

**STATE OF ILLINOIS  
DEPARTMENT OF TRANSPORTATION**

<b>IN THE MATTER OF:</b>	)	
	)	
<b>North Suburban Asphalt Maintenance, Inc.</b>	)	<b>11-S-004</b>
	)	
<b>Respondents</b>	)	

**FINDINGS AND RECOMMENDATIONS  
TO THE CHIEF PROCUREMENT OFFICER**

On June 8, 2011 IDOT Secretary Gary Hannig and IDOT Chief Procurement Officer Bill Grunloh issued a Notice of Suspension and Interim Suspension to Respondent North Suburban Asphalt Maintenance, Inc. (hereinafter "North Suburban" or "Respondent"). The charges against North Suburban involved two construction projects: (1) Lake County Project No. 10-00000-12-GM, and (2) Village of Volo Project No. 10-00000-01-GM. For simplification purposes, the projects will be referred to hereafter simply as the "Lake County project" and the "Volo project." As to each project, Respondent is charged with four violations. First, it is charged that North Suburban violated the "Responsible Bidder" requirements contained in 30 ILCS 500/30-22(6) in that it failed to provide evidence that it participated in applicable apprentice and training programs approved by and registered with the United States Department of Labor's Bureau of Apprenticeship and Training for the trade of Laborer when in fact the trade of laborer was used on the project. Second, it is charged with violation of Section 6.520 of the procurement regulations [44 Ill. Adm. Code 6.520] by making a material false statement with respect to the projects in question by failing to include the trade of "laborer" in its certification when in fact the trade of laborer was used on the projects. Third, in response to a query from IDOT, it denied that any laborers would be used on either of the projects when some of its workers did in fact perform laborer's work. Finally, IDOT charged that Respondents actions constitute "theft" under 720 ILCS 5/16-1 and 720 ILCS 5/33E-14, thereby violating Section 6.520 (a) of the regulations which outline causes for suspension or disbarment. [44 Ill. Adm. Code 6.520(a).] In reviewing both the transcript of proceedings and the briefs submitted thereafter, it appears that IDOT has abandoned its allegation that the Respondent's actions constitute theft.

A hearing was held on October 6, 2011, via videoconference. Present in Springfield were IDOT Deputy Chief Counsel Lance Jones, Assistant Chief Counsel Philip McQuillan, and witnesses Robert Anderson and Joseph Kuhlman, the Hearing Officer and court reporter. Present at the Schaumburg IDOT facility were Mr. Sean F. Darke, attorney for Respondent, and Al Harris, President and owner of North Suburban Asphalt Maintenance, Inc.

## LAW

At the center of this proceeding is a provision of the Illinois Procurement Code which is commonly referred to as the "Responsible Bidder" law. It provides, in relevant part:

*To be considered a responsible bidder on a construction contract for purposes of this 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 by and registered with the United States Department of Labor Bureau of Apprenticeship and Training. [30 ILCS 500/30-22]*

The Procurement Code gives the Chief Procurement Officer broad authority to promulgate rules governing its various provisions, which appear in Title 44, Subtitle A, Part 6 of the Illinois Administrative Code.<sup>1</sup> Among them are rules to govern suspension of contractors. Of particular note, Section 6.510 states:

*The CPO (Chief Procurement Officer) may suspend a contractor or subcontractor from participation on any contract or subcontract awarded by or requiring approval or concurrence of the Department upon a determination by the CPO based upon adequate evidence that the contractor or subcontractor has engaged in conduct proscribed by Section 6.520 of this Subpart. This determination may be predicated on evidence developed by means of an investigation conducted by the CPO and procurement compliance monitors and the record of any hearing requested and conducted pursuant to this Subpart; \* \* \* \* [44 Ill. Adm. Code 6.510]*

The grounds for suspension or debarment are set forth in Section 6.520, and provide in portions relevant to this proceeding:

*A contractor or subcontractor may be suspended or debarred from participation due to acts or omissions that indicate that the contractor or subcontractor lacks integrity and honesty in the conduct of business or the performance of contracts. Acts or omissions that indicate the lack of business integrity and honesty include but are not limited to:*

- a) *fraud, bribery, embezzlement, theft, collusion, conspiracy, anti-competitive activity or other misconduct and offenses prohibited by law whether or not any such misconduct or offense is in connection with*

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<sup>1</sup> The rules governing contract procurement, including suspension of contracts, were originally contained in Part 660 of title 44 of the Illinois Administrative Code, authorized and promulgated by the Department of Transportation. During the pendency of these proceedings the statutory provisions transferred oversight of the procurement process to the Chief Procurement Officer, and the rules were transferred to Part 6 of Title 44. The references herein are to Part 6.

*a Department contract or subcontract or any contract or subcontract requiring Department approval;*

\* \* \* \*

- c) materially violating any rule or procurement procedure or making a material false statement in connection with any rules or procurement procedures of the Department;*
- d) making a material false statement, representation, claim or report respecting the character, quality, quantity, or cost of any work performed or materials furnished in connection with a contract or subcontract administered or supervised by the Department; [44 Ill. Adm. Code 6.510]*

As noted above, IDOT charged North Suburban under subsections 6.520(a), (c) and (d).

### FACTS

Respondent is an asphalt maintenance contractor, working primarily on roadways and parking lots in Cook, DuPage and Lake counties. Mr. Al Harris is President and owner of North Suburban Asphalt Maintenance, Inc.

Prior to the two construction projects that are at the center of these proceedings, North Suburban had never performed projects that involved Motor Fuel Tax ("MFT") funds. Both projects at the core of the charges at issue—the "Lake County project" and the "Volo project" — are MFT projects. As such, they are subject to certain laws and regulations, in particular the "Responsible Bidder" provisions of the Illinois Procurement Code (30 ILCS 500/30-22(6) and related provisions of the Illinois Administrative Code.

Among the prerequisites for bidding on MFT projects is submission of certain documentation indicating that a bidder meets the Responsible Bidder requirements. Among the documentation required is an "Apprenticeship or Training Program Certification." Mr. Harris submitted the certification form with the North Suburban bids on both the Lake County and the Volo projects. On both forms, he clearly indicated that the types of work or crafts that would be used on the projects were "Drivers" and "Operators," and that North Suburban complied with the Apprenticeship and Training Program Certification through its membership in Associated Builders & Contractors ("ABC").

Subsequently, North Suburban was awarded the contracts for both the Lake County and Volo projects. Thereafter, IDOT received official protests as to both projects, which request that North Suburban be deemed ineligible to be awarded the contracts because (1) it does not participate in applicable apprenticeship and training programs approved and registered with the

U.S. Department of Labor's Bureau of Apprenticeship and Training for the trade of Laborer, and (2) the use of laborers is necessary to perform work on the projects.

In keeping with IDOT procedures, North Suburban was notified of the protests and asked to respond. Mr. Harris talked with one or more individuals at IDOT (whose names he was not sure about) regarding the situation and thereafter—on the advice of those individuals, according to Harris—responded that North Suburban would not use laborers on the projects. At that point IDOT took Harris' representations at face value and notified the protestor that the protests were denied.

Thereafter, the IDOT Chief Counsel requested that a number of contractors, including North Suburban, be audited to substantiate their compliance with the Responsible Bidder provisions. Mr. Joseph Kuhlman, an internal auditor for IDOT, testified that he performed the audit of Respondent. The audit consisted of reviewing certified payrolls submitted by North Suburban to the Illinois Department of Labor to show compliance with the Prevailing Wage Act (820 ICLS 130 et seq.). According to Mr. Kuhlman, certified payrolls submitted to the Department of Labor and signed by Mr. Harris show several individuals classified as "laborer." By reference to the applicable prevailing wage guidelines, he also showed that the individuals classified as "laborers" were in fact paid in accordance with the prevailing wage guidelines as laborers.

Mr. Harris testified repeatedly that he was confused about the term "laborer." For example, with respect to his responses to the bid protests, when asked by his counsel whether he uses laborers, he responded:

"Well, I'm nonunion, so I don't have laborers, so I was a little bit confused what they meant by that. So I'm not using – I don't know if they meant union laborers at the time or what they actually meant. So I wrote the letter, no, we're not using laborers." [Transcript, page 134]

A few lines later, when asked why he was confused, he testified:

"Well, we do labor. Every job I do is labor, so that's, no matter what you – now, no one used the word classification with me, just laborers. And I made an assumption. Well, union laborer? We're a nonunion shop. We're paying prevailing wages, but we're not a union shop. So I'm under the assumption we're not using union laborers." [Transcript, page 135]

Perhaps Mr. Harris' position is best summed up by his response to IDOT counsel upon cross-examination:

"\* \* \* \* My guys aren't laborers. My guys aren't drivers, my guys aren't operators. My guys are employees. Everyone else here is classifying my guys as something different or what they really are. There is no classification in my company. We just try to closely match to the process that they're doing to the process or to the parameters of what you guys are

calling or whoever with the prevailing wage of where they fall under in what they're doing." [Transcript, page 182]

Mr. Harris insisted, however, that at no time did he have any intent to deceive IDOT with respect to his use of laborers on either the Lake County or Volo projects.

As to the certified payrolls showing several employees classified by North Suburban as "laborers" Harris admitted that the certified payrolls for the two jobs in question did show certain employees classified as "laborers" and that he signed the documents. However, his testimony is that the employees in question were in fact misclassified by staff in his office. He introduced Respondent's Exhibit #25, which consists of revised certified Transcripts of Payroll for the jobs in question which show the various employees classified as Operators, Drivers or Supervisors. Also part of the Exhibit are copies of checks to the various employees who were (according to Harris) misclassified, paying them the difference between the prevailing wage for the original classification as laborers and the revised classifications. The revised Transcripts of Payroll were, according to Harris, submitted in June 2011, after he had received the Notice of Suspension in the instant proceedings.

### ANALYSIS

The regulations governing suspension of contractors and subcontractors provide, in two separate sections, that the applicable standard of proof which applies to suspensions is "adequate evidence." Section 6.510 deals with the initial (i.e., pre-hearing) determination by the CPO, and provides

The CPO may suspend a contractor or subcontractor from participation on any contract or subcontract awarded by or requiring approval or concurrence of the Department upon a determination by the CPO based upon adequate evidence that the contractor or subcontractor has engaged in conduct proscribed by Section 6.520 of this Subpart \* \* \* \* [44 Ill. Adm. Code 6.510]

Section 6.690(a) sets forth the same standard to be applied following the hearing provided for by Section 6.620:

"Based on the record as a whole and an adequate evidence standard of proof, the CPO will determine the suspension action to be taken." [44 Ill. Adm. Code 6.690(a)]

There is no definition of "adequate evidence" in the Illinois Procurement Code or in pertinent state regulations. It is apparent, however, from a review of the cases cited by the parties and an examination of the statutes and regulations cited in them, that Illinois has adopted its approach—and much of the language in its regulations--from the federal procurement structure. Thus, an examination of the federal provisions is instructive in interpreting the state regulations. The federal provisions use the term "adequate evidence" and it is defined in several sections of the Code of Federal Regulations (CFR) governing procurement. "Adequate evidence" is defined

in those sections as “information sufficient to support the reasonable belief that a particular act or omission has occurred.”<sup>2</sup>

Both parties have cited *Horne Bros., Inc. v. Laird*, 463 F.2d 1268, C.A. D.C. 1972, to further characterize what constitutes “adequate evidence.” It should be noted, first, that the facts in *Horne* are substantially different than those in the present case, such that the case itself is of no use as precedent. *Horne* does, however, provide some guidance to that Court’s view of the meaning of “adequate evidence.”

“While the initial thrust of a suspension may be likened to an ex parte temporary restraining order, *the continuance of the suspension beyond a thirty day period is more fairly likened to a preliminary injunction after notice, maintainable only on the showing of adequate evidence that is not self-determined*”<sup>3</sup> 463 F.2d at 1272 [Emphasis added]

The *Horne* court noted the guidance provided by the Armed Service Procurement Regulations (ASPR Section 1.605)

\* \* \* \* Section 1.605 provides, in part, \* \* \* (i)n assessing evidence, consideration should be given to how much credible information is available, its reasonableness in view of surrounding circumstances, corroboration or lack thereof as to important allegations, and inferences which may be drawn from the existence or absence of affirmative facts. This assessment should include an examination of basic documents such as contracts, inspection reports, and correspondence.” 463 F.2d at 1279

While it may seem like quite a stretch to rely on an ostensibly unrelated federal purchasing provision to assist in interpretation of a phrase in the Illinois regulations, the analysis comes full circle when it is noted that this ASPR section has been adopted verbatim into the Department’s regulations which outline factors the Chief Procurement Officer must use in determining what suspension actions should be taken. See: 44 Ill. Adm. Code 6.690 (b).

While nothing cited by the parties nor discussed above gives a precise definition of what constitutes “adequate evidence,” they point clearly to the conclusion that the burden of showing “adequate evidence” is a low threshold. While the Department bears the burden of proof, it is by no means a heavy burden, and one which appears to be at least somewhat less than the more familiar “preponderance of the evidence” standard. In simpler terms, then, it appears that the Department’s burden doesn’t even rise to the level of “more likely than not.”

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<sup>2</sup> See, for example: 13 CFR 124.305 (d) (1), 48 C.F.R. 2.101 (2), 41 C.F.R. § 105-68.900 and 48 C.F.R. 2.101 (2).

<sup>3</sup> Under the federal scheme, an immediate suspension may be imposed for only 30 days (akin to what Illinois calls an “Interim Suspension” where there is no opportunity for a hearing), after which a hearing must be held if requested. In the case before us for consideration, we are dealing with a “suspension” that takes place after Notice and an opportunity for hearing.

Evaluating the record, it appears that nearly all of the factual issues are undisputed. Respondent bid on two MFT projects, submitted certifications that no laborers would be used on the projects, in response to protests stated once again that no laborers would be used on the projects, and submitted certified payrolls which classified several employees as "laborers." Those facts stand unrefuted—well beyond even the highest standards of proof.

The core issue is whether the employees of North Suburban were in fact performing work appropriately classified as "laborers." Apart from the fact that Harris certified them to the Department of Labor as laborers and paid them the prevailing wage of laborers, the testimony of Mr. Harris and IDOT Exhibit #6 strongly support the conclusion that the work being performed was to a great extent that of "laborer."

While there is some overlap between the work of laborers and the work of Heavy Equipment Operators, a review of the record makes it evident that a substantial part of the work being performed by the employees of North Suburban Asphalt is work that fits squarely under the classification of "laborer."

For example, Mr. Harris described the first steps taken on the Lake County project thusly: "First thing we'll set up the signage, traffic control, close the lane down." IDOT Exhibit #6 is Bulletin 2008-16 issued by the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship. The Exhibit, Appendix A, in describing generally the work of Construction Craft Laborers, states "CCL's also clear and prepare highway work zones, install traffic barricades, markers, and control traffic." Mr. Harris describes work done after the crack-cutting process: "And right behind the crack-cutting process is two men on the front of the truck with air cannons powered by air compressor. They're cleaning out the cracks." IDOT Exhibit #6, Appendix A, states "Other highly specialized tasks include . . . operating air, electric and pneumatic tools." IDOT Exhibit #6, Appendix A – 5, in setting forth the training curriculum specifically addresses asphalt, providing "the student will practice the preparation of the surface, having the tools ready, and cleaning of the tools and machinery. The patching of pot-holes and cracks will be practiced along with proper raking techniques." These are precisely the kinds of work described by Mr. Harris that is done by North Suburban Asphalt. Further comparison of the work as described by Mr. Harris and the training required of Laborers plainly supports a conclusion that North Suburban's employees were performing the work of laborers.

Respondent's Counsel elicited testimony from Mr. Harris as to some of the elements of the work done by North Suburban's employees, and related them to items contained in IDOT Exhibit #7. IDOT Exhibit #7, also issued by the USDOL, sets forth training guidelines for Operating Engineers.<sup>4</sup> Counsel is correct that there are some provisions in the training of Operating Engineers that could apply to work done by employees of North Suburban. IDOT has cited Construction and General Laborers, District Council of Chicago and Vicinity, Affiliated with the Laborers International Union of North America, AFL-CIO and Paul J. Schwendener,

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<sup>4</sup> The Appendices to IDOT Exhibit #7 make reference to "Operating Engineer (Universal Equipment Operator)," "Operating Engineer (Grade and Paving Equipment Operator)" and "Operating Engineer (Plant Equipment Operator)" rather than to term "Heavy Equipment Operator" as used by the parties. Whether the term used by the parties is a shorthand reference to the 3 categories of Operating Engineer, or an incorrect reference (Respondent certification of craft/trades to be used for which it had the required training program was simply to "Operators"), does not change the point that the duties of the various trades/crafts may overlap.

Inc., 304 NLRB No. 77, 1991 WL 178176 (NLRB) as precedent for classifying Respondent's workers as laborers. What that case unquestionably illustrates is that there is often no "bright line" test to distinguish the work of one trade or craft from another. Clearly there is overlap in the work and training of apprentices from one trade or craft to another. Nonetheless, a review of both IDOT Exhibits #6 & #7 shows unambiguously that the work done by the employees of Mr. Harris fit the category of "Laborer" much more so than the category "Operating Engineer."

Mr. Harris takes the position that he was confused regarding the issue of whether he was in fact using "laborers." His testimony on that issue is entirely believable, as is his insistence that he had no intent to deceive IDOT or anyone else as to the work being done by his employees. While some confusion is understandable, Mr. Harris signed and submitted an "Apprenticeship or Training Program Certification" for each project (see IDOT Exhibits #13 and #19), which specifically provides, in the last paragraph:

*The bidder is responsible for making a complete report and shall make certain that each type of work or craft job category that will be utilized on the project is accounted for and listed. [Emphasis added].*

If Mr. Harris was confused as to whether the work being done by his employees fell under the "laborer" classification or some other classification, he should have inquired further. Under the cited provision it was his responsibility to know, not to assume. Moreover, his receipt of the first protest should have been a red flag alerting him to the issue and the need to inquire further. He did not.

Respondent further takes the position that the "certified transcript of payrolls" submitted to the Illinois Department of Labor classifying several employees as "laborers" was simply a mistake, which was corrected by submission of revised payrolls and payment to the affected employees of the corrected rate. The fact that the "mistake" was corrected only after the Notice of Suspension and Interim Suspension were issued makes them inherently suspect. In view of the standard of proof required of the Department to sustain the suspension, I cannot conclude that the revised payrolls provide a satisfactory defense for Respondent.

A thorough evaluation of the facts leads inescapably to the conclusion that the Department has established its case on "information sufficient to support the reasonable belief that a particular act or omission has occurred" – i.e., adequate evidence.

Counsel for Respondent argues that IDOT had no jurisdiction to investigate the Lake County project, because the protest filed by on that project was filed beyond the 7-day limit required by the regulations. Respondent's objection to the protest is untimely. Had Respondent wished to contest the validity of the protest, it should have done so upon receipt of the request from the Department for a response to the protest. Instead, Respondent submitted a response—a response that was not, as it turns out, truthful. It was not the protest that caused the Respondent's current difficulty, it was the response. Assuming *arguendo* that the protest was filed too late, Respondent cites no statutory or regulatory authority which would limit the Department's authority to investigate a contractor's compliance with the Responsible Bidder provisions of the Procurement Code or any other requirement imposed upon a successful bidder by statute or



regulation. To hold that a timely-filed protest is required before the Department can investigate compliance with statutory and regulatory requirements would in effect decimate enforcement of the Procurement Code. Indeed, a good number of the causes for suspension or disbarment listed in Section 6.520 (44 Ill. Adm. Code 6.520) are the types of violations that might not be discovered until after the bid protest period had expired. To make the timely filing of a bid protest a prerequisite to jurisdiction of the Department to enforce the Code and regulations flies in the face of the very purpose of the Procurement Code and applicable regulations.

Respondent next argues that IDOT lacks jurisdiction to determine what job duties fall under laborers or operators. This position, if accepted, would likewise place an unreasonable and unwarranted restriction on the Department's ability to enforce the Procurement Code and regulations. For example, if a contractor were to bid on a massive road construction project, and certify that it was using only laborers, the Department would have more than a reasonable suspicion that the project would require more than laborers to complete. Under the position urged by Respondent here, IDOT would simply have to take the contractor's certification at face value and believe that only laborers would be working on the project. As large trucks, graders and other large road-building equipment proceeded down the highway in front of the IDOT headquarters, there would be no way for IDOT to question whether all of the workers driving those trucks were laborers.

#### PENALTY

Under the terms of the Procurement Code [30 ILCS 500/50-65] and regulations [44 Ill. Adm. Code 6.550] a contractor may be suspended for up to 10 years. The Notice of Suspension did not determine a specific length for the suspension, but the Department, in its closing brief, suggested a suspension of "up to 5 years." The length of suspension is completely at the discretion of the Chief Procurement Officer, subject only to the admonition that it be commensurate with the seriousness of the cause or causes for the suspension.

There is little doubt, in my judgment, as to the facts of this case, nor to the responsibility of Respondent for the violations. Clearly it was North Suburban's responsibility under the applicable law to understand the requirements and to comply with them, and it did not fulfill that responsibility. However, there are three mitigating factors particular to this case that warrant consideration. First, the two projects in question are the first MFT projects ever done by North Suburban which lends some credibility to Mr. Harris' testimony that the violations committed were at least partially due to his lack of understanding and that he did not purposefully mislead the Department. Second, North Suburban is a small operation. Larger operations have the wherewithal to either employ or hire attorneys or other consultants to steer them through the sometimes confusing rules and policies. A small operation like North Suburban, where the owner/operator is responsible for all facets of the operation, may not have that luxury. That by no means excuses North Suburban violations, but may perhaps make its failure to comply more understandable. Third, in view of the record as a whole, I believe it highly unlikely that Mr. Harris will repeat the violations if and when he is allowed to resume work on MFT projects.

Given the mitigating circumstances cited above, I recommend a suspension of two years, commencing on the date of the initial suspension.

## CONCLUSION

After a thorough review of the testimony, exhibits and arguments of counsel, it is my recommendation that the Chief Procurement Officer find as follows:

1. Respondent North Suburban Asphalt Maintenance, Inc. was the successful bidder on Lake County Project No. 10-00000-12-GM.
2. Lake County Project No. 10-00000-12-GM was paid for, in whole or in part, by Motor Fuel Tax funds and as such was subject to the "Responsible Bidder" provisions of the Illinois Procurement Code, and the rules and regulations adopted thereunder.
3. For the said project Respondent submitted an "Apprenticeship or Training Program Certification" which certified that Respondent was a participant in apprenticeship and training programs for "drivers" and "operators" through its membership in Associated Builders and Contractors. The "Apprenticeship or Training Program Certification" failed to certify participation by Respondent in an apprenticeship or training program for the trade of "laborer."
4. Under the terms of the Apprenticeship or Training Program Certification agreed to and signed by North Suburban Asphalt Maintenance, Inc. President Al Harris, all requirements of the certification "constitute a material part of the Respondent's contract, and Respondent is responsible for making a complete report and must make certain that each type of work or craft job category that will be utilized on the project is accounted for and listed.
5. In response to a request from the Department notifying it of a protest filed on Lake County Project No. 10-00000-12-GM, Respondent again notified the Department that it would not be using the trade of "laborer" on the project.
6. Contrary to the certification and assertions of Respondent, employees of North Suburban Asphalt Maintenance, Inc. did, in fact, perform the duties of "laborer" on Lake County Project No. 10-00000-12-GM.
7. The failure of North Suburban Asphalt Maintenance, Inc. to certify that it participated in apprenticeship and training programs for the trade of "laborer" on Lake County Project No. 10-00000-12-GM violates the Illinois Procurement Code "Responsible Bidder" requirement (30 ILCS 500/30-22(6)).
8. The certification of North Suburban Asphalt Maintenance, Inc. that it would not use the trade of "laborer" on Lake County Project No. 10-00000-12-GM when it did in fact use the trade of "laborer" on the project constitutes:

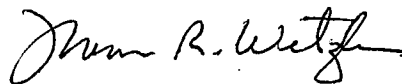
- i. "a fraud on the Department and local agencies" and "misconduct prohibited by law" in violation of Section 6.520(a) of the Rules for Contract Procurement of the Chief Procurement Officer of the Department of Transportation;
  - ii. a material violation of a procurement procedure and a material false statement in connection with a procurement procedure, in violation of Section 6.520(c) of the Rules for Contract Procurement of the Chief Procurement Officer of the Department of Transportation; and
  - iii. the making of a material false statement or representation respecting the character of work performed in connection with a contract administered or supervised by the Department, in violation Section 6.520(d) of the Rules for Contract Procurement of the Chief Procurement Officer of the Department of Transportation.
9. The Respondent's statement, in response to the Department's inquiry regarding a protest filed against the awarding of the contract to North Suburban Asphalt Maintenance, Inc., that laborers would not be used on Lake County Project No. 10-00000-12-GM when it did in fact use laborers on the project constitutes
  - i. "a fraud on the Department and local agencies" and "misconduct prohibited by law" in violation of Section 6.520(a) of the Rules for Contract Procurement of the Chief Procurement Officer of the Department of Transportation;
  - ii. a material violation of a procurement procedure and a material false statement in connection with a procurement procedure, in violation of Section 6.520(c) of the Rules for Contract Procurement of the Chief Procurement Officer of the Department of Transportation; and
  - iii. the making of a material false statement or representation respecting the character of work performed in connection with a contract administered or supervised by the Department, in violation of Section 6.520(d) of the Rules for Contract Procurement of the Chief Procurement Officer of the Department of Transportation.
10. Respondent North Suburban Asphalt Maintenance, Inc. was the successful bidder on Village of Volo Project No. 10-00000-01-GM.
11. Village of Volo Project No. 10-00000-01-GM was paid for, in whole or in part, by Motor Fuel Tax funds and as such was subject to the "Responsible Bidder" provisions of the Illinois Procurement Code, and the rules and regulations adopted thereunder.
12. For the said project Respondent submitted an "Apprenticeship or Training Program Certification" which certified that Respondent was a participant in apprenticeship and

training programs for “drivers” and “operators” through its membership in Associated Builders and Contractors. The “Apprenticeship or Training Program Certification” failed to certify participation by Respondent in an apprenticeship or training program for the trade of “laborer.”

13. Under the terms of the “Apprenticeship or Training Program Certification” agreed to and signed by North Suburban Asphalt Maintenance, Inc. President Al Harris, all requirements of the certification constitute a material part of the Respondent’s contract, and Respondent is responsible for making a complete report and must make certain that each type of work or craft job category that will be utilized on the project is accounted for and listed.
14. In response to a request from the Department notifying it of a protest filed on Village of Volo Project No. 10-00000-01-GM Respondent again notified the Department that it would not be using the trade of “laborer” on the project.
15. Contrary to the certification and assertions of Respondent, employees of North Suburban Asphalt Maintenance, Inc. did, in fact, perform the duties of “laborer” on Village of Volo Project No. 10-00000-01-GM
16. The failure of North Suburban Asphalt Maintenance, Inc. to certify that it participated in apprenticeship and training programs for the trade of “laborer” on Village of Volo Project No. 10-00000-01-GM violates the Illinois Procurement Code “Responsible Bidder” requirement (30 ILCS 500/30-22(6)).
17. The certification of North Suburban Asphalt Maintenance, Inc. that it would not use the trade of “laborer” on Village of Volo Project No. 10-00000-01-GM when it did in fact use the trade of “laborer” on the project constitutes:
  - i. “a fraud on the Department and local agencies“ and “misconduct prohibited by law” in violation of Section 6.520(a) of the Rules for Contract Procurement of the Chief Procurement Officer of the Department of Transportation;
  - ii. a material violation of a procurement procedure and a material false statement in connection with a procurement procedure, in violation of Section 6.520(c) of the Rules for Contract Procurement of the Chief Procurement Officer of the Department of Transportation; and
  - iii. the making of a material false statement or representation respecting the character of work performed in connection with a contract administered or supervised by the Department, in violation Section 6.520(d) of the Rules for Contract Procurement of the Chief Procurement Officer of the Department of Transportation.

18. The Respondent's statement, in response to the Department's inquiry regarding a protest filed against the awarding of the contract to North Suburban Asphalt Maintenance, Inc., that laborers would not be used on Village of Volo Project No. 10-00000-01-GM when it did in fact use laborers on the project constitutes
- i. "a fraud on the Department and local agencies" and "misconduct prohibited by law" in violation of Section 6.520(a) of the Rules for Contract Procurement of the Chief Procurement Officer of the Department of Transportation;
  - ii. a material violation of a procurement procedure and a material false statement in connection with a procurement procedure, in violation of Section 6.520(c) of the Rules for Contract Procurement of the Chief Procurement Officer of the Department of Transportation; and
  - iii. the making of a material false statement or representation respecting the character of work performed in connection with a contract administered or supervised by the Department, in violation of Section 6.520(d) of the Rules for Contract Procurement of the Chief Procurement Officer of the Department of Transportation.
19. Pursuant to Section 6.520(d) of the Rules for Contract Procurement of the Chief Procurement Officer of the Department of Transportation the above findings indicate that Respondent lacks integrity and honesty in the conduct of business or the performance of contracts.
20. Under the terms of Section 6.550 of the Rules for Contract Procurement of the Chief Procurement Officer of the Department, the term of a suspension imposed by the CPO will be for a period, commensurate with the seriousness of the cause or causes, of up to 10 years. North Suburban Asphalt Maintenance, Inc. is hereby suspended for a period of 2 years, commencing on the date of the original Notice of Suspension issued herein.

Respectfully submitted.



Thomas R. Wetzler  
Hearing Officer

March 15, 2012