

City of Lowell - Law Department

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July 23, 2009

City Manager Bernard F. Lynch
Mayor Edward "Bud" Caulfield
Members of the City Council

RE: Somerville Responsible Employer Ordinance

Dear Mr. Manager, Mayor Caulfield and Members of the City Council:

I write in response to Councillor Milinazzo's request that the "Law Department review the Somerville responsible employer ordinance and investigate possible use in the City of Lowell." Please be advised that the Law Department has previously reviewed a proposed "Responsible Employer" Policy in 2007. (A copy of the original opinion is attached.) The current proposal is very similar to the 2007 Somerville Responsible Employer Ordinance. The current proposal differs from the 2007 proposal by excluding the "Labor Harmony" provision. This provision, as discussed in the earlier opinion, attempts to protect the City, in ways in which the City is already covered in other standard provisions such as CCD's and provisions for liquidated damages. Many other proposed provisions are primarily the same as the provisions proposed in 2007, and are contained either in the City's contract language or in the bid specifications.

In 2007, the Law Department asked DPW, DPD, and Parks Department to review and comment on the initial proposed Responsible Employer Ordinance proposed language. The comments received from the departments indicated that it would be difficult to oversee some of the provisions in the Policy, and the departments felt that the current contract provisions were more than sufficient. Where the language used in the provisions of the 2007 proposal and the language in the current proposal are comparable, the departments would likely maintain their positions.

As previously discussed, the addition of these provisions may add a cost to the contractor and thereby they may add a cost to the City of Lowell and its taxpayers.

I trust this answers your inquiry into this matter.

Yours very truly,



Christine P. O'Connor
City Solicitor

Encl.

Councilmotions/09

CITY OF LOWELL
LAW DEPARTMENT
INTEROFFICE MEMORANDUM
EXT. 4050

TO: Bernard F. Lynch – City Manager

FROM: Christine P. O'Connor – City Solicitor

DATE: January 26, 2007

SUBJECT: Responsible Employer Policy

The Law Department has reviewed the "Responsible Employer" Policy. Pursuant to our review please be advised of the following:

- Labor Harmony Clause: Much of the "Responsible Employer" Policy centers on a provision entitled "Labor Harmony." The provision could prove problematic on several levels. First and foremost is the difficulty of adequately identifying what constitutes "labor harmony." This could lead to situations between contractors and subcontractors involving disputes as to whether there is a violation of "harmony." Moreover, this provision calls for the City to request "any labor disputes the Contractor has been involved in during the past five years." While this information could prove valuable to the City, we would have to have in place criteria for weighing such information. A more efficient approach may very well be the Pre-qualification process which under the 2004 construction reform laws have helped to eliminate irresponsible contractors before bidding.

Also, part of what this provision is designed to protect the City against (delay's etc.) is covered in other standard provisions such as CCD's and provisions for liquidated damages.

- Other Provisions: Many of the other provisions are contained either in our own contract language or in the bid specifications. For example, in our standard contract language already includes language regarding "prevailing wage rates," as well as Chapter 152 requirements (including, but not limited to industrial accident insurance coverage). In many of our bid specifications we have language dealing with weekly payment reports.
- I had also asked DPW, DPD and Parks/Rec to review and comment on the proposed language. Both DPW and Parks felt that contractors would have difficulty overseeing some of these provisions and felt that our current contract provisions are sufficient.

- Lastly, the addition of these provisions may add a cost to the contractor and thereby the City.

I would be happy to discuss this further if you have any questions.

C:responsible employer