
From: Anderson, Deborah (AGO) [deborah.anderson@state.ma.us]
Sent: Monday, June 12, 2023 9:42 AM
To: John Flick
Cc: Joshua Cormier
Subject: RE: 11:30 is better

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That is an accurate summary of our conversation.

Deborah A. Anderson
Assistant Attorney General
Construction Bid Unit
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Boston, MA 02108 [mail]
617-963-2371
617-722-3066 Fax
Deborah.Anderson@mass.gov
Office hours: 8:00 AM – 4:00 PM

**** Revised [Public Construction Bidding in MA Frequently Asked Questions](#)**

From: John Flick <jflick@flicklawgroup.com>
Sent: Monday, June 12, 2023 9:09 AM
To: Anderson, Deborah (AGO) <deborah.anderson@mass.gov>
Cc: Joshua Cormier <jcormier@gardner-ma.gov>
Subject: RE: 11:30 is better

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Debbie,

I want to thank you for the time you have provided helping the City of Gardner navigate this situation. This e-mail serves as a recap of our discussion and plan moving forward.

As we stated, in December 2022 or January 2023, a private company was permitted to occupy a City building as a “tenant” without a lease. This was done without the knowledge of the Purchasing Department or Law Department. In April 2023, the Purchasing Department learned that the private entity was performing major renovations to this space. As the Purchasing and Law Departments investigated this matter it was learned that the private entity was operating under a verbal license agreement and the private entity had contracted with the contractor to perform renovations.

Once this was discovered, steps were taken to cease all work. The Law Department concluded, in conjunction with the Purchasing Department, that the City would assume the private entity's contract with the contractor, and have the contractor re-bid the project as a public works project. The work will only continue and the contractor paid once an assumption agreement is signed. Other relevant facts include:

1. The total amount of the work performed to date exceeds \$500,000.00.
2. The HVAC work alone exceeds \$250,000.00.
3. The contractor performing the work is not DCAM certified.
4. The City did not obtain any engineering feasibility studies.
5. The City is planning to use funds from a state earmark using federal APRA funds.

The City cannot bring this matter into compliance with Massachusetts procurement laws. After our consultation, the steps being taken by the City to resolve this matter are as follows:

1. The City will enter into an Assumption/Settlement Agreement with the contractor resolving all claims and converting the original contract to a public works contract.
2. The contractor will pay its eligible employees the applicable prevailing or Davis/Bacon wages.
3. Due to the non-compliance with procurement laws to date, the federal ARPA funds cannot be used to pay the contractor and the City will have to appropriate those funds from the City's general fund.
4. Any further work to be performed as part of this project, including all leasehold interests of private entities will comply in all respects with the Commonwealth of Massachusetts procurement laws.

Thank you again for your assistance.

Best,
John Flick
City Solicitor

From: Anderson, Deborah (AGO) <deborah.anderson@state.ma.us>
Sent: Friday, June 9, 2023 10:55 AM
To: John Flick <jflick@flicklawgroup.com>
Subject: 11:30 is better

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