

IN THE CIRCUIT COURT OF THE FIRST JUDICIAL DISTRICT OF
HINDS COUNTY, MISSISSIPPI

M.A.C. & ASSOCIATES, LLC

PLAINTIFF

VS.

CIVIL ACTION NO. 16-315

SIEMENS INDUSTRY, INC.
and JOHN DOES 1-3

DEFENDANT

SUMMONS

STATE OF MISSISSIPPI
COUNTY OF HINDS

TO: Siemens Industry, Inc.
c/o Registered Agent, CT Corporation System
645 Lakeland Drive East, Suite 101
Flowood, Mississippi 39232

NOTICE TO DEFENDANT

THE COMPLAINT WHICH IS ATTACHED TO THIS SUMMONS IS IMPORTANT AND YOU MUST TAKE IMMEDIATE ACTION TO PROTECT YOUR RIGHTS.

You have been named as the Defendant in a Complaint filed herein by the Plaintiff, M.A.C. & Associates, LLC. Attached to this Summons is a copy of said Complaint.

You are required to mail a copy of a written response to Robert L. Gibbs, Gibbs Travis PLLC, the attorney for the Plaintiff, whose address is 1400 Meadowbrook Road, Suite 100, Jackson, MS 39211.

Your response must be mailed or delivered within thirty (30) days from the date of delivery of this summons and complaint or a judgment by default will be entered against you for the money or other things demanded in the complaint. You must also file the original of your response with the Clerk of this Court within a reasonable time afterward.

Issued under my hand and seal of said Court, this 31 day of May, 2016.

(SEAL)

By: Karla Bailey
Clerk of Hinds County, Mississippi



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M.A.C. & ASSOCIATES, LLC

PLAINTIFF

VS.

CIVIL ACTION NO. _____

**SIEMENS INDUSTRY, INC.
and JOHN DOES 1-3**

DEFENDANT

COMPLAINT

COMES NOW Plaintiff, M.A.C. & Associates, LLC, by and through counsel, and files this Complaint against Defendant, Siemens Industry, Inc. ("Siemens" or "Defendant"). In support thereof, Plaintiff would show unto this Honorable Court the following:

PARTIES

1. Plaintiff, M.A.C. & Associates, LLC is a minority owned business, located in Jackson, Mississippi.
2. Defendant, Siemens Industry, Inc. is a company registered to do business within the State of Mississippi, located at 1919 Lakeland Drive, Jackson, Mississippi 39216 and may be served with process through its registered agent for service of process, CT Corporation System, 645 Lakeland Drive East, Suite 101, Flowood, Mississippi 39232.
3. Defendants John Does 1-3 are other individuals or corporations who may be liable for all or part of the negligible acts or omissions committed resulting in the injury to M.A.C. & Associates, LLC and for whom Plaintiff may seek recovery of damages, but whose identity is unknown at this time.

JURISDICTION AND VENUE

4. Pursuant to Mississippi Code Annotated § 9-7-81 (2006), this Court has original subject matter and personal jurisdiction over Defendant.

5. Pursuant to Mississippi Code Annotated § 11-11-3 (2006), venue is proper in the Circuit Court of Hinds County, Mississippi in that the events that caused the injury occurred in Jackson, Mississippi (Hinds County).

FACTUAL BACKGROUND

6. In January 2013, the City of Jackson entered into a contract with Siemens Industry, Inc. (hereinafter "Siemens" or "Defendant") to make improvements to the City's water and sewer system. Siemen's scope under the contract consisted of (1) Advance Metering Infrastructure Upgrade; (2) Water Treatment Plant Repairs and Upgrades; and (3) Sewer Collection System Repairs. The total cost of these projects to the City was \$90,983,106 with additional payments due to Siemens for the Performance Assurance Program Services.

7. The Advance Metering Infrastructure Upgrade was the largest component of the contract and consists of the installation of almost 65,000 remote read meters; the infrastructure necessary to collect data from the remote read meters, and a new billing system. The total cost of the Advance Metering Infrastructure Upgrade is \$51,209,884,

8. In order to secure the instant contract, Defendant committed to the City of Jackson that (1) 50% of the project cost would be in compliance with the City's EBO program, (2) it would partner with Jobs for Jacksonians and Youth Summer Work Program, (3) it would have internships with Jackson State University School of Science, Engineering, and Technology; (4) all material purchases would be made from Jackson's distributors, and (5) it would move its office within the City limits of Jackson.

9. In September 2012, Siemens made application to the City of Jackson Equal Business Opportunity Plan (EBO). In its application, Siemens proposed that 58.29% of the construction on the project would be African-American and 32% would be female. To help

reach these goals, Siemens selected M.A.C. & Associates, LLC “hereinafter “M.A.C. or “Plaintiff”) to perform construction, sewer repair work, O&M work and water meter installation work, digging and plumbing with a dollar value of \$20,328,920.00 and a 21.9% minority business enterprise participation.

10. Prior to the City accepting Siemens’ proposal, Siemens committed to the City that it would mentor, train and manage local minority businesses involved in the project, which included Plaintiff.

11. Siemens also committed to M.A.C. and other minority businesses, that was a part of Siemens’ Equal Business Opportunity (“EBO”) proposal to the City, that it would mentor, train and help manage these businesses so these businesses would be successful and able to compete for similar contracts in the future.

12. Based, in part, on representations made by Siemens, Plaintiff, by and through its President, Marcus Wallace lobbied the City’s leadership and in January 2013 the City of Jackson and Siemens entered into a contract to make improvements to the City’s water and sewer systems.

13. Siemens and M.A.C. entered into negotiations for M.A.C. to be a subcontractor to handle the construction part of the City’s contract with Siemens. In its attempts to negotiate a fair contract, M.A.C. submitted price proposals which would allow him the standard 15-20% markup on phases of work. Siemens refused to allow M.A.C. to receive this type of profit and would only agree to a low 5% profit. Siemens represented to M.A.C. that there was not enough profit in Siemens’s Contract with the City to allow M.A.C. to make a 15-20% mark-up.

14. In July 2013, Siemens and M.A.C. entered into a Subcontract Agreement wherein Siemens was the contractor and M.A.C. being the subcontractor. A copy of the Subcontract

Agreement is attached hereto as Exhibit "1" and is made a part of this Complaint as if it was fully contained herein.

15. To carry out M.A.C. Subcontract Agreement with Siemens, M.A.C. contracted with Hemphill Construction, Inc. (hereinafter "Hemphill") to assist in performing the O&M and sewer repair work. Siemens recommended to M.A.C. that it should contract with Pedal Valve, Inc. (hereinafter "Pedal") to assist in performing the water meter phase of the project. Based on Siemens' recommendation, M.A.C. met with Pedal and Pedal committed to assist in the water meter phase.

16. After the City gave the notice to proceed on this project, Siemens entered into a separate Subcontract Agreement with Pedal. Siemens subcontract with Pedal breached Siemens subcontract with M.A.C. who was no longer responsible for all construction work on the subject project and also reduced the amount of minority participation that Siemens contract with the City required.

17. Pedal's removal from a subcontract with M.A.C. caused substantial harm to M.A.C. as follows:

- a. M.A.C. no longer had control of a significant part of the construction phase of the subject project in breach of its contract with Siemens;
- b. Siemens removed the contingency portion of the construction phase of the contract from M.A.C. and gave it to Pedal;
- c. Pedal, as a subcontractor to Siemens, looked out for its best interest to the detriment of M.A.C. by hiring employees of M.A.C. who had been trained at M.A.C.'s expense;
- d. Pedal failed to keep a sufficient number of professional installers ("Eagles") on the City of Jackson project, leaving unskilled local workers to work in Jackson. This resulted in M.A.C.'s production numbers going down;

- e. Pedal's "Eagles" failed to properly install meters which caused M.A.C.'s installers to return to make a proper installation. In that Pedal had been paid for the installation, M.A.C was not able to charge for the repair charges, thus causing M.A.C. to loss money;
- f. Pedal, without M.A.C.'s knowledge or consent, sent M.A.C. employees to other towns/cities where Pedal had contracts to work on other water meter projects at M.A.C.'s expense; and
- g. Pedal made promises to the City to perform miscellaneous work on the subject project, but MAC ended up performing said work. The contingency fund was set up to pay for this work but Siemens allowed Pedal to use the contingency fund which resulted in MAC not being paid.

18. Siemens failed to carry out its part of the contract with the City which resulted in the City shutting down the project twice. M.A.C. suffered serious financial loss during these shutdowns.

19. As a result of the act(s) and/or omissions of Siemens, M.A.C. has sustained economic and punitive damages.

FRAUDULENT MISREPRESENTATION

20. Plaintiff re-allege and incorporate herein the foregoing allegations of this Complaint as if set forth herein in its entirety.

21. Defendant made material and/or significant factual representations to the City of Jackson which Plaintiff relied on which representations were false. Those factual representations are as follow:

- a. That 58.29% of the water meter project would go to African American businesses;
- b. That 21.9% of the contract would be awarded to M.A.C. and that the dollar value of the work to be performed by M.A.C. would be \$23,328,920.00;
- c. That M.A.C. would be responsible for all construction phases of the contract;

- d. That every minority subcontractor, including M.A.C., would be properly mentored, trained and managed since this project was new and unique; and
- e. That Defendant would utilize the City of Jackson's Job for Jacksonians program and the Second Chance Program and that subcontractors, including M.A.C., would also utilize these programs.

22. Plaintiff relied on these representations not knowing they were not true.

23. The representations made to the City of Jackson and Plaintiff were false and amounts to misrepresentations.

24. Plaintiff reasonably relied on these misrepresentations to its detriment.

25. The acts and/or omission of Defendant proximately caused or contributed to damages and losses incurred by Plaintiff.

FRAUD BY THE INDUCEMENT

26. Plaintiff re-allege and incorporate herein the foregoing allegations of this Complaint as if set forth herein in its entirety.

27. Defendant, in seeking to obtain the subject contract from the City of Jackson, made certain statements and representations to the City and Plaintiff, which lead Plaintiff to be a part of Defendant's EBO team presented to the City. Defendant represented to the City:

- a. That Plaintiff would perform all construction, sewer repair, O&M work and water meter installations on the project;
- b. Plaintiff's participation in the project would be 21.9% of the cost of the project; and
- c. Defendant would train, manage and mentor its EBO team, including Plaintiff, so the local and minority companies, including Plaintiff, would come out of the project profitable.

28. Plaintiff as a local minority company, reasonably relied on these representations and allowed Defendant to include it as a part of Defendant's EBO team.

29. Plaintiff as a local minority company reasonable relied on these representations

when it entered into a Subcontract Agreement with Defendant.

30. Defendant intentionally and without just cause engaged in deceitful business practices, which fraudulently induced Plaintiff to be a part of Defendant's EBO team and to sign the Subcontract Agreement with Plaintiff.

31. These fraudulent acts were calculated to harm Plaintiff and as a direct and/or proximate cause thereof Plaintiff has been irreparably harmed.

BREACH OF CONTRACT

32. Plaintiff re-allege and incorporate herein the foregoing allegations of this Complaint as if set forth herein in its entirety.

33. Plaintiff and Defendant entered into a Subcontract Agreement July 2013 for Plaintiff to perform certain construction work as described in Exhibit "A" to the subject Subcontract Agreement. (Exhibit "1" attached hereto.) Rather than allowing Plaintiff to perform the work described in Exhibit "A" of the Subcontract Agreement, Defendant breached the Subcontract Agreement in the following matters:

- a. Removed meter installation from M.A.C.'s Subcontract Agreement with Siemens and entering into a separate Subcontract Agreement with Pedal for meter installation;
- b. Failure to pay Plaintiff's the standard markup percentage for the value of services rendered in order for Defendant to receive a larger profit share;
- c. Caused Plaintiff to perform work for which it was not paid;
- d. Did not pay Plaintiff the full value of work performed;
- e. Reduced M.A.C.'s subcontract by \$983,347.60 with a change order that was not agreed to by M.A.C; and
- f. Failure to pay the amount due under the contract.

BREACH OF IMPLIED DUTY OF GOOD FAITH AND FAIR DEALINGS

34. Plaintiff re-allege and incorporate herein the foregoing allegations of this Complaint as if set forth herein in its entirety.

35. Every contract in Mississippi carry an implied duty of good faith and fair dealing. These covenants provide that both sides to a contract will act in good faith and not prevent the opposing side from realizing the benefit of their bargain.

36. Defendant breached the implied covenant by (1) removing Pedal as a subcontractor to M.A.C., (2) removing the contingency funds from M.A.C., (3) not paying M.A.C. the full value of its work, (4) reducing the amount due M.A.C. with a change order that was not agreed to by M.A.C., and (5) not paying M.A.C. for work performed by M.A.C.

NEGLIGENCE

37. Plaintiff re-allege and incorporate herein the foregoing allegations of this Complaint as if set forth herein in its entirety.

38. Defendant owes Plaintiff a duty to:

- a. Comply with its representations made to the City of Jackson and to Plaintiff;
- b. Comply with the contract terms;
- c. Act with due care toward its subcontractors, including Plaintiff;
- d. Comply with the Equal Business Opportunity (EBO) Program of the City of Jackson; and
- e. Provide training and mentoring to its subcontractors, including M.A.C.

39. Defendant breached its duty owed to Plaintiff.

40. Defendant's breach, directly and/or proximately caused Plaintiff's damages.

GROSS NEGLIGENCE

41. Plaintiff re-allege and incorporate herein the foregoing allegations of this

Complaint as if set forth herein in its entirety.

42. Defendant owes Plaintiff a duty to Plaintiff to:
 - a. Comply with its representations made to the City of Jackson and to Plaintiff;
 - b. Comply with the contract terms;
 - c. Act with due care toward its subcontractors, including Plaintiff;
 - d. Comply with the Equal Business Opportunity (EBO) Program of the City of Jackson; and
 - e. Provide training and mentoring to its subcontractors, including M.A.C. wholly and completely.

43. Defendant intentionally, maliciously and callously breached its duty owed to Plaintiff.

44. Defendant's breach, directly and/or proximately caused Plaintiff's damages.

INTERFERENCE WITH BUSINESS RELATIONS

43. Plaintiff re-allege and incorporate herein the foregoing allegations of this Complaint as if set forth herein in its entirety.

44. Defendant interfered with Plaintiff business relations with Pedal by removing Pedal as a subcontractor to Plaintiff and executing a separate subcontract with Pedal and removing contingency funds from Plaintiff to Pedal.

45. Defendant interfered with Plaintiff business with Hemphill Construction by dealing directly with Hemphill who was a subcontractor of M.A.C.

46. Defendant, in cooperation with Hemphill interfered with Plaintiff's banking relationship with Copiah Bank, by preventing Plaintiff access to funds deposited into his account.

47. These acts of interference directly and/or proximately caused damages to

Plaintiff.

PUNITIVE DAMAGES

48. Plaintiff re-allege and incorporate herein the foregoing allegations of this Complaint as if set forth herein in its entirety.

49. The aforementioned actions of Defendant were done knowingly, willfully and intentionally or with reckless disregard for the rights of Plaintiff, evidencing bad faith on the part of Defendant and entitling Plaintiff to punitive damages.

PRAYER FOR RELIEF

WHEREFORE PREMISES CONSIDERED, Plaintiff prays that summon is issued against Defendant and that Defendant be cited to appear and answer herein, that on final hearing hereof, Plaintiff have judgment entered against Defendant in the amount of \$12,000,000.00, in actual damages and in the amount of \$25,000,000.00 in punitive damages, plus reasonable attorneys' fees and all costs of Court incurred herein.

Respectfully submitted,

M.A.C. AND ASSOCIATES, LLC.

Robert L. Gibbs

OF COUNSEL:

Robert L. Gibbs, MSB No. 4816
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DEFENDANT

FILED
MAY 31 2016
ZACK WALLACE CIRCUIT CLERK
BY _____
PLAINTIFF
D.C.

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