



June 30, 2012

Final Investigative Report Concerning Ombudsman Complaints 2010-0046 and 2011-0191

COMPLAINT

A constituent approached the Ombudsman's Office on March 25, 2010 with a complaint that she was not paid fairly for work that her company subcontracted for a MOA project in 2009. The constituent claims that the MOA improperly calculated rental equipment rates and believes that the contractor ASRC (Arctic Slope Regional Corporation) owes her company approximately \$350,000.

The constituent again approached the Municipal Ombudsman's office on October 14, 2011 to determine the status of her 2010 complaint.

FINDINGS

The allegation that, due to the improper calculation of rental equipment fees, the Municipality is improperly withholding funds from the constituent's general contracting company is UNSUPPORTED. **Thus, the allegation in this complaint that the constituent was not paid fairly for work that her company subcontracted for an MOA project in 2009 is UNSUPPORTED.**

ANALYSIS AND CONCLUSION

The constituent and the ASRC disagree on the compensation for the constituent's rental equipment rates from a construction project at the Airport Heights Fire Training Center. The constituent alleges that because the Municipality failed to properly assess the equipment rental rates by using Blue Book values, the MOA is improperly withholding funds from constituent. The MOA has been firm in its position that only actual costs on rented equipment would be allowable based on the regulatory scheme that governs every construction project commissioned by the Municipality. These guidelines preserve continuity within the municipal contractor-subcontractor relationship and provide legal guidance to subcontractors and municipal personnel that oversee construction projects. (See, Municipality of Anchorage Standard Specifications MASS-B specifications; see also Article 5.21 at http://www.muni.org/Departments/works/project_management/Documents/MASS%20Revision%202%20-%20Entire%20Document.pdf.)

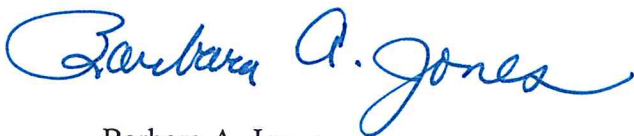
In an attempt to resolve this dispute, the constituent met with an MOA engineer on February 8, 2010 and the MOA engineer and the MOA Capital Projects manager on March 18, 2010. However, the dispute was not resolved. Their position is that MASS-B

Article 7.4.A.3.b. mandates the Municipality's methodology of assessing the value of compensation to subcontractors for rented equipment: "Rented Equipment (over \$500) Costs for equipment brought to the Work site and rented or leased specifically for Work required under this Section shall be included at the **actual rental rate** and supported by invoices from the equipment vendor." In contrast, MASS-B Article 7.4.A.3.a. states that "For any **Contractor-owned machinery or special equipment**, the contractor shall include costs for the rental rates in the current edition and appropriate volume of the 'Rental Rate Blue Book for Construction Equipment,' (hereinafter referred to as the 'Blue Book'), published by Dataquest, Inc." Therefore, because the disputed amount regards equipment that was rented, not owned, by the constituent, under MASS-B it is more appropriate to calculate this amount via the actual rental rate, and not by Blue Book standards, as the constituent suggests. Thus, the constituent's position is contrary to regulations that are routinely utilized by the Municipality of Anchorage. **For all of the above reasons, this allegation, that the MOA improperly calculated the amount owed the constituent, is unsupported.**

For all of the above reasons, the allegations of the constituent are UNSUPPORTED. Rental equipment rates in municipal construction contracts are governed by MASS-B, which mandates that the rates are calculated by actual rental value, and not Blue Book value, as the constituent has maintained. Thus, no recommendations by the Ombudsman are necessary in this matter.

A preliminary report regarding this matter was provided to the department.

If you object to the Ombudsman's decision to decline or discontinue this investigation or review, you may file a grievance with the Ombudsman as specified in A.M.C.R. 2.60.006.



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Municipal Ombudsman