

City and Borough of Juneau
155 South Seward Street
Juneau, AK 99801
Telephone: 586-5240

FINAL DECISION IMPOSING DEBARMENT – SOUTHEAST EARTHMOVERS, INC.

November 21, 2022

Jon McGraw
Southeast Earthmovers, Inc.
P.O. Box 784
Sitka, AK 99835

Sent by email: earthmovers.jon@gmail.com

Dear Mr. McGraw:

Pursuant to CBJC 53.50.400 - 440, Southeast Earthmovers, Inc. (SEEM) is hereby debarred from award consideration and participation for City and Borough of Juneau (CBJ) contracts for goods and / or services. This debarment is for a period of eighteen months and is effective immediately. This time period shall extend from today until May 21, 2024. The causes for this debarment are SEEM's recent failures to timely complete projects and its repeated failures to timely pay suppliers and subcontractors, all of which are violations of contract provisions sufficiently serious to justify this debarment.

Procedural summary:

On June 1, 2022, CBJ's engineering and public works director issued a notice of proposed debarment. On June 2, SEEM—through counsel—timely requested a hearing. On July 14, CBJ's deputy city manager, who was designated to serve as this matter's hearing officer, issued a schedule setting SEEM's briefing deadline for eight weeks out, September 8, with a hearing date tentatively scheduled for early November. On July 26, SEEM confirmed the briefing schedule. On September 2, six days before SEEM's briefing materials were due, SEEM requested a 30-day extension. The hearing officer provided a new briefing deadline of October 6, which was later extended to October 18. On September 29, one of SEEM's three attorneys requested an additional two weeks for SEEM's briefing. The hearing officer granted this, and SEEM's briefing deadline was pushed to November 1 and the tentative hearing date for this matter was pushed to mid-January 2023.

On November 1, despite receiving several extensions, SEEM failed to provide any briefing material. Instead, on November 2, two of SEEM's attorneys sent an email representing SEEM "is

not pursuing [its] appeal of the debarment notice.” Thus, through this email, SEEM waived its right to a hearing.

Relevant CBJ Code authority:

CBJC 53.50.402 provides a series of causes that may trigger debarment. Relevant to this debarment are the causes provided in Section d, which states:

(d) Violation of contract provisions of a character that is regarded by the manager to be so serious as to justify debarment action, such as:

(1) Knowing failure without good cause to perform in accordance with the specifications or within the time limit provided in the contract; or

(2) Failure to perform or unsatisfactory performance in accordance with the terms of one or more contracts, except that failure to perform or unsatisfactory performance caused by acts beyond the control of the contractor may not be considered to be a basis for debarment.

Cause for debarment:

In 2021, SEEM was assessed substantial liquidated damages based on its failure to timely complete Contract No. BE21-032 (“Capital Avenue Reconstruction”). The notice and contract for this project set out a completion deadline, stated that time was of the essence, and included liquidated damages. SEEM missed the completion deadline. While the CBJ acknowledges there were some setbacks due to unforeseen issues (e.g., unpredictable underground conflicts), SEEM’s failure to timely complete this project was substantially due to insufficient crew, abbreviated work days and weeks, lack of available equipment, and the significant absence of an onsite superintendent to provide direction. Additionally, in December 2021, almost two months after SEEM was paid for work performed by one of its subcontractors, the CBJ discovered that that subcontractor had not yet been paid by SEEM despite its repeated requests. It was not until January 2022—and the CBJ became involved—that SEEM paid its subcontractor for work performed in September. This withheld payment violated a contract provision requiring SEEM to pay its subcontractor within thirty days of payment for work performed by the subcontractor.

Also in 2021, SEEM failed to timely complete Contract No. BE22-066 (“2021 Area Wide Paving, Phase II”). Like the notice and contract for the Capital Avenue Reconstruction project, this project’s notice and contract emphasized an end-of-season deadline and included liquidated damages for failure to timely complete work. In the weeks after SEEM was awarded this contract, SEEM was nonresponsive to repeated requests for a schedule and updates. SEEM

finally did “stir” when threatened with a notice of intent to default issued approximately one week before the deadline, October 8, 2021. As was the case with the Capital Avenue Reconstruction project, SEEM was unable to complete the 2021 Area Wide Paving, Phase II project by its deadline and SEEM was assessed liquidated damages. This project was completed October 29, 2021—three weeks after its deadline and incredibly close to the end of construction season. As was also the case with the Capital Avenue Reconstruction project, an onsite inspector noted this project was delayed because SEEM had an insufficient crew who lacked direction and equipment.

However, SEEM’s most serious failure to perform within a contract’s time limits during 2021 regarded Contract No. BE21-179 (“Goodwin Road Reconstruction”). Approximately two months passed between the pre-construction conference in June and the date SEEM began work in early August. September 1, 2021 was the required completion date for this project, and the contract contained express language stating time was of the essence and setting liquidated damages. Through the summer, a project engineer contracted by the CBJ attempted to communicate with SEEM regarding this project, but SEEM was largely non-responsive until October 7, 2021—more than a month after the work should have been completed. The triggering event was a notice of intent to default from the CBJ. Ultimately, SEEM failed to complete this project during the 2021 construction season and was required to maintain Goodwin Road during the winter. As noted by the project engineer contracted by the CBJ, SEEM’s failure to timely complete this project was due to the SEEM’s late start and understaffing, lack of available equipment and material, and significant lack of experience and direction. SEEM’s performance of this contract required substantial time and involvement from CBJ staff and imperiled motorists’ and pedestrians’ safety and risked catastrophic damage to surrounding residences.


For all three of the above-described 2021 projects, SEEM failed to perform within contract time limits. For all three of the above-described 2021 projects, SEEM’s failures to perform within contract time limits was due to circumstances within SEEM’s control; staffing, scheduling, equipping, and directing. Further, SEEM’s long history of paying subcontractors and suppliers late—in violation of standard CBJ contract provisions and state statutes regarding public construction and works contracts¹—undermines SEEM’s representations that the above-described 2021 late payment instance was merely due to a misunderstanding.²

¹ See AS 36.90.210(a).

² In addition to Contract No. BE21-032 (“Capital Avenue Reconstruction”), SEEM failed to timely pay suppliers or subcontractors for: Contract No. DH19-050 (“Cruise Ship Security Checkpoint – PH I”); Contract No. BE18-077 (“Jensen-Olson Arboretum Parking Lot”); Contract No. BE18-098 (“Downtown Street Improvements – Phase II”); Contract No. BE18-201 (“McGinnis Subdivision Paving, PH IV, Hummingbird Lane Paving and Improvements”); Contract No. BE-17-177 (“East Street Reconstruction”); Contract No. BE17-215 (“F Street Reconstruction”); Contract No. E09-062 (“North Douglas Sewer, Phase

Over the years, the CBJ has issued many warnings and notices to SEEM regarding its misrepresentations, misconduct, and mismanagement.³ The CBJ has a strong interest in awarding contracts to persons who will timely complete them, and in doing so lessen risks to property and the public and costs to the CBJ. The CBJ also has a strong interest in its contracts' subcontractors and suppliers receiving timely payment. Debarment is the best means to ensure these interests are safeguarded.⁴

Signed,



Duncan Rorie Watt, City Manager
City and Borough of Juneau
(907) 586-5240

IV"); Contract No. E08-142 ("West Mendenhall Valley Sewer, Ph I"); Contract No. E07-115 ("West Juneau Water Improvements"); Contract No. E06-109 ("Davis Avenue Reconstruction").

³ Additionally, SEEM failed to disclose added subcontractors (Contract No. BE17-215 ("F Street Reconstruction")) and was assessed liquidated damages for failing to meet deadlines (Contract No. BE19-092 ("Heron Way Reconstruction and Paving"), Contract No. E06-109 ("Davis Avenue Reconstruction")). Beyond contract violations, SEEM made material misrepresentations in bids for CBJ contracts regarding paying subcontractors or suppliers (Contract No. BE20-192 ("Adair Kennedy Park Improvements"), Contract No. BE17-215 ("F Street Reconstruction"), Contract No. E05-136 ("Duck Creek Crossing")) and provided substantially deficient disclosures (Contract No. BE19-273 ("Sherwood Lane Water Repair")).

⁴ As provided by CBJC 53.50.440, SEEM is welcome to request reinstatement in the future.