

**From:** [Mishaan, Jessica](#)  
**To:** [cnolan@sheeheyvt.com](mailto:cnolan@sheeheyvt.com)  
**Cc:** [Anderson, Michelle](#)  
**Subject:** response to public records request  
**Date:** Wednesday, October 16, 2019 10:15:10 AM  
**Attachments:** [2019-10-16 Anderson response to Nolan w docs.pdf](#)

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Dear Mr. Nolan,

Please find the attached response to your public records request.

Thank you,

**Jessica Mishaan** | Paralegal

Office of the Attorney General | General Counsel and Administrative Law Division

109 State Street Montpelier, VT 05609-1001

p (802) 828-5500

PRIVILEGED & CONFIDENTIAL COMMUNICATION: This communication may contain information that is privileged, confidential, and exempt from disclosure under applicable law. DO NOT read, copy or disseminate this communication unless you are the intended addressee. If you are not the intended recipient (or have received this E-mail in error) please notify the sender immediately and destroy this E-mail. Vermont's lobbyist registration and disclosure law applies to certain communications with and activities directed at the Attorney General. Prior to any interactions with the Office of the Vermont Attorney General, you are advised to review Title 2, sections 261-268 of the Vermont Statutes Annotated, as well as the Vermont Secretary of State's most recent compliance guide available at <https://www.sec.state.vt.us/elections/lobbying.aspx>.

**THOMAS J. DONOVAN, JR.**  
ATTORNEY GENERAL

**JOSHUA R. DIAMOND**  
DEPUTY ATTORNEY GENERAL

**WILLIAM E. GRIFFIN**  
CHIEF ASST. ATTORNEY  
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**STATE OF VERMONT**  
**OFFICE OF THE ATTORNEY GENERAL**  
**109 STATE STREET**  
**MONTPELIER, VT**  
**05609-1001**

October 16, 2019

Craig Nolan  
SHEEHY FURLONG & BEHM P.C.  
30 Main Street, 6th Floor  
PO Box 66  
Burlington, VT 05402-0066

Dear Mr. Nolan,

I write in response to your request for documents under the Vermont Public Records Act, 1 V.S.A. § 315 *et al*, dated October 3, 2019. This is a consolidated response with the Agency of Transportation (AOT) and includes records in AOT and Attorney General possession and control. Documents responsive to your request are attached.

Further responsive documents have been withheld in accordance with 1 V.S.A. § 317(c)(4). Under this exemption, an agency may withhold records which, if made public pursuant to this subchapter, would cause the custodian to violate any statutory or common law privilege other than the common law deliberative process privilege as it applies to the General Assembly and the Executive Branch agencies of the State of Vermont. In this case, responsive records are protected by the common law attorney client and attorney work product privileges.

Portions of two records have been redacted under 1 V.S.A. § 317(c)(42). Under this exemption, an agency may withhold information that could be used to identify a complainant who alleges a public agency, a public employee or official, or a person providing goods or services to a public agency under contract has engaged in a violation of law, or in waste, fraud or abuse of authority, or in an act creating a threat to health or safety, unless a complainant consents to disclosure of his or her identity.

To the extent you feel this information has been withheld in error, you may appeal to the Deputy Attorney General, Joshua Diamond.

Sincerely,

A handwritten signature in blue ink, appearing to read "Michelle Anderson".

Michelle Anderson  
Assistant Attorney General



**State of Vermont**  
**Finance & Administration**  
One National Life Drive  
Montpelier, VT 05633-5001  
<http://vtrans.vermont.gov>

[phone] 802-828-3752  
[fax] 802-828-5545

*Agency of Transportation*

May 13, 2019

Mr. Eric Boyden  
J.A. McDonald, Inc.  
585 Gilman Road  
Lyndon Center, VT 05850

Re: Annual Prequalification Renewal

Dear Mr. Boyden:

Please be advised that your request for annual prequalification renewal filed with the Vermont Agency of Transportation has been denied in accordance with the *Vermont Agency of Transportation Policies and Procedures on Prequalification, Bidding, and Award of Contracts* on the following basis:

1. Subsection 4.01(C): Less than satisfactory performance on work for the Agency. Unsatisfactory performance shall include, but not be limited to, lack of timeliness in performing work, inferior or inadequate quality of work performed or materials provided, and/or violations of terms of a contract.

In accordance with Subsection 6.01 of the above said Policy, an appeal hearing may be requested in writing.

Sincerely,

E-SIGNED by Wayne Gammell  
on 2019-05-14 15:25:41 GMT

Wayne Gammell,  
Director of Finance and Administration





State of Vermont  
Finance & Administration  
One National Life Drive  
Montpelier, VT 05633-5001  
<http://vtrans.vermont.gov>

Agency of Transportation

[phone] 802-828-3752  
[fax] 802-828-5545

May 14, 2019

Mr. Eric Boyden  
J.A. McDonald, Inc.  
585 Gilman Road  
Lyndon Center, VT 05850

Re: Annual Prequalification Renewal

Dear Mr. Boyden:

In follow up to the appeal filed today, please be advised that the denial of the Annual Prequalification Renewal for J.A. McDonald, Inc., is based on the elements outlined within Subsection 4.01(C): Less than satisfactory performance on work for the Agency. Unsatisfactory performance shall include, but not be limited to, lack of timeliness in performing work, inferior or inadequate quality of work performed, or materials provided, and/or violations of terms of a contract.

Pursuant to the foregoing, it is my understanding you have scheduled a meeting with Secretary Flynn tomorrow, May 15, 2019, at 2:30 p.m. to discuss this matter further.

Sincerely,

E-SIGNED by Wayne Gammell  
on 2019-05-14 18:47:50 GMT

Wayne Gammell,  
Director of Finance and Administration





**State of Vermont**  
**Office of the Secretary**  
219 North Main Street, Suite 201  
Barre, VT 05641  
[vtrans.vermont.gov](http://vtrans.vermont.gov)

[phone] 802-476-2690  
[fax] 802-479-2210  
[ttd] 802-253-0191

*Agency of Transportation*

May 22, 2019

Mr. Eric Boyden, President  
J.A. McDonald, Inc.  
PO Box 132  
Lyndon Center, VT 05850

Dear Mr. Boyden:

I am writing to respond to the outstanding questions you raised during our meeting on May 16, 2019. Specifically, you asked whether, going forward, VTrans would be willing to allow JAM to perform work on federal-aid highway construction contracts as a subcontractor. We have given this question due consideration and have determined to authorize JAM to perform non-structural construction work in the future. VTrans will not authorize JAM to work as a subcontractor on any structural work, such as bridge and/or culvert repair or replacement.

You also asked whether VTrans will permit JAM to attend and observe any destructive testing that it will be conducting on any of the structures that JAM has performed work on in the past. Again, after careful consideration, I have decided to grant this request with conditions. Specifically, JAM staff will not be allowed to attend the destructive testing activities, however, JAM may send a third-party consultant technician or engineer to observe this testing activity. If you are interested in having such a third party observe the testing, please be advised that VTrans will provide notice of such testing via email but will not be including the individual in its scheduling activities. We cannot make any commitments with respect to how much notice will be provided, but I assure you that my staff will make all reasonable efforts to provide such notice as promptly as possible. Please also note that the observer will only be authorized to observe and may not ask questions or otherwise become involved in any capacity other than observation. Such observation may include photographing and/or video recording of the testing activities.

Please let me know if you have any questions, and, if applicable, the name and email address of the third-party observer.

Sincerely,

A handwritten signature in black ink that reads "Joe Flynn".

Joe Flynn  
Secretary of Transportation





State of Vermont  
Barre City Place  
219 North Main Street  
Barre VT 05641  
[vtrans.vermont.gov](http://vtrans.vermont.gov)

August 26, 2019

*Sent via Certified Mail*

Mr. Eric Boyden  
J.A. McDonald, Inc.  
585 Gilman Road  
Lyndon Center, VT 05850

Dear Mr. Boyden:

As you know, the Vermont Agency of Transportation (AOT) has been investigating whistleblower allegations that your company, J.A. McDonald, Inc., knowingly provided non-conforming construction services on a number of Vermont bridge projects, in addition to the Bristol, Vermont project.

Preliminary results of the investigation corroborate these allegations. This investigation is on-going and will continue in cooperation with the Vermont Attorney General's investigation under the False Claims Act (Attachment 1 AG notification letter). Based upon the forgoing, and until further notice, effective immediately AOT finds that J.A. McDonald, Inc. is not a responsible contractor and therefore is ineligible to receive any new work, as a contractor or a subcontractor, on any AOT projects, or on work for other any entities utilizing AOT grant funds.

Thank you for your time and attention to this matter.

Sincerely,

E-SIGNED by Joe Flynn  
on 2019-08-26 14:51:35 GMT

Joe Flynn  
Secretary, VT Agency of Transportation

**THOMAS J. DONOVAN, JR.**  
ATTORNEY GENERAL

**JOSHUA R. DIAMOND**  
DEPUTY ATTORNEY GENERAL

**SARAH E.B. LONDON**  
CHIEF ASST. ATTORNEY GENERAL



TEL: (802) 828-3171

<http://www.ago.vermont.gov>

**STATE OF VERMONT  
OFFICE OF THE ATTORNEY GENERAL  
109 STATE STREET  
MONTPELIER, VT  
05609-1001**

August 26, 2019

**CERTIFIED MAIL  
RETURN RECEIPT REQUESTED**

Mr. Eric Boyden, President  
J.A. McDonald, Inc.  
P.O. Box 132  
Lyndon Center, VT 05850

Re: Vermont False Claims Act Investigation

Dear Mr. Boyden,

This letter is to notify you that the Vermont Attorney General's Office has opened an investigation into potential violations by J.A. McDonald, Inc. of the Vermont False Claims Act ("FCA") 32 V.S.A. §§ 630-642, related to the following Vermont Agency of Transportation construction projects: #06B174, Bennington AC NH 019-1(53); #06B176, Bennington AC NH 019-1(54); and #95A175 Guilford AC IM 091-1(33).

J.A. McDonald, Inc. (as defined below) is instructed to preserve all documents in its possession, custody or control that relate to the above projects, including any such documents that may be created in the future. Civil Investigative Demands will be issued in the near future to obtain documents and other evidence.

Definitions relevant to this request are as follows:

1. "J.A. McDonald, Inc." means its subsidiaries, parent, affiliates, segments, regions, divisions, groups, related companies, joint ventures and partnerships, any and all predecessor and successor entities, and any and all present and former owners, members, officers, directors, representatives, employees, consultants, contractors, or agents.
2. "The term 'Documents'" is used in the broadest sense and include, but are not limited to, all items identified in Rule 34(a)(1) of the Vermont Rules of Civil Procedure

including, without limitation, any original and non-identical copies of electronically stored information ("ESI"), computer data, written, printed, typed, recorded, electronic, graphic or photographic matter or sound reproduction of any kind or nature, however produced, reproduced, stored or maintained, including, but not limited to, e-mails, writings, correspondence, reports, memoranda, presentations, notes, newspapers, periodicals, files, minutes, transcripts, instructions, orders, papers, bills, invoices, receipts, claims, dairies, calendars, date books, journals, telephone logs, computer print outs, contracts, diagrams, charts, records, and data of any description, as well as draft or final versions of internal and external correspondence (including e-mails and text messages).

3. "Related to or with respect thereto" are used in the broadest sense of each of its constituent words and means, without limitation, about, constitutes, evidences, discusses, analyzes, regards, shows, contains, embodies, comprises, respects, touches upon, incident to, identifies, states, deals with, comments on, responds to, describes, involves, or is in any way pertinent to, whether directly or indirectly.

If you have any questions, please contact Michelle Anderson at 802-828-0370 or [michelle.anderson@vermont.gov](mailto:michelle.anderson@vermont.gov).

Kind Regards,



Michelle Anderson  
Assistant Attorney General



[REDACTED]

[REDACTED] is aware of potential violations which occurred in Bennington, Vermont and which may be broken into the "Furnace Brook" violations and the "East Road" violations. The Furnace Brook violations [REDACTED] going around to various connecting bolts and attempting to bend them into alignment with a template anchor plate. [REDACTED] cut the bolt heads in a manner similar to the Bristol project [REDACTED]

[REDACTED] directed to hammer or cut the bolt heads [REDACTED]

[REDACTED]

The East Road violations were at another part of the larger Bennington project which began after the Furnace Brook portion, [REDACTED] The specification violating act was that anchor bolts had to be dropped through reinforced concrete. It is possible to either pour the concrete and attempt to drill through the concrete without hitting rebar or to use hollow sleeves at the time of pouring the concrete through which the bolts can later pass [REDACTED]

[REDACTED] workers were hitting rebar when drilling through the concrete preventing inserting the bolt through the concrete as needed due to rebar being in the way. [REDACTED] cut through the rebar [REDACTED]

[REDACTED]

[REDACTED] had been out late at night cutting rebar on the East Road project [REDACTED]

Later, in approximately March 2016, [REDACTED] well known in JA McDonald for shorting people their wages under Davis-Bacon and for cutting comers, such as cutting rebar and bolt heads. [REDACTED] stated that he did not know why [REDACTED] had the practice of cutting rebar as the use of sleeves was easy but otherwise acknowledged [REDACTED] regularly cut rebar on other projects. Another employee, [REDACTED] also stated to [REDACTED] he also knew about [REDACTED] habit of cutting rebar.

[REDACTED] another project where [REDACTED] cut rebar in a like manner. That project was part of rehabilitation on "Bridge No. 3" on I-91 and was part of a federal grant totaling \$3,008,442 in 2008, and which eventually was disbursed under Vermont AOT Project Guilford AC IM 091-1(33). The project was finally complete in November 2011.

[REDACTED] the same rebar cutting be done on the Guilford Project as on East Road [REDACTED]

[REDACTED] cutting was also done at night on the Guilford project, [REDACTED]

[REDACTED] had also taken part in the nighttime cutting.

1 VSA 317( c )(5)(A)(iv)

CONFIDENTIAL

~~6/12/18~~ 6/12/18 Meeting w/ Matthew Hake (FHWA) Ann Grand (VTrans)

Matt Dillon (FHWA)

Bennington-019-1(53) Allegations

Joe Flynn (VTrans)

1 VSA 317(c)(5)(A)(iv)

Furnace Brook Bridge

Wayne Symonds (VTrans)

- Attempted to bend connecting bolts into alignment with a template anchor plate- heads cut in a manner similar to Bristol project- directed to hammer or cut the bolt heads

East Road Bridge

- When drilling concrete for anchor bolts, workers hit rebar. [REDACTED] cut through rebar [REDACTED]

Guilford 091-1(33) Allegation

- Rebar cutting on "Bridge No. 3" similar to that of East Road

THOMAS J. DONOVAN, JR.  
ATTORNEY GENERAL

JOSHUA R. DIAMOND  
DEPUTY ATTORNEY GENERAL

SARAH E.B. LONDON  
CHIEF ASST. ATTORNEY GENERAL



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STATE OF VERMONT  
OFFICE OF THE ATTORNEY GENERAL  
109 STATE STREET  
MONTPELIER, VT  
05609-1001

September 4, 2019

**CERTIFIED MAIL  
RETURN RECEIPT REQUESTED**

J.A. McDonald, Inc.  
Attn: Mr. Eric Boyden, President  
P.O. Box 132  
Lyndon Center, VT 05850

**Civil Investigative Demand for Documentary Material**

This Civil Investigative Demand ("CID") is issued pursuant to the Vermont False Claims Act, 32 V.S.A. §§ 630-642, ("FAC") in connection with an investigation by the Vermont Attorney General into possible violations of the FCA by J.A. McDonald, Inc., ("JAM"), its successors, subsidiaries and/or affiliates.

Between on or about 2007 and 2012, JAM provided contracted construction services to the State of Vermont, Agency of Transportation under the following bridge projects: 95A176 Guilford AC IM 091-1(33); 06B174, Bennington AC NH 019-1(53); and 06B176, Bennington AC NH 019-1(54), which were funded with both State and Federal funds. This investigation involves allegations that JAM knowingly presented or caused to be presented false claims related to the above projects to the State of Vermont and the United States. More specifically, it is alleged that JAM employees and/or principals altered critical bridge components such that the bridge(s) in question no longer conformed to specifications.

**Documentary Materials**

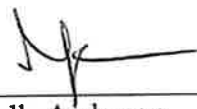
This CID requires you to produce documentary materials under sworn certificates. In responding to this CID, please follow the Instructions in Attachment A and the Definitions set forth in Attachment B. Requests for production of documentary material are specified in Attachment C. Models of acceptable Certificates are in Attachment D.

You must produce the requested documents no later than thirty (30) days from the date of receipt of this CID to Assistant Attorney General Michelle Anderson who has been designated as an FCA investigator in this case, at the Office of the Attorney General, 109 State Street, Montpelier, VT, 05609, or at another location to be mutually agreed upon by yourself and Attorney Anderson.

Issued at Montpelier, Vermont, this 4th day of September 2019.

STATE OF VERMONT  
THOMAS J. DONOVAN, J.R.  
ATTORNEY GENERAL

By:



\_\_\_\_\_  
Michelle Anderson  
Assistant Attorney General  
802-828-0370

## ATTACHMENT A

### Instructions

1. Unless otherwise indicated, this Civil Investigative Demand ("CID") requests documentary material relating to the time period beginning on May 30, 2007 and continuing through the date of service of this CID. This CID calls for production of any and all documents, communications, or information prepared, sent dated, received, maintained, held, in effect or which otherwise came into existence at any time during the relevant period.
2. The requests in this CID are meant to reach any and all information, documents, and communications in your possession, custody or control, regardless of where, or the manner in which it is stored.
3. For each document that you produce, please indicate by request number and subpart, if applicable, the document request to which it responds.
4. You are required to produce the originals of all documents and communications that are responsive, in whole or in part, to this CID. As a courtesy, copies of documents will be accepted, provided that the original documents shall be made available upon request of the FCA Investigator.
5. To the extent that the documents are found in file folders and similar containers that have labels or other identifying information, the documents shall be produced with such file folder, labels, or other information intact.
6. Electronically stored information ("ESI") shall be produced after consultation with, and in a form that is satisfactory to, the FCA Investigator.
7. For each document or communication requested in this CID, you shall produce the entire document or communication without redaction, abbreviation or deletion, except insofar as any document or communication is withheld or redacted under a claim of legal privilege in compliance with these Instructions.
8. No document or communication requested in this CID shall be destroyed, modified, redacted, removed from your possession, custody or control, or made inaccessible. If a document or communication responsive to the CID was but is no longer in your possession, custody, or control, state for each document why it is no longer in your possession, custody, or control, and produce all existing indices, lists or documents that reflect the transfer, loss or destruction of the document of communication.
9. If you withhold any document or communication requested in this CID on the ground of any legal privilege, please provide a privilege log setting forth: (a) the type of document or communication; (b) the date of the document or communication; (c) the title of the document or communication; (d) the name, address and position of each author of the document or communication, and any person who assisted in its preparation; (e) the

name, address and position of each addressee or recipient of the document or communication, or copies of it; (f) the number of pages of the document or communication; (g) a brief description of the subject matter of the document or communication; (h) the number of the request for production of the documentary material, including and subpart, if applicable, to which the document or communication is responsive; and (i) the factual and legal basis for the claim of privilege.

10. When a requested document contains both privileged and non-privileged material, the non-privileged material must be produced to the fullest extent possible. If a legal privilege is asserted with respect to part of the material contained in the document, indicate the portion(s) to which your claim of privilege applies. If you produce a redacted document, state the reasons for the redaction, and include the redacted document in the privilege log described in paragraph No. 9 of these Instructions. Any redaction must be clearly visible on the redacted document and marked accordingly.
11. The certificate shall state that all of the documentary material required by the CID, and in the possession and custody, and control or knowledge of the person to whom the CID is directed has been produced and made available to the FCA Investigator identified in the CID. To the extent that any information is not furnished, the information shall be identified, and the reasons set forth with particularity regarding why the information was not furnished. (A model certificate is included in Attachment D).
12. Definitions of words and phrases as used in this CID are set forth in Attachment B. In addition to those definitions, the following constructions apply to this CID's requests for documentary material.
  - a. All present tenses of verb forms shall be understood to include within their meaning the future and past tense as well, and vice versa, to bring within this CID and documents that are related to the relevant time period.
  - b. The singular form or a noun or pronoun shall be understood to include within their meaning the plural form as well, and vice versa.
  - c. The words "and" and "or" shall be construed either conjunctively or disjunctively as required by the context to bring within the scope of this CID any answer or response, or documents that might be deemed outside its scope by a different construction.

## ATTACHMENT B

### Definitions

1. "JAM" means J.A. McDonald, Inc., its subsidiaries, parent, affiliates, segments, regions, divisions, groups, related companies, joint ventures and partnerships, any and all predecessor and successor entities, and any and all present and former owners, members, officers, directors, representative, employees, consultants, contractors, or agents. JAM includes without limitation, J.A. McDonald Inc.
2. "Document" is used in its broadest sense and includes, but is not limited to, all items identified in Rule 34(a)(1) of the Vermont Rules of Civil Procedure. It means, without limitation, any original and non-identical copy of electronically stored information ("ESI"), computer data, written, printed, typed, recorded, electronic, graphic, or photographic matter or sound reproduction of any kind or nature, however produced, reproduced, stored or maintained, including, but not limited to, emails, writings, correspondence, reports, memoranda, presentations, notes, newspapers, periodicals, files, minutes, transcripts, instructions, orders, papers, bills, invoices, receipts, claims, dairies, calendars, date books, journals, telephone logs, computer print outs, contracts, diagrams, charts, and data of any description.
3. "Communication" means any transmission or exchange of information between two or more persons, in writing or electronically, including without limitation, conversations or discussions whether by chance or design, and by any means, including electronic media.
4. "Relating to, concerning or referencing" is used in the broadest sense of each of its constituent words and means, without limitation, about, constitutes, evidences, discusses, analyzes, regards, shows, contains, embodies, comprises, respects, touches upon, incident to, identifies, states, deals with, comments on, responds to, describes, involves, or is in any way pertinent to, whether directly or indirectly.
5. "Identify" when used in reference to a natural person, means state the person's full name, address, telephone number, job title, business affiliation, and each position held during the relevant time period. When used in reference to any other type of person "identify" means state the name of the entity, its present or last known address, and its telephone number.
6. "Any" and "all" include "each" and "every."
7. "State of Vermont" means any employee, agent, official, organization or body of the State of Vermont government.
8. "Vermont Agency of Transportation" means any employee, agent, official, organization or body of the State of Vermont, Agency of Transportation.
9. "Federal Highway Administration" means any employee, agent, official, organization or body of the U.S. Federal Highway Administration.



## ATTACHMENT C

### Requests for Documentary Material

1. Any and all documents, records and communications related to, concerning or referencing projects #95A176 Guilford AC IM 091-1(33); #06B174, Bennington AC NH 019-1(53); and #06B176, Bennington AC NH 019-1(54), (hereinafter "the Projects"), including but not limited to:
  - a. Employee payrolls and related documents;
  - b. Communications between JAM and the State of Vermont, the Vermont Agency of Transportation, or the Federal Highway Administration;
  - c. Documents submitted by JAM to the State of Vermont, the Vermont Agency of Transportation, or the Federal Highway Administration;
  - d. Records or receipts for all purchases of equipment, tools or materials;
  - e. All written correspondence, including electronic correspondence;
  - f. Documents related to, concerning or referencing safety incidents or workplace injuries;
  - g. Superintendent and Foreman reports; and
  - h. Daily work logs or diaries.

**ATTACHMENT D**

**Model Certificates of Compliance**

**CERTIFICATION OF COMPLIANCE**

I am authorized to act on behalf of JAM, (as that word is defined in Attachment B), with respect to the production of documentary materials as requested in the CID, and I have knowledge of the facts and circumstances related to the production of those documentary materials.

I hereby certify that all documentary material required by the CID that is in the possession, custody, control or knowledge of JAM has been produced to the false claims law investigator named in the CID.

To the extent that any information has not been furnished, that information has been identified herein and reasons have been set forth with particularity regarding why the information was not furnished.

Signature \_\_\_\_\_

Title \_\_\_\_\_

SWORN before me this \_\_\_\_ day of \_\_\_\_\_ 2019.

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_



State of Vermont  
Barre City Place  
219 North Main Street  
Barre VT 05641  
[vtrans.vermont.gov](http://vtrans.vermont.gov)

September 5, 2019

Mr. Eric Boyden  
J.A. McDonald, Inc.  
585 Gilman Road  
Lyndon Center, VT 05850

Re: Annual Prequalification Renewal

Dear Mr. Boyden:

In follow up to your correspondence dated September 3, 2019, I am reaching out to propose the following dates and times for you to appear before the Prequalification Committee and present your appeal on the annual prequalification renewal denial issued on May 13, 2019:

Monday, September 9, 2019, at 11:00 a.m.; or  
Tuesday, September 10, 2019, at 3:00 p.m.

Please be advised that pursuant to Section 6.02 of the *Vermont Agency of Transportation Policies and Procedures on Prequalification, Bidding, and Award of Contracts*, the Prequalification Committee will endeavor to issue a written decision within five (5) working days following the date of the appeal hearing.

The above tentative dates are both scheduled to take place at One National Life Drive, Montpelier, VT, in Room 413.

Thank you for your time and attention to this matter and I look forward to hearing from you soon.

Sincerely,

*Maureen Parker*

Maureen Parker,  
Chief of Contract Administration



State of Vermont  
Barre City Place  
219 North Main Street  
Barre VT 05641  
[vtrans.vermont.gov](http://vtrans.vermont.gov)

September 13, 2019

Mr. Eric Boyden  
J.A. McDonald, Inc.  
585 Gilman Road  
Lyndon Center, VT 05850

Re: Annual Prequalification Renewal

Dear Mr. Boyden:

In follow up to the appeal hearing held before the Vermont Agency of Transportation Prequalification Committee on September 9, 2019, please be advised that the committee has taken into account all information and materials provided and determined that the annual prequalification for J.A. McDonald, Inc., shall remain denied at this time.

Additionally, the Committee considered your proposal of alternatively allowing J.A. McDonald, Inc., annual prequalification with the removal of the bridge category and exclusively permitting roadway work. As preliminary investigative results have corroborated allegations of non-confirming construction service, the Committee is not persuaded to approve any categories for annual prequalification at this time.

Please be advised that pursuant to Section 6.03 of the *Vermont Agency of Transportation Policies and Procedures on Prequalification, Bidding, and Award of Contracts*, you may appeal the foregoing decision to the Secretary of Transportation within five (5) working days of receipt of the date of this correspondence.

Sincerely,

E-SIGNED by Wayne Gammell  
on 2019-09-13 14:11:53 GMT

Wayne Gammell,  
Director of Finance and Administration

State of Vermont  
Office of the Secretary  
219 North Main Street, Suite 101  
Barre, VT 05641  
vtrans.vermont.gov

[phone] 802-476-2690  
[fax] 802-479-2210  
[ttd] 802-253-0191

Agency of Transportation

October 1, 2019

Mr. Eric Boyden, President  
J.A. McDonald, Inc.  
PO Box 132  
Lyndon Center, VT 05850

Dear Mr. Boyden:

You have written to me appealing the Prequalification Committee's ("Committee") decision to deny J.A. McDonald's annual prequalification application. I have considered the matters you presented to the Committee opposing that action, and I have decided to uphold the Committee's decision.

I do not make this decision lightly or gladly. Contrary to your allegations that J.A. McDonald has not received due process in this matter, I find that the Agency of Transportation (AOT) has gone to extraordinary lengths to provide J.A. McDonald not only due process but every reasonable benefit of the doubt to avoid this result, as described below.

In 2017, a federal investigation confirmed whistleblower allegations that J.A. McDonald had deliberately, and with intent to conceal, provided non-conforming construction services to the State of Vermont, on a bridge project in Bristol, Vermont. The state and the federal governments settled claims for damages with J.A. McDonald regarding that matter, however, the settlement left open the potential for both the state and the federal governments to take administrative action to suspend or debar J.A. McDonald from participation in all state and federal contracting opportunities in the future.

However, based upon the understanding that J.A. McDonald had fully cooperated in that investigation, and that the acts of misconduct were a singular instance of two rogue employees who had been fired, I decided not to seek a state suspension or debarment and I strongly advocated for the federal government not to take such action at that time.

In March of 2018, I received very disturbing information that there was a new whistleblower, alleging similar non-conformances and practices, on projects prior to the Bristol project. Given the vague nature of the allegations I received at that time, I did not take action to revoke J.A. McDonald's prequalification status, and again gave the company the benefit of the doubt. However, I began an investigation to determine the facts.

By May of 2019, the investigation had obtained corroborating evidence of the allegations of nonconformances regarding the Bennington Bypass project, including allegations of misconduct by J.A. McDonald employees, some current. Under the circumstances, the Committee determined J.A. McDonald presented an unreasonable risk and should not be granted its requested annual prequalification renewal, which had been submitted in that timeframe. You were notified of this denial on May 14, 2019, in accordance with AOT's prequalification procedures.

After receiving this notice, you contacted me and requested an informal meeting. You specified this was not an appeal, but rather an effort to gain a better understanding of the reasons for the denial and have the opportunity for a discussion. Such a meeting is not part of our prequalification process, but mindful of the gravity of the situation for your company, I granted your request and met with you and your attorney on May 15, 2019.

During this meeting you requested partial relief from the prequalification denial in the form of being permitted to subcontract on state-funded work. I was not required to grant this request, but I did so, except for bridge work.

During this meeting you also asked whether you would be permitted to bid on tasks under your Indefinite Delivery/Indefinite Quantity contract. This contract is not covered by the prequalification procedure but has "off-ramp" provisions which would have permitted AOT to terminate the contract. You stated that you would prefer not to face termination, but instead would voluntarily accept that you could not bid on work under that contract until further notice. I was not required to forbear terminating your contract, but I chose to grant your request.

I also agreed to your request to hold your right to appeal the prequalification denial within five days in abeyance and permit you to appeal at a later date.

Shortly thereafter, you asked to meet with me again, and again I agreed and met with you on May 28, 2019. At this meeting you asked three questions:

- Would you be permitted to withdraw your annual prequalification request and resubmit it requesting only non-bridge categories?
- If you withdrew the request and were placed in an inactive prequalification status, what would be the consequences?
- If you withdrew, and were in an inactive prequalification status, could you receive subcontract work to include box culverts?

On June 24<sup>th</sup> you were informed that you would be permitted to withdraw or resubmit your request for non-bridge work, but this would not affect the action by the Prequalification Committee to deny your prequalification status, and that the Prequalification Committee was unlikely to grant J.A. McDonald any form of prequalification if resubmitted. You were further informed that inactive status would leave your company on the prequalification list, but listed as inactive, rather than denied. We agreed to consider you eligible for subcontracted box culverts. I had no obligation to consider your request under the prequalification procedures but chose to do so in yet another attempt to lessen the impact on J.A. McDonald, while at the same time protecting the citizens of Vermont.

Late this summer's continued investigation, including destructive testing on the East Road bridge, further corroborated the allegations of deliberate non-conformance by additional J.A. McDonald employees, some current. Specifically, the unauthorized cutting of rebar, which was concealed from State inspectors. Testing is ongoing at other locations, but even if this is the only issue discovered, it is apparent that the problems encountered in Bristol were not aberrations caused by two rogue employees

Mr. Eric Boyden  
October 1, 2019  
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but were part of a broader pattern of poor performance by J.A. McDonald, which has damaged the state and its infrastructure.

At this juncture the Attorney General's Office determined it was appropriate to investigate this as a Vermont False Claims Act case, and I found it necessary to rescind my earlier agreements regarding continued work described above, of which I informed you by letter on August 26, 2019.

You responded to this notice on September 3, 2019 by appealing the denial of your annual prequalification application. In accordance with my earlier agreement to permit you to hold your appeal right in abeyance, the Committee heard your appeal within the five days prescribed by the AOT prequalification rules and issued a decision to uphold the denial in accordance with those rules.

The prequalification process is in place to ensure that only responsible contractors are permitted to bid on large state and federally funded transportation projects. There are many reasons firms can and are denied prequalification, and among those is a record of poor performance. At this time, I, like the Committee, have found J.A. McDonald has a record of poor performance which has worked to the state's substantial detriment. I would reconsider this decision if the investigation into the current allegations, or other circumstances indicate reconsideration would be appropriate.

As this final action in the prequalification process may be deemed a suspension, you have the right to appeal this decision to the Vermont Transportation Board in accordance with 14 010 004, Policy and Procedures for Debarment, paragraph 3.3, and be represented by counsel at a hearing.

Sincerely,

A handwritten signature in cursive script, appearing to read "Joe Flynn".

Joe Flynn  
Secretary of Transportation