

**STATE OF ILLINOIS
DEPARTMENT OF TRANSPORTATION**

IN THE MATTER OF,)
)
Northern Contracting Inc.)
) **2021-5-0001**
Respondent.)
)

ADMINISTRATIVE SETTLEMENT AGREEMENT

The Illinois Department of Transportation (“IDOT” or “Department”), with the approval of the independent Chief Procurement Officer (“CPO”), and Richard Roesch, for and on behalf of Northern Contracting, Inc. (“Northern”) agree to resolve the Interim Suspension against Northern, issued pursuant to 44 Ill. Admin. Code 6.530, under the authority of and in accord with the Illinois Procurement Code, 30 ILCS 500/1-1, *et seq.*, and the implementing regulations, 44 Ill. Adm. Code 6, Subpart I.

RECITALS

WHEREAS, it is the purpose of the Illinois Procurement Code and the declared policy of the State of Illinois that the principles of competitive bidding and economical procurement practices shall be applicable to all purchases and contracts by and for any State agency (30 ILCS 500/1-5);

WHEREAS, a Responsible Bidder or Offeror is “a person who has the capability in all respects to perform fully the contract requirements and the integrity and reliability that will assure good faith performance.” 30 ILCS 500/1-15.80;

WHEREAS, 44 Ill. Adm. Code 6.520 states, in part, “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 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”;

WHEREAS, the Illinois Procurement Code provides “[a]ny contractor or subcontractor may be suspended for violation of this Code or for failure to conform to specifications or terms of delivery. 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. Contractors or subcontractors may be debarred in

accordance with rules promulgated by the chief procurement officer or as otherwise provided by law”;

WHEREAS, on or about January 15, 2021, IDOT contract 62N15 was placed on the January 15, 2021, letting pursuant to the competitive sealed bid process set forth in 44 Ill. Adm. Code 6.80, in compliance with Section 20-5 and 20-10 of the Illinois Procurement Code. 30 ILCS 500/20-5 and 500/20-10;

WHEREAS, IDOT received a report on January 13, 2021, from an individual associated with Contractor A, who provides products and services relevant to contract 62N15 and who had bid on previous IDOT lettings to contract for such services;

WHEREAS, the January 13, 2021, report from Contractor A alleged Northern had contacted Contractor A to provide and seek bid price information for contract 62N15;

WHEREAS, pursuant to 44 Ill. Adm. Code 6.530, on June 3, 2021, the CPO issued a Notice of Suspension and Interim Suspension to Northern stating Northern is subject to an Interim suspension until the completion of an investigation of the causes for suspension and a hearing on the merits, if necessary;

WHEREAS, CPO IDOT determined that based on the allegations set forth in the Notice of Suspension and Interim Suspension, Northern appears to have intentionally violated the requirements for sealed competitive bidding. Information provided on the call could be used to create an artificially low and anti-competitive minimum bid. The call also appears to be an attempt to agree on exchange of pricing information. The price information conveyed on the call is an element of the offense of bid-rigging in the Section 33E-3 of the Criminal Code;

WHEREAS, Northern has not been charged with any criminal wrongdoing, nor have any of its employees: and

WHEREAS, 44 Ill. Adm. Code 6.540 also provides that the CPO and contractor may accept a status of nonparticipation in Department contracts;

NOW THEREFORE, in consideration of the foregoing, it is hereby stipulated, and the Parties agree as follows:

1. The recitals set forth above are incorporated into and are part of this Agreement.
2. Each of the Parties to this Agreement, and the individuals executing it on their behalf, warrant, covenant and agree that the person executing this Agreement is authorized to enter into and execute this Agreement for and on behalf of the Party or Parties he represents.
3. The Parties agree that if this case proceeded to hearing, the Department would provide evidence to support the Notice of Suspension and Interim Suspension allegations as stated above.
4. The Parties agree that the Hearing Officer would have made a report containing findings of fact and conclusions of law which would have been submitted to the CPO for review and final decision.

5. The Parties agree that the CPO could have rendered a final decision based on the record as a whole and an adequate evidence standard of proof, as required under 44 Ill. Adm. Code 6.690.

6. The Parties agree that the final decision of the CPO is to accept the voluntary nonparticipation of Northern in Department contracts or subcontracts for a period of seven (7) months, ending January 3, 2022.

7. Beginning on the date of the Interim Suspension, June 3, 2021, and continuing uninterrupted for a period of seven (7) months up to and including, January 3, 2022, Northern agrees not to participate, hereinafter referred to as a "period of voluntary exclusion".

8. During the period of voluntary exclusion, Northern agrees to not participate in any new contract or subcontract awarded by or requiring approval or concurrence of the Department, which includes any contract or subcontract in connection with a local agency project that is subject to the approval or concurrence of the Department.

9. During the period of voluntary exclusion, the Department will not consider, select or approve Northern for participation in any new contract or subcontract awarded by or requiring approval or concurrence of the Department, which includes any contract or subcontract in connection with a local agency project that is subject to the approval or concurrence of the Department.

10. It is understood the Department may disclose this Agreement to others to fulfill its legal obligations and governmental responsibilities and the Agreement may be subject to disclosure under the Freedom of Information Act.

11. Northern is executing this Agreement solely for the purpose of avoiding protracted legal proceedings and to facilitate a final resolution of the matters referenced herein.

12. While the intent of this Agreement is to settle and resolve the Parties' differences with respect to the allegations as stated in the Notice of Suspension and Interim Suspension, the Parties agree that the CPO reserves the right to pursue further administrative action that the CPO deems appropriate if the CPO becomes aware of facts to support a violation of this Agreement.

13. This Agreement also in no way restricts the authority, responsibility, or ability of the CPO to consider and institute, at any time, suspension or debarment proceedings against Northern based on information discovered in the future which constitutes an independent cause for such proceedings. Grounds for future suspension/debarment proceedings include, but are not limited to, reliable evidence that Northern has misrepresented any material fact in connection with this Agreement during either the investigation of the underlying events or the negotiation of this

Agreement or that Northern has engaged in any material breach or violation of this Agreement. In the event Northern engages in any material breach or violation of this Agreement, Northern will have ten (10) business days from the date of receipt of notice from the CPO of a material breach or violation to correct that breach or violation. If correction is not possible within ten (10) business days, for reasons beyond the control of Northern, an acceptable plan for correction shall be submitted to the CPO. Any failure to correct the violation or present an acceptable plan, may constitute an independent cause for suspension or debarment.

14. Northern does not, by this Agreement or otherwise, waive its rights to oppose any future disbarment or suspension.

15. No issues relating to any criminal charges or investigation are addressed in or resolved by this Agreement. Nothing in this Agreement shall bind the county, state or federal government from pursuing any criminal or civil case with respect to the actions of any person or entity, to the extent any such cause of action, whether criminal or civil, may be available.

16. By entering into this Agreement, Northern is not admitting to any criminal guilt or civil liability and expressly denies the same.

17. This Agreement may not be altered, modified or amended unless by written consent and agreement of all Parties.

18. This Agreement is not binding upon the Department until it is executed by the CPO and is effective on the date of the signature of the CPO.

19. The terms of this Agreement are terminated on January 3, 2022.

20. This Agreement constitutes the entire agreement between the Parties, superseding any prior agreements or understanding, oral or written, with respect to the subject matter of this Agreement.

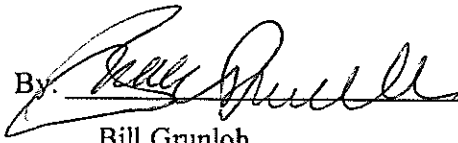
21. This Agreement is the complete and exclusive statement of the Parties' agreement relating to the subject matter herein and shall bind and inure to the benefit of the Parties, Illinois State Agencies and their officers, directors and employees, their successors or assigns.

22. This Agreement shall be construed and interpreted in accordance with the laws of the State of Illinois.

23. Electronic copies of signatures are deemed acceptable, binding signature for purposes of this Agreement. This Agreement may be executed in counterparts, each of which will be deemed an original document, and all of which will constitute one and the same Agreement.

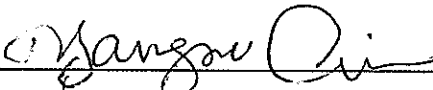
State of Illinois,

Chief Procurement Office


By:  Date 9/14/2021
Bill Grunloh
Chief Procurement Officer

State of Illinois,

Department of Transportation

By:  Date 9-15-2021
Yangsu Kim
Chief Counsel

Northern Contracting, Inc.

By:  Date 9/14/2021
Richard Roesch
President