



STATE OF MICHIGAN

DEPARTMENT OF TECHNOLOGY, MANAGEMENT & BUDGET
LANSING

GRETCHEN WHITMER
GOVERNOR

BROM STIBITZ
DIRECTOR

VIA E-MAIL ONLY

July 20, 2021

Mr. Joseph Scanlan
Department of Environment, Great Lakes and Energy
Air Quality Division
1504 West Washington Street
Marquette, Michigan 49855

Mr. Jason Wolf
Department of Environment, Great Lakes and Energy
Air Quality Division – Enforcement Unit
P.O. Box 30260
Lansing, Michigan 48909-7760

Re: Violation Notice, June 8, 2021, SRN: U482004132, U482004291, U482003378, Luce County
– Buildings 1, 14, 35; Newberry Correctional Facility

Dear Sirs,

This letter is in response to the above referenced violation notice from EGLE-AQD dated June 8, 2021, issued to the Department of Technology Management and Budget (DTMB). DTMB requested and received from the EGLE-AQD a written approval for an extension to respond to that violation notice by July 20, 2021. The violation notice pertains to the Newberry Correctional Facility Various Buildings Demolition project (the "Project")

This response is divided into two main sections, namely a background section to provide a general overview relevant to and incorporated into the second main section, which is the response section that includes more details with respect to each individual violation identified in the above referenced violation notice.

Background

The Michigan Department of Corrections (MDOC) owns the buildings that are the subject of the violation notice. DTMB, and specifically the Design and Construction Division of the State Facilities Administration, is generally responsible for contracting for professional design services and construction and demolition services for the State.

DTMB had that responsibility with respect to MDOC and the Project, and all demolition activity

on the Project occurred under contract.

As part of its responsibilities on the Project, DTMB solicited competitive bids for a professional services contract. In July 2019, DTMB awarded a contract (Contract Y19407) to Materials Testing Consultants, Inc. (MTC) to provide professional services for the State on the Project. MTC is a firm that provides construction materials testing and environmental engineering services. It also conducts surveying and sampling of suspected hazardous materials and sends the sample to an independent laboratory for evaluation and confirmation of results. DTMB needed this type of expertise for the Project, including to provide accurate information pertaining to Asbestos Containing Material (ACM) on the Project, which would guide demolition activities to ensure compliance with legal and regulatory requirements. Accordingly, DTMB contracted with MTC for its expertise, including with respect to demolition projects involving asbestos. MTC was DTMB's representative on the Project.

Under its contract with DTMB, MTC's duties include preparing bid documents for demolition bids for the Project. In that regard, DTMB provided MTC with an asbestos report DTMB had obtained in 2018 (supplemented in 2018 from a previous issuance). DTMB provided this report to MTC for informational purposes in June 2019 while the bid process was still underway, (before MTC was awarded its contract). Under its contract with DTMB, MTC was responsible for independently ensuring that all ACM on the Project is identified (including for purposes of preparing an accurate bid package for demolition contractors, as discussed below) and that suspected ACM is properly sampled and tested and overseeing proper abatement and disposal of ACM.

After DTMB awarded MTC its contract, MTC physically inspected facilities at the Project from November 2019 through February 2020 for purposes of developing bid documents for demolition work. MTC's preparation of the bid documents included providing a scope of work for demolition bidders to use to prepare their bids that includes ACM quantities for buildings 1, 14, and 35, which are the subject of the violation notice referenced above, as well as ACM quantities for other buildings on the Project, which are the subject of a separate violation notice from EGLE to DTMB (also dated June 8, 2021) that DTMB is responding to under separate cover

During the design phase of its work, (while MTC was preparing the demolition bid documents) MTC requested a price increase under its contract with DTMB to conduct sampling beyond MTC's original proposal for sampling, or to conduct additional sampling beyond what it originally anticipated would be necessary. DTMB approved and paid MTC for the extra work. MTC did not specify in the demolition bid documents it had prepared that any of the buildings on the Project would be an "ordered demolition." DTMB relied on MTC's expertise to identify ACM quantities and properly prepare the bid package/scope of work for demolition contractors.

Bidders for the demolition work would use the information in the bid package MTC prepared, including the listed ACM quantities, to prepare their bids. Demolition bidders were also asked to prepare a price sheet to lock in maximum (per unit) rates for additional asbestos abatement work that may be required in the event additional quantities of ACM were discovered as work was performed.

In July 2020, DTMB advertised the bid package for the demolition work on the Project, and MTC evaluated bid responses and recommended a bid award. Ten bidders submitted bids, and none asked questions during the bid process about the need for ordered demolitions; nor did they indicate in their respective bids that any ordered demolitions would occur. One of the questions submitted by bidders to MTC during the bid process was whether the 2018 asbestos report had been verified or reviewed; to which MTC responded that the report had been reviewed and that it was part of MTC's asbestos reports.

In August 2020, DTMB awarded the contract (Contract No. Y20388) to Bolle Contracting, LLC, (Bolle) for the demolition work on the Project through a competitive bid process using the bid package MTC prepared. Under its contract with DTMB, Bolle is responsible for ensuring that its demolition work, and specifically as it pertains to ACM, occurs according to all legal and regulatory requirements. In addition, Bolle is responsible under the contract, for recognizing suspected ACM during its work, including materials it uncovers that have not been sampled, and providing notice to MTC for sampling. These contractual obligations on contractors like Bolle are a failsafe designed to ensure that any ACM that may not have been identified by design professionals like MTC is identified during demolition and is properly addressed.

Thus, if additional quantities of ACM were discovered on the Project during demolition beyond what MTC indicated in the bid package, DTMB would expect Bolle to provide proper notice (to permit testing, and if positive for asbestos, ensure proper abatement and/or demolition) and to submit a request for a price increase under its contract with DTMB commensurate with the additional quantities of ACM beyond those MTC identified in the bid package; such requested price increases would be reviewed and approved (as appropriate) with the assistance of MTC.

Violation Responses

DTMB incorporates the information provided above as part of each of its responses below.

Building 1- Hospital (SRN U482004132)- Failure to thoroughly inspect; Failure to estimate the amount of RACM (Regulated Asbestos Containing Material); Failure to remove RACM

1. Dates violations occurred:

MTC inspected facilities at the Project from November 2019 through February 2020. Based on the information MTC provided in the bid package, including ACM quantities as to Building 1, Bolle removed the RACM identified in the bid package from March 2021 to early May 2021.

In addition, before EGLE issued the violation notices, Bolle identified some suspect materials (plaster) in Building 1 that are not identified in MTC's bid package. MTC tested those materials and it was found to be ACM. Bolle abated those additional ACM that were discovered. (Though it appears from EGLE's violation notice, that neither Bolle or MTC discovered all additional ACM.) DTMB was not made aware of these events until after-the-fact when MTC reported to DTMB that Bolle indicated that it would not seek a price increase for the extra work it performed related to the additional ACM. Bolle and/or MTC should have notified DTMB immediately. Bolle has since requested a contract change increase relative to that work, and DTMB is in the process of preparing a change order for the additional work. Before EGLE issued the subject Notice of Violation, DTMB did not receive other requests for price increases from Bolle related to a discovery of additional RACM beyond what was indicated in the bid documents MTC prepared.

2. Explain cause and duration of violations:

MTC initially failed to properly inspect and/or verify RACM quantities as it was required to under its contract with DTMB and/or to recommend and request that this building might be done as an "ordered demolition." This violation was ongoing from the time MTC was obligated under its contract to identify/confirm the presence or absence of RACM on site until MTC inspected and took additional samples, including in Building 1, after the results of EGLE's May 26, 2021 sampling were available. MTC has obtained the results of its own sampling. MTC remains obligated under its contract with DTMB to ensure that further demolition work proceeds according to legal and regulatory requirements. In addition, Bolle failed to recognize RACM as it was performing demolition work between March 2021 and early May 2021, except as it pertains to the plaster referenced above.

3. Are violations ongoing:

No. MTC completed additional inspection and sampling, on June 14-23, 2021, and obtained results on June 30, 2021 and July 1, 2021. MTC has prepared updated estimates of RACM and demolition will proceed accordingly in compliance with legal and regulatory requirements.

4. Corrective actions taken:

As noted above, MTC has since completed the additional assessment necessary to thoroughly inspect to the proper standard and has obtained test results. In addition, MTC has prepared updated estimates of RACM and scope of work for Bolle based on the new information it has obtained. Bolle will proceed accordingly in compliance with legal and regulatory requirements with MTC oversight. It is DTMB's understanding that MTC has thus addressed its failure to thoroughly inspect. Bolle has already begun additional abatement work according to the updated information provided by MTC and will provide DTMB with updated pricing information to complete abatement in compliance with legal and regulatory requirements. In addition, DTMB has had discussions with MDOC, and MDOC has put the funding in place to allow DTMB to rapidly process the approval for a contract price increase for the additional work that is required.

5. Corrective actions proposed:

See response to No. 4 immediately above and to No. 6 immediately below.

6. Steps to prevent reoccurrence:

After EGLE issued the Notice of Violation at issue, MTC indicated that it failed to thoroughly inspect for asbestos on the Project, and that it should have done its own proper inspection of the buildings. DTMB reminded MTC of its contractual obligations to ensure proper abatement work. DTMB has also reminded Bolle of its obligations under its contract with DTMB, and given the information it was provided, to recognize suspect materials during the work or uncovered during the work that have not been previously sampled, that it is required to have the professional (MTC) test them before removal and disposal.

In sum, DTMB has met, with MTC and Bolle as well as with MDOC to discuss the issues and a path forward. MTC completed a thorough inspection since the violation notices and provided Bolle with an updated scope of work. MTC and Bolle will ensure that demolition work proceeds in accordance with legal and regulatory requirements. MTC will verify and document abatement when completed. MTC has been reminded of its responsibility to be vigilant during oversight of demolition. Bolle has been reminded of its responsibility to be vigilant to ensure that demolition does not proceed past the point of removing any suspect previously untested materials DTMB will monitor MTC and Bolle closely to assure compliance and to hold each party fully accountable for their individual and complimentary roles.

Building 14 Amusement Hall (SRN U482004291) - Failure to thoroughly inspect.

DTMB incorporates the response to the violations pertaining to Building 1 above as its response to this violation.

Building 35 Nurses Building – (SRN U482003378) Failure to thoroughly inspect; Failure to update notice.

DTMB incorporates the response to the violations pertaining to Building 1 above as part of its response to this violation. In addition, as to the "failure to update notice" DTMB responds as follows:

1. Dates violations occurred:

DTMB does not know when the noted violation occurred because Bolle did not request a contract price increase attendant to a discovery of additional RACM quantities beyond what is indicated in the documentation MTC prepared and provided. In addition, it is DTMB's understanding that MTC was not aware of additional RACM quantities at the relevant time either.

2. Explain cause and duration of violations

Under its contract with DTMB, Bolle is responsible for providing the Notices of Intent to Renovate/Demolish, and providing updated Notices as required. As noted above, it is DTMB's understanding that MTC was also not aware that the amount of RACM abated from this building had changed sufficiently to require an updated Notice. Neither Bolle nor MTC made DTMB aware of a discovery of RACM quantities in this building beyond what is indicated in MTC's documentation. Bolle failed to update the Notice as required and apparently also failed to notify MTC and did not notify DTMB of a discovery of additional quantities of RACM. In addition, MTC seemingly failed to properly identify all RACM upon its inspection and during its sampling and preparation of the demolition bid package.

3. Are violations ongoing:

This building was demolished before EGLE provided the notice of violation at issue. DTMB has not received confirmation from Bolle as to whether Bolle has updated the Notice of its Intent to Renovate/Demolish as may be required. It is DTMB's understanding that MTC has inspected the debris from the demolition of this building in order to meet its obligation to respond to the violation it received relative to this building.

4. Corrective actions taken:

Please see the response to the violations pertaining to Building 1 above. In addition, DTMB has discussed with Bolle about Bolle's contractual obligations pertaining to compliance with asbestos related demolition work.

5. Corrective actions proposed:

To confirm that Bolle has updated or will update its Notice of its Intent to Renovate/Demolish as may be required and to further discuss this issue with MTC.

6. Steps to prevent reoccurrence:

Please see the response to the violations pertaining to Building 1 above.

Conclusion

With this response, DTMB intends to demonstrate that DTMB has done and is doing everything it can to mitigate this situation and prevent a reoccurrence. DTMB intends to demonstrate that it acted reasonably by engaging a professional services firm and a demolition contractor, both with expertise and experience with asbestos work, under contracts that obligate each of them independently and in tandem, as it were, to ensure that situations like those that are the subject of the violation notice do not occur. DTMB further intends to demonstrate that it acted reasonably and properly when it became aware of issues related to the violations at issue and this it will continue to do so. If you have any further questions, please contact DTMB through the

Mr. Joseph Scanlan, EGLE-AQD
Page 7
July 20, 2021

contact below. As additional information, if any, becomes available, it will be provided to you as soon as possible.

Sincerely,

A handwritten signature in blue ink that reads "Tom Pawlowski". The signature is written in a cursive style with a distinct dot over the final 'i'.

Tom Pawlowski, P.E.
DTMB – Design and Construction Division
Project Director
517-242-0973