



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

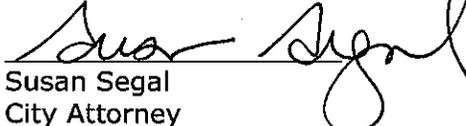
Date: April 5, 2011
To: Ways & Means/Budget Committee
Referral to:

Subject: *Collins Electrical Systems v. City of Minneapolis, et al.*

Recommendation: That the City Council approve payment to the City of Minneapolis in the amount of \$97,000 from Collins Electrical Systems/Egan Co. in settlement of the City's claims, and authorize the City Attorney's Office to execute any documents necessary to effectuate the settlement.

Previous Directives:

Prepared by: Tracey Fussy Phone: (612) 673-2254

Approved by: 
Susan Segal
City Attorney

Presenter in Committee: Susan Segal, City Attorney

Financial Impact: (Check those that apply)

- No financial impact (Revenue to City)
- Action requires an appropriation increase to the _____ Capital Budget or Operating Budget.
- Action provides increased revenue for appropriation increase.
- Action requires use of contingency or reserves.
- Business Plan: _____ Action is within the plan. _____ Action requires a change to plan.
- Other financial impact (Explain):
- Request provided to department's finance contact when provided to the Committee Coordinator.

Community Impact: Other

Background/Supporting Information:

In 2009, the City entered into an agreement with a local company – Mtec – to supply professional design services, labor and equipment related to the Northstar Corridor Light Rail Extension Project ("Project"). Mtec was a subcontractor to Collins Electric ("Collins"). Collins was a subcontractor to Graham. Graham was the general contractor hired by MnDOT.

The City supplied traffic control signals and set up the timing and sequencing of the signals. The City supplied those services, labor and materials, pursuant to the agreement with Mtec, and had substantially completed its obligations in November 2009. The City expended \$153,000 pursuant to the agreement in out-of-pocket services, labor and materials. In December 2009, the City sent an invoice to Mtec seeking payment for its work. Mtec did not pay the City for the materials and work provided under the agreement claiming that the company was insolvent. All information indicates that it is in fact insolvent and not able to pay the City.

The City sent notice to Collins' and Graham's payment bond sureties on August 10, 2010, seeking recovery of its out-of-pocket expenses. A dispute arose as to the timeliness of the City's claim on the payment bond, with Collins disputing that the City had timely filed its claims. Collins commenced the underlying lawsuit against all of the parties working on the Project. Collins sought a declaratory judgment seeking, among other things, a determination that the City had failed to timely claim payment under the bonds.¹

On March 30, 2011, the parties engaged in a court-ordered mediation, with Jonathan Lebedoff acting as mediator. The parties reached a tentative settlement with Collins agreeing to pay the City \$97,000 for full satisfaction of the City's claim. Public Works administration supports the tentative settlement and our office recommends the City Council approve the tentative settlement.

¹ After the commencement of the lawsuit, Collins was purchased by Egan Co.