined the CFO of Contractor was clearly aware of the policy, and recommended the Chief Procurement Officer find "that Audit Finding No. 2 constitutes more-than-adequate evidence that [Contractor] lacks integrity and honesty in the conduct of business or the performance of contracts." I concur with this part of the hearing officer's recommendation. However, the hearing officer determined that because Contractor claimed it would go bankrupt if it was subject to further suspension, "a lengthy suspension is tantamount to a death sentence for McDonough Association, Inc. A death sentence for [Contractor] will result in a number of results that would not, in my view, serve the public interest as required by Section 6.50 of the regulations. First, it would destroy a company that has a long history—and until the present an apparently unblemished history--of providing consulting services to IDOT and other state and local agencies in Illinois and beyond." The hearing officer recommended a suspension term of 6 months. I do not concur with the recommended suspension term for the following reasons.

Suspending a contractor is never a decision taken lightly, especially when that suspension may result in the end of a long-standing company. Contractor's actions must be judged on their seriousness and weighed against other suspension cases that have come before this office. In this case, Contractor's mitigating factors, that it has lost business and could go bankrupt, are the natural and direct result any business may face when it chooses to overbill a client. While it is true that Contractor has a long history of working for the Department, the audit showed that for the majority of the last decade Contractor has been overbilling. That fact does not evidence a business relationship that is beneficial to the State. Indeed, the hearing officer found, and I concur, these actions constituted theft. The impact a suspension has on a Contractor must be weighed alongside the seriousness of the violation and past disciplinary precedent of this office. As such, I do not accept the recommendation of the hearing officer to limit the suspension based solely upon Contractor's inability to continue its business while suspended.

There are two recent disciplinary cases before this Office which bear discussion. In the first case, Suspension Nos. 2012-S-002 and 2012-S-003 a DBE Contractor was found to be allowing other entities to complete work which the Contractor was representing to have completed. The suspension resulted from a criminal complaint for fraud being issued. In that case, the Contractor entered into an

agreement with the Department and imposed a voluntary suspension of five years. In another case, Suspension No. 11-S-004, a Contractor misrepresented its use of trade laborers under the "Responsible Bidder Requirements" of the Illinois Procurement Code and was given a two-year suspension. In that case, the Contractor claimed to have been confused when it responded to the Department about trade laborers, and claimed to have had no intent to deceive or misrepresent. The hearing officer found, and I concurred, that it was the Contractor's responsibility to ensure it understood the requirements and acted in accordance with those requirements and all applicable laws. The hearing officer found, and I concurred, that the Contractor's claimed confusion was no excuse for the misrepresentation of facts to the Department. The mitigating factors in that case were that this was a new and small Contractor who did not have a lot of experience and that based upon the Contractor's assertion the conduct was not likely to occur again in the future. In addition, the Contractor claimed a suspension would likely cause the dissolution of its business. Given those circumstances, I concurred that a two-year suspension was appropriate.

The present case falls somewhere between these two precedents. This case has further reaching and more serious impact than case no. 11-S-004. This case is more analogous to the fraud aspects of case nos. 2012-S-002 and 2012-S-003. Here, Contractor is a sophisticated and long-standing business that has been working for the Department for many years. The overbilling took place over the majority of the last decade and ended in a multi-million dollar overbilling balance. Like case no. 11-S-004, Contractor claims to have made changes to its practices to prevent such a failure in the future. However, the magnitude of the overbilling and the inability of such a business to prevent this kind of activity is, like case nos. 2012-S-002 and 2012-S-003, staggering. As the hearing officer stated "a significant suspension of [Contractor] is appropriate in view of the seriousness of the violation for which I find it responsible." As such, for all of the reasons set forth herein, considering Contractor's mitigating circumstances, but consistent with the past precedent of this Office, I find a suspension of three years appropriately commensurate with the seriousness of the conduct proven in Finding No. 2.

B. Finding No. 1

The remainder of the findings the hearing officer found were not supported by adequate evidence. Finding No. 1 alleges Contractor's distribution of dividends was, in part, characterized improperly as bonuses and included in overhead. The audit points out that the "bonuses" were paid in exact proportion to the shareholder's ownership interest. The audit contends the bonus amounts at issue result in tens of millions of dollars that were improperly billed to overhead accounts. Yet, Contractor claims to have disallowed voluntarily most of these amounts in order to be in compliance with the applicable accounting rules, regulations, and past precedent. There is a Department issued "Wolaver" memorandum, albeit a dated one, which appears to have been the basis for some of Contractor's actions. While the amount of inappropriate billing is not precisely clear from the evidence, the question of whether there was a violation is the same regardless of the amounts at issue. In order to comply with the applicable regulations distributive income, or dividends, cannot be included in overhead. 48 C.F.R § 31.205-6. To the extent that shareholders received bonuses in addition to distributive income, there must be a demonstrable and documented process by which the bonuses are calculated. *Id.*; *see also* McDonough Exhibit M7. The evidence shows Contractor began the bonus analysis for the shareholders by determining the amount of profits that would be distributed and divided that amount amongst the shareholders in direct proportion to their percentage of ownership interest. *See, e.g.*, Department Exhibit 1 at Audit Exhibits L-U; McDonough Exhibit MAI 24; Hearing Transcript ("Tr.") at 248:23-249:6. Absent further action, this total amount, which Contractor calls in Exhibit MAI 24 "Bonus Compensation," is clearly a distribution of profits and not allowable as overhead by law. The next step appears to be that Contractor determined a maximum percentage amount of the

shareholder's salary, using the Wolaver memorandum, that could be claimed in overhead as a performance based bonus. Contractor then attempted to give every shareholder the maximum "Allowable Bonus" without any demonstrable consideration of performance. *See* Tr. at 249:7-249:14. Indeed, Contractor argued in its opening statement that shareholders are by their nature high performers so no further analysis was needed. *See* Tr. at 22. Contractor's next step was to take the total "Bonus Compensation" and portion out from that amount the "Allowable Bonus." The remainder of the distributive income amount was deemed "Excess Bonus." The result was that the total "Bonus Compensation," the amount distributed to the shareholders, remained the same but was divided into two categories: "Allowable Bonus" and "Excess Bonus." *See* Tr. at 247:22-248:1; 248:13-22. Contractor claims that while the total "Bonus Compensation" amount was included in the overhead spreadsheets, the "Excess Bonus" portion voluntarily disallowed.

It is worth noting two things here. First, it appears that the shareholders received the same total "Bonus Compensation" regardless of what the "Allowable Bonus" ended up being. In other words, Contractor paid the shareholders the same ownership-percentage-based dividend regardless of performance. The second thing worth noting is the testimony suggests the shareholders only received one check for their total "Bonus Compensation" amount. There was no separate check issued for the "Allowable Bonus" and "Excess Bonus" (i.e. dividends) amount. *See* Tr. at 147:2-18, 148:6-15. It appears the only place there was any express separation of these funds was on the overhead spreadsheet and the spreadsheets provided by Mr. Kosik during the hearing in Exhibit MAI 24. There is more than adequate evidence to support a finding that at the beginning of the analysis, the total "Bonus Compensation" was a distribution of profits. This amount was drawn from a pool of profits set aside to be distributed to shareholders and distributed on a percentage-ownership based formula. What Contractor then did was to determine what amount it could claim as a bonus and then re-named that amount of the distributive income "Allowable Bonus." The end result was the shareholders received the exact same amount of distributed income. In fact, even if there had been no allowable bonus, the shareholders would have still received the same amount of dividends. The only difference between what we have in this example and what occurred in 2000-2009 would be that in real life Contractor got reimbursed by its clients for a portion of the "Bonus Compensation" by re-naming it "Allowable Bonus" and billing it as overhead. That practice is absolutely unacceptable. In fact, it should be noted that since the audit, Contractor has completely re-documented its bonus award system and now makes a clear separation of bonus from dividend. In addition, the bonus calculation is now directly tied to individual performance by use of a point scale. *See* McDonough Exhibit M12 Section 3.

For all of these reasons, I must reject the hearing officer's determination that Finding No. 1 was not proven by adequate evidence. While Contractor testified it was following a practice it thought was reasonable, failure to understand the law is no excuse for a violation. In addition, this matter was the subject of an excruciating amount of testimony and documents which, in the end, appeared to provide more confusion than clarity. Regardless, any reasonable person would come to the conclusion that this type of distribution of compensation is clearly a dividend or profit sharing and not a bonus; dividends are not allowable as overhead cost. The simple fact that Contractor's analysis started with a calculation of distributive income and in the end that same amount of distributed income was paid to the shareholders, regardless of the label Contractor put on it, is enough to meet the adequate evidence standard of proof. The inclusion of these dividends to overhead resulted in overbilling to the Department, and I therefore reject the hearing officer's recommendation and find that the conduct alleged in Finding No. 1 was proven by adequate evidence to be a violation. Moreover, the sheer lack of documentation, explanation, separation, and common sense used in this situation certainly indicates that Contractor lacks integrity and honesty in its business practices and contract performance.

C. Finding Nos. 3, 4, and 5

With respect to Finding Nos. 3 and 5, the hearing officer appears to have based his recommendation on the "insignificant" amount of the sums involved. Indeed, with respect to Finding No. 3, the hearing officer goes so far as to state the Contractor's actions could constitute theft, but were not of a significant amount and therefore could not be considered a "material" violation. With respect to Finding No. 5 the hearing officer found "there is no evidence that the company management were aware of any falsification" and therefore, no material violation. The issue in both Finding Nos. 3 and 5 is the improper inclusion of costs in overhead which should have been directly billed to specific projects. In addition, the auditors found several cases where expense reports were submitted to the overhead accounts, but had post-it notes on the reports which showed what project the work was actually for. The audit notes that absent these post-it notes being left on the reports there would have been no way to know that these charges were inappropriate. Indeed, the audit notes there is no way to know if other post-it notes had been used but removed. The audit concludes this practice of using post-it notes to identify the actual project responsible for the work while billing overhead instead raises serious questions as to the validity of all the charges in the account. The hearing officer also appears to have found these charges to be inappropriate, noting the charges could "arguably" be classified as theft. Indeed, Contractor admitted during testimony, much like with Finding No. 2, that its actions were incorrect and resulted in otherwise unreimbursable expenses being charges to other clients via the overhead account. *See* Tr. at 178:23-179:3, 199:16-20, 201:8-12.

Whether the amount is small or large, the result is an inflation of the overhead account which is then paid by the Department. As evidenced by the post-it notes, there were other projects that should have been billed for this work. Contractor notes that for the transportation charges (Finding No. 3) the overhead account was credited. However, the overhead account statement does not clearly tie the credits to the transportation costs. Indeed, while Contractor attempted to clarify this during testimony, the explanation was not convincing. In particular, Contractor's example of transportation credits related to line item numbers 5030 and 7030 on the overhead spreadsheet whereas the Audit took issue with the charges to line item number 7150. *See* Tr. at 193:19-195:1. On cross examination, Contractor admitted the debits and credits for line item numbers 5030 and 7030 had nothing to do with the Transportation line item (number 7150). *See* Tr. at 198:3-7; see also Department Exhibit 1 at Audit Exhibits Nos. A-J. . With respect to the post-it notes, this practice is absolutely unacceptable. While the hearing officer states there is "no evidence that the company management" knew about this practice, that is not only hard to believe but is no excuse. These reports were submitted, approved, entered into the accounting system, and retained by the company. *See* Tr. at 184:6-11. There is no reason that a post-it note on an expense report showing the report itself to be a misrepresentation should pass through all of those gates without being questioned by the company. While the executive level employees may have not been specifically aware of the falsification of those reports, every person starting with the affixer of the post-it note to the people approving, entering, and retaining the documents were aware that it was a falsified expense report. That these reports and post-it notes made it through Contractor's system, apparently unquestioned, evidences serious flaws in Contractor's accounting practices. In addition, Contractor testified that for 2008 alone these amounts totaled $25,000. *See* Tr. at 184:17-186:13. That is not an "insignificant" amount. Regardless, these findings show a lack of accounting integrity on Contractor's part and support a finding that Contractor lacks responsible business integrity and honesty. I therefore reject the hearing officer's recommendation and find that the conduct alleged in Finding Nos. 3 and 5 was proven by adequate evidence to be a violation.

With respect to Finding No. 4, the audit alleges Contractor included $490,000 in specific settlement costs which should have been attributed to two specific projects, to the "Legal and

Accounting" overhead account. The Contractor conceded this allegation during the hearing, but nevertheless cited the DCAA Contract Auditing Manual as justification for its actions. *See* Tr. at 123:24-124:22. The Department countered with additional citations which appear to establish that since the questioned settlement costs were identifiable to a specific contract, the entire award should be charged to that contract, and not to the indirect cost pool (i.e., overhead account). Contractor has expressly conceded to the audit findings on this issue. Nevertheless, the hearing officer found this charge not proven and determined "because [Contractor] has presented a plausible (although incorrect) position to justify its allocation of the settlement costs to the overhead account, and predominantly in view of the position of [Contractor]'s outside accounting firm that the allocation was not objectionable, and in view of the fact that there is no evidence by which to determine or even infer a fraudulent intent," there was no violation This is another example of Contractor allowing project-specific expenses to be included in its general overhead. This practice is not acceptable and evidences a lack of responsible business integrity and honesty. Moreover, Contractor has conceded to the facts of this finding. As such, I reject the hearing officer's recommendation and find the conduct in Finding No. 4 was proven by adequate evidence to be a violation.

Overall, Finding Nos. 1, 3, 4, and 5 show Contractor had adopted practices and procedures which allowed for inappropriate billing to its overhead accounts. Indeed, with respect to Finding Nos. 1, 3 and 5, the expense reports at issue were both inappropriate and misrepresentations of fact with respect to the nature of the work. In some instances, Contractor claims it credited the overhead accounts to correct the inappropriate billing. But the evidence is not clear that the amounts were actually or fully credited. Even so, while this might correct the monetary implications of Contractor's practice, it does not change the fact that inappropriate billing to overhead was taking place. To allow the inappropriate billing in the first place is problematic as not only does it open the door for overbilling, but it leads to the situation where on the books Contractor's accounts are misrepresented depictions of who should be billed for work. The problems with Contractor's accounting system overall reinforce the conclusion drawn with respect to Finding No. 2 above that Contractor has demonstrated a lack of business integrity and honesty in the conduct of business and performance of contracts. However, I do not find an additional suspension beyond three years is warranted because of the conduct in Finding Nos. 1, 3, 4, and 5. These findings are extensions of the same set of faulty practices and, while additional violations, do not warrant additional suspension time beyond the already imposed three years. As such, I find the three year suspension commensurate with the seriousness of all Contractor's conduct discussed herein.

IV. CONCLUSIONS OF LAW

I concur with the hearing officer's recommendations as to the following:

1. The allegations contained in Finding No. 2 of the audit, that Contractor improperly allocated time to overhead accounts which should have been allocated to direct costs, have been established by adequate evidence.
2. As a result of the improper allocation of time to overhead proven in Finding No. 2, the amount of overhead was overstated, thus resulting in the Department paying Contractor more than it was required to pay under the applicable law and its contracts with Contractor.
3. The actions of Contractor as proven in Finding No. 2 constitute theft as well as violation of 44 ILL. ADM. CODE 6.520 (a).

4. The actions of Contractor as proven in Finding No. 2 indicate that Contractor lacks integrity and honesty in the conduct of business or the performance of contracts as defined by 44 ILL. ADM. CODE 6.520.
5. The actions of Contractor in submitting the inaccurate overhead amounts proven in Finding No. 2 constitute making a material false statement, representation, claim or report, in violation of 44 ILL. ADMIN. CODE 6.520(d).
6. The actions of Contractor as proven in Finding No. 2 indicate Contractor lacks integrity and honesty in the conduct of business or the performance of contracts as defined by 44 ILL. ADM. CODE 6.520.
7. Because Contractor has been found to lack integrity and honesty in the conduct of business or the performance of contracts, as set forth above, subject Contractor to a suspension "commensurate with the seriousness of the cause or causes, of up to 10 years." 44 ILL. ADMIN. CODE 6.550.
8. A significant suspension of Contractor is appropriate in view of the seriousness of the violation for which I find it responsible.
9. The allegations contained in Findings No. 1, 3, 4 and 5 of the IDOT audit, are a significant cause for concern.

I reject the hearing officer's recommendations insofar as I find as follows:

10. In view of the seriousness of the charges in Finding No. 2 for which I find Contractor guilty, considering the potential impact claimed by Contractor, and past disciplinary precedent of this office, I impose a suspension of three years, beginning as required by 44 ILL. ADMIN. CODE 6.690(c) on the date of the Interim Suspension.
11. The allegations contained in Finding No. 1 of the audit, that Contractor improperly allocated dividends to overhead costs, have been established by adequate evidence.
12. The allegations contained in Finding No. 3 of the audit, that Contractor improperly allocated costs that should have been allocated to specific projects to the transportation overhead account, have been established by adequate evidence.
13. The allegations contained in Finding No. 4 of the audit, that Contractor included $490,000 in specific settlement costs, which should have been attributed to two specific projects, to the "Legal and Accounting" overhead account, were conceded by Contractor.
14. The allegations contained in Finding No. 4 of the audit, as conceded, have been established by adequate evidence.
15. The allegations contained in Finding No. 5 of the audit, that post-it notes were found on expense reports of one employee which contradicted the information on the actual expense report, indicating the expense reports were chargeable to other projects, have been established by adequate evidence.
16. As a result of the conduct proven in Finding Nos. 1,3, 4, and 5 the amount of overhead was overstated, thus resulting in the Department paying Contractor more than it was required to pay under the applicable law and its contracts with Contractor.
17. The actions of Contractor as proven in Finding Nos. 1, 3, 4, and 5 constitute theft as well as violation of 44 ILL. ADM. CODE 6.520 (a).
18. The actions of Contractor as proven in Finding Nos. 1,3, 4, and 5 indicate that Contractor lacks integrity and honesty in the conduct of business or the performance of contracts as defined by 44 ILL. ADM. CODE 6.520.

19. The actions of Contractor in improperly allocating costs to the transportation overhead account proven in Finding Nos. 1, 3, 4, and 5 constitute making a material false statement, representation, claim or report, in violation of 44 ILL. ADMIN. CODE 6.520(d).
20. The actions of Contractor as proven in Finding Nos. 1,3, 4 and 5 indicate Contractor lacks integrity and honesty in the conduct of business or the performance of contracts as defined by 44 ILL. ADM. CODE 6.520.
21. The three year suspension term imposed as a result of the conduct in Finding No. 2 is adequately commensurate with the seriousness of Finding Nos. 1,3, 4, and 5.

V. DETERMINATION OF CHIEF PROCUREMENT OFFICER

For all of the reasons, I concur-in-part with the recommendation of the hearing officer as detailed in the above analysis. Based upon my review of the evidence and analysis of past precedent, I find that McDonough Associates, Inc. should be suspended for a term of 3 years commensurate with the seriousness of the conduct by adequate evidence. Pursuant to 44 ILL. ADMIN. CODE 6.690(c), the Interim suspension term will be deducted from the three year suspension period.

This Final Determination is issued and served this 5th day of June, 2012 at Springfield, Illinois.

Bill Grunloh, Chief Procurement Officer
2300 S. Dirksen Parkway, Room 200
Springfield, Illinois 62764
(217) 558-5434

CERTIFICATE OF SERVICE

I, Bill Grunloh, Chief Procurement Officer for the Department of Transportation, hereby certify that a copy of the foregoing Final Determination of Suspension has been sent to the following parties of record:

upon Counsel for McDonough Associates, Inc.:

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by electronic mail on June 5th, 2012 and causing a copy of the same to be sent via certified mail at Springfield, Illinois on June 6th, 2012;

upon Counsel for the Department of Transportation:

Lance Jones
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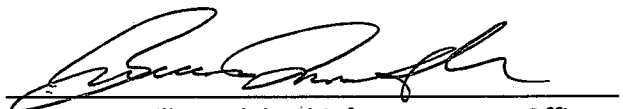
by electronic mail and hand-delivery on June 5th, 2012; and

upon the following interested parties:

- Ann Schneider, Ellen Schanzle-Haskins, Marva Boyd, Jeff Heck, Frank McNeil, and Bill Frey of the Department of Transportation
- Chad Fornoff and Whitney Rosen of the Executive Ethics Commission
- Office of the Chief Procurement Officer for Higher Education
- Office of the Chief Procurement Officer for General Services
- Office of the Chief Procurement Officer for the Capitol Development Board
- Aaron Carter of the Procurement Policy Board
- Thomas Wetzler

by electronic mail on June 5th, 2012.



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