



**Request for City Council Committee Action
From the City Attorney's Office**

Date: February 22, 2006

To: Ways & Means/Budget Committee

Subject: Boone Trucking, et al. v. Weis Construction Company and the City of Minneapolis, et al.
U.S. District Court No.: 05-0024 MJG/JGL – Claims of Boone Trucking

Recommendation: That the City Council authorize settlement of Plaintiff Boone Trucking's case for the amount of \$14,000.00 payable to Boone Trucking and its attorney, Lateesa Ward, from Fund/Org. 6900 150 1500 3000, and that the City Attorney be authorized to execute any documents necessary to effectuate this settlement.

Previous Directives:

Prepared by: Sydnee N. Woods Assistant City Attorney Phone: 673-2625

Approved by: _____
Jay M. Heffern
City Attorney

Presenter in Committee: Jay M. Heffern, City Attorney

Financial Impact (Check those that apply)

- No financial impact - or - Action is within current department budget.
(If checked, go directly to Background/Supporting Information)
- Action requires an appropriation increase to the Capital Budget
- Action requires an appropriation increase to the Operating Budget
- Action provides increased revenue for appropriation increase
- Action requires use of contingency or reserves
- Other financial impact (Explain): \$14,000.00 from Fund/Org. 6900 150 1500 3000
- Request provided to the Budget Office when provided to the Committee Coordinator

Community Impact:

City Goals: Build Community

Background/Supporting Information

The Boone trucking case involves claims of discrimination in the hiring of subcontractors by contractors working on Heritage Park and the new Central Library projects. Plaintiffs allege violations of state and federal law. The City pursued a Rule 12 Motion to Dismiss/ Motion for Summary Judgment with only limited success. The City has since settled all the other claims except for Boone Trucking's.

In 2001, Mortenson/Thor (not a party in the above-captioned case), was selected through a competitive process to act as the Construction Manager on the New Central Library Project. The successful bidder for the Interiors contract was Defendant PCL Construction Services, Inc ("PCL"). The goals for the utilization of women-owned and minority-owned

businesses in sub-contracting for the Interiors Contract were set at 15% for women-owned businesses and 25% for minority-owned businesses.

PCL's proposed utilization did not meet the set utilization goals established for the Interiors Contract. Therefore, prior to approving PCL for the contract award, Contract Compliance Officer Marvin Taylor examined whether PCL made a good faith effort to meet the goals outlined in the City's bidding requirements. After reviewing documents provided by PCL, and placing numerous phone calls to SUBP contractors who were not utilized to determine whether, in fact, they were contacted, Taylor and the Minneapolis Department of Civil Rights determined PCL made good faith efforts to achieve the previously set participation goals. PCL provided information documenting its efforts at maintaining a working environment free of harassment, intimidation and coercion, establishing and maintaining an internal list of recruitment resources, encouraging internal recruitment of women and minorities for employment, and reaching out to women-owned and minority-owned businesses.

In May 2004, CCO Taylor received a complaint from Plaintiff Boone Trucking regarding PCL's failure to select Boone Trucking for waste removal. PCL had selected Atomic Waste instead. Atomic Waste is a women-owned business and part of the SUBP program. After an inquiry, Taylor determined that PCL's selection of Atomic Waste instead of Boone Trucking was based on a significantly lower bid by Atomic Waste. He informed Boone Trucking of this determination and also that the City of Minneapolis could not force PCL or other general contractors to accept higher bids for goods and services. Boone Trucking never produced any evidence that PCL's selection of Atomic Waste was race or gender based.

Given the time and expense involved to complete the discovery process, the length of time of a possible federal court trial, and the possibility of a verdict of against the City, at a recent court-ordered settlement conference the City offered Plaintiff \$14,000 for full and final settlement of its case. In addition, the City has agreed to sponsor an annual one-day minority contracting training program. Although sponsored by the City, it may partner with other private or public sponsors. The program will, from time to time, include presentations on such topics as business development, bonding requirements, financing options, tax advice and legal issues for small and emerging businesses. In addition, the City will agree to review its request for proposal and bid forms to determine if the current language is suitable to achieving its goals for small and emerging business participation in city contracts.