



April 20, 2015

Sent via Hand Delivery and facsimile

Dan Marran
Contract and Risk Manager – City of Sparks, NV
431 Prater Way
Sparks, NV 89432-0857
Fax: (775) 353-2399

Re: Notice of Protest
Protesting Party: Vega Asphalt Paving, Inc.
Project: 2015 Permanent Patch
Bid #: 14/15-017
PWP #: WA-2015-145

Dear Mr. Marran and City Council Members:

My office represents Vega Asphalt Paving on their general business matters and I have been asked to assist them in protesting the Recommendation to Award dated April 16, 2015 regarding the above-identified project. Vega Asphalt Paving is a local family business and this contract is very important to them. Accordingly, please accept this letter as their Notice of Protest pursuant to paragraph 34 of the General Conditions for this bid package.

On April 1, 2015, the City of Sparks published a notice to bidders for the City's 2015 Permanent Patch needs. Pursuant to the notice, on April 15, 2015, Vega Asphalt Paving submitted a completed bid package with a total bid price of \$183,500.00. Vega Asphalt Paving's bid was the lowest of the 7 bids submitted.

On April 16, 2015, the City made its recommendation to award the project to a higher bidder on the basis that Vega Asphalt Paving's bid was "non-responsive," pursuant to Section 20 of the Special Conditions. According to the Bid Re-Cap Summary of the bids submitted, 6 out of the 7 bids submitted were found to be non-responsive on the same basis. (Attached as **Exhibit 1**, is a copy of the Bid Re-cap.)

CHRIS RUSBY
TRAVIS CLARK
LICENSED: NV, CA

36 Stewart Street
Reno, Nevada 89501
P: 775-409-4037
F: 775-299-5326

www.rusbyclark.com

According to an April 17, 2015 email from Mr. Marran, it appears the City will not be requiring a bond or any other sort of security to hear this particular protest. (Attached as **Exhibit 2** is a copy of the email.) If at any time you determine that a bond or other security will be necessary, please notify us and we make such arrangements.

1. Irregularities in Bidding Process:

While we recognize that Section 20 of the Special Conditions requires bidders to submit a certified supplier's price quotation for delivered asphalt with their bid proposals, there appears to have been some irregularity and confusion in the bidding process for this particular project. Such irregularity is demonstrated by the fact that 6 of the 7 bid proposals that were submitted did not include a certified supplier's price quotation, and were all determined to be non-responsive.

The confusion amongst almost all of the contractors appears to have been the result of two factors. First, Section 20 of the Special Conditions is located on page 36 of the 58 page bid package. Other than this paragraph, there is no other mention or reference anywhere else in the bid package to the requirement for contractors to include a certified price quotation with their bid proposals. Second, on page 3 of the bid package, is a "Bidder's Checklist" which contains a list of the documents required to be submitted with the bid proposal; however, a certified supplier's price quotation is not mentioned in the list. It appears 6 out of the 7 contractors who submitted bids relied on this checklist.

The irregularity and confusion caused by these inconsistencies is further demonstrated by Sierra Nevada Construction, Inc.'s conduct once the bids had been submitted. According to an April 15, 2015 email from Mr. Marran, it appears Sierra Nevada Construction immediately raised an issue with the City after the bids were submitted about whether the other bidders had included a certified supplier's price quotation pursuant to Section 20 of the Special Conditions. (Attached as **Exhibit 3**, is a copy of the email.) Clearly, Sierra Nevada Construction recognized that this requirement would most likely be overlooked by other bidders due to the factors discussed above and sought to take advantage of the inconsistencies in the bid package.

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2. The City has the right to waive informalities, technical defects and minor irregularities in bids received:

Paragraph 30 on page 25 of the General Conditions provides in pertinent part:

30. Award of Contract:

- (a) Bids/Proposals will be analyzed and award will be made to the lowest, responsive and responsible bidder whose bid conforms to the solicitation and whose bid is considered to be most advantageous to the City, price and other factors considered. Factors to be considered may include, but are not limited to: bidder's past performance, total unit cost, economic cost analysis, life cycle costs, warranty and quality, maintenance cost, durability, the operational requirements of the City and any other factors which will result in the optimum economic benefit to the City.
- (b) The City reserves the right to reject any item or items, to waive informalities, technical defects and minor irregularities in bids/proposals received; and to select the bid(s) or proposal(s) deemed most advantageous to the City. Should the City elect to waive a right it will not constitute an automatic waiver of that right in the future nor will it impact any other right or remedy. The City may consider bids/proposals submitted on an "all or nothing" basis if the bid/proposal is clearly designated as such.

Thus, according to paragraph 30, the project award should be made to the lowest responsive and responsible bidder. The City has the right to waive any informalities, technical defects and minor irregularities. Additionally, the City has the right to select the bid deemed most advantageous to the City.

In this case, Vega Asphalt Paving was the lowest bid. Vega Asphalt Paving's bid contained a technical defect as a result of the irregularities and confusion caused by the inconsistencies in the bid package. Attached as **Exhibit 4**, is a copy of a certified supplier's quotation dated April 16, 2015. The price contained in this quote is the exact same price relied upon by Vega Asphalt Paving in preparing its bid. Accordingly, Vega has cured the minor technical defect and, thus, there is no prejudice to the City.

Further, if the City were to waive this minor technical defect, it would be the most advantageous to the City and would result in the optimum economic benefit to the

City. Sierra Nevada Construction's bid price was almost \$16,000 more than Vega Asphalt Paving's and, thus, the failure to waive the technical defect would economically disadvantage the City.

3. Purposes of Section 20:

Section 20 of the Special Conditions provides:

SECTION 20: ASPHALT CEMENT COSTS

The CONTRACTOR shall furnish with his proposal a certified supplier's price quotation for delivered asphalt. The CONTRACTOR's bid price for asphaltic items will be based upon the price quotation furnished with the proposal. If at any time during the life of the contract covering this proposal, the price of asphalt to the bidder is increased or decreased by the supplier or by the U.S. Government or any of its agencies, in an amount which exceeds twenty-five percent (25%) of the certified price quotation furnished with the original CONTRACTOR's proposal, the CONTRACTOR and the City may negotiate a new price for asphaltic concrete, open grade seal, tack coat or any other bid item which uses asphalt.

The new unit price shall be based on the actual increased or decreased cost of the asphalt cement to the CONTRACTOR, but in no event shall the negotiated increase or decrease of unit price exceed eighty-five percent (85%) of the amount of increase or decrease in unit cost of asphalt to the CONTRACTOR. In the event of such increase or decrease in price of asphalt cement to the CONTRACTOR, the CONTRACTOR shall notify the City within five (5) days of such increase or decrease. Such notification of increase or decrease shall be accompanied by a certified copy of the supplier's price quotation of the delivered asphalt.

In the event that the CONTRACTOR is unable to obtain enough asphalt cement for completion of the paving portion of this contract due to shortage of bituminous materials, an extension of time may be granted upon certification of such shortage.

It appears the purpose of Section 20 is to protect the contractor and the City from changes in the price of asphalt. As can be seen from the attached Exhibit 4, Vega Asphalt Paving has provided and secured the required documentation to accomplish Section 20's objectives. This documentation provides a basis for the City and Vega Asphalt Paving to address and negotiate any future decrease in the price of asphalt for

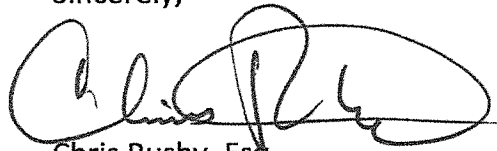
the benefit of the City. Vega Asphalt Paving is also willing to waive any protection afforded the contractor in the event the cost of asphalt increases.

Accordingly, there would be no harm to the City were it to waive the technical defect in Vega Asphalt Paving's low bid. The defect has been fully cured. The City has a basis to negotiate any future decreases in the cost of asphalt and, thus, the protection afforded by Section 20 to the City will be completely fulfilled. Moreover, given the technical defect, Vega Asphalt Paving is offering additional concessions, which further inure to the City's benefit and make waving the technical defects the most advantageous to the City and would result in the optimum economic benefit to the City.

CONCLUSION

For the foregoing reasons, Vega Asphalt Paving respectfully requests that the City reconsider its Recommendation to Award this contract to Sierra Nevada Construction. Vega Asphalt Paving was the low bidder. There was a technical defect in Vega's bid caused by irregularities and inconsistencies in the bid package. Vega Asphalt Paving has since cured the defect. The City has the right to waive to irregularities and minor technical defects, if it is in the best interests of the City economically. This case presents just such a situation where the City should exercise its rights and waive any technical defects because it is the most advantageous to the City.

Sincerely,

A handwritten signature in black ink, appearing to read "Chris Rusby", with a large, stylized flourish at the end.

Chris Rusby, Esq.

On behalf of Vega Asphalt Paving, Inc.

enclosures

EXHIBIT 1

EXHIBIT 1

2015 Permanent Patch				
BID # 14/15-017 / PWP# WA-2015-145				
Bid Date 4/15/15 AT 2 PM				
Bidder	Bond	Self List	Total	Notes
Sierra Nevada Construction	Yes	Yes	\$ 199,007.00	
Vega Asphalt Paving**	Yes	Yes	\$ 183,500.00	Non-Responsive (see Below)
West Coast Paving	Check	Yes	\$ 186,550.00	Non-Responsive (see Below)
Andersen Asphalt	Yes	Yes	\$ 212,425.00	Non-Responsive (see Below)
Q & D Construction	Yes	Yes	\$ 230,625.00	Non-Responsive (see Below)
Arrow Construction	Yes	Yes	\$ 339,000.00	Non-Responsive (see Below)
Spanish Springs Construction	Yes	Yes	\$ 392,444.00	Non-Responsive (see Below)
**Multiplication error corrected by City. Did not affect ranking of bids.				
Bids found Non-Responsive: Section 20 of the Special Conditions, found on Page 36 of the Bid Document required the submittal of supporting price information specific to asphalt items.				
This information was only provided by Sierra Nevada Construction who noted the issue at the public bid opening.				

EXHIBIT 2

EXHIBIT 2

Chris Rusby

From: Robert Vega Sr
Sent: Friday, April 17, 2015 2:06 PM
To: Chris Rusby, Esq.
Subject: Fwd: bid award appeal

Follow Up Flag: Follow up
Flag Status: Flagged

----- Forwarded message -----

From: **Marran, Dan** <dmarran@cityofsparks.us>
Date: Fri, Apr 17, 2015 at 2:02 PM
Subject: RE: bid award appeal
To: Robert Vega Sr <vega.asphalt@gmail.com>
Cc: "Marran, Dan" <dmarran@cityofsparks.us>, "Eiting, Shirle" <seiting@cityofsparks.us>

The City **will not** require a bond or any other sort of security to hear this particular protest. The section of the bid and applicable State law allows the City to be flexible in this requirement, depending on the situation at-hand.

As noted in the dialog yesterday, all other provisions of the appeal/protest section will still apply including the 5 day deadline for the protest which must include specific information. Specifically:

Per the section you cited and NRS 338.142 (2), please be sure your letter addresses the following:

“A notice of protest must include a written statement setting forth with specificity the reasons the person filing the notice believes the applicable provisions of law were violated.”

Once your letter is received, I will let you know when the item will be scheduled for City Council consideration, discussion and possible action. If you have any further questions, please let me know.

Dan Marran, CPPO, C.P.M.

Contracts and Risk Manager - City of Sparks, NV

Phone: (775) 353-2273

Fax: (775)-353-2399

From: Robert Vega Sr [mailto:vega.asphalt@gmail.com]
Sent: Friday, April 17, 2015 1:47 PM
To: Marran, Dan
Subject: bid award appeal

Please reply so we know you've received this.

Dan,

No bonding company will bond the appeal bond. Will the City of Sparks accept a cashiers check?

Please answer how long the funds will be held and that expenses not incurred by the City to read our appeal letter (such as staffing costs and legal fees) will be refunded to us.

As mentioned previously pg 25 - section 30 Award of Contract -part B states:

"The City reserves the right to reject any item or items, to waive informalities, technical defects and minor irregularities in the bids/proposals received; and to select the bid(s) or proposal(s) deemed most advantageous to the City."

We believe it was a technicality and have an asphalt mix quote from the asphalt vendor now.

Also the bid item checklist failed to list the pg 36 section 20 vendor quote to be included with the other required documentation/forms. (this is proved by 6 of the 7 contractors estimating this project viewed as non-responsive.

Sincerely,

Aria with Vega Asphalt Paving Inc.

WE ARE NOT JUST A BUSINESS WE ARE A FAMILY.

775-857-7498 Robert's cell

775-626-6358 Office

EXHIBIT 3

EXHIBIT 3

Chris Rusby

From: Robert Vega Sr
Sent: Wednesday, April 15, 2015 5:42 PM
To: Chris Rusby, Esq.
Subject: Fwd: 2015 Permanent Patch results

----- Forwarded message -----

From: Marran, Dan <dmarran@cityofsparks.us>
Date: Wed, Apr 15, 2015 at 3:28 PM
Subject: RE: 2015 Permanent Patch results
To: Robert Vega Sr <vega.asphalt@gmail.com>, "Quilici, Brent" <bquilici@cityofsparks.us>
Cc: "Ericson, Jon" <jericsen@cityofsparks.us>, "Marran, Dan" <dmarran@cityofsparks.us>, "Martini, John" <jmartini@cityofsparks.us>, "Eiting, Shirle" <seiting@cityofsparks.us>

The City will likely not be posting results until tomorrow.

As noted at the bid opening, there are issues with multiple bids that the City is working to sort out.

Specifically, please note Section 20 of the Special Conditions found on Page 36 of the bid document. One of the bidders (during the bid opening) asked us to verify whether the required pricing information had been submitted by other bidders. It appears that the information was not provided for a number of the bids that were turned in.

Thank you for your patience while we determine the next step.

Dan Marrar, CPPO, C.P.M.

Contracts and Risk Manager - City of Sparks, NV

Phone: (775) 353-2273

Fax: (775)-353-2399

From: Robert Vega Sr [<mailto:vega.asphalt@gmail.com>]
Sent: Wednesday, April 15, 2015 3:16 PM
To: Marran, Dan; Quilici, Brent
Subject: 2015 Permanent Patch results

Please reply so we know you've received this.

Please let us know when you post the result online. <http://portal.cityofsparks.us/bids/bid/detail/69>

Sincerely,

Aria with Vega Asphalt Paving Inc.

WE ARE NOT JUST A BUSINESS WE ARE A FAMILY.

775-857-7498 Robert's cell

775-626-6558 Office



Quote

Bill To: 291048 - Vega Asphalt Paving Inc.
385 Freeport Blvd., Suite 4
Sparks, NV 89431

Contact: Robert Vega
Phone: 775-626-6658
Fax:
P.O. #:

Project: City of Sparks PWP#WA-2015-145

Quote #: 154984
Quote Date: 04/16/2015
Quote Expires: 05/16/2015
Bid Date: 04/16/2015
Sales Rep: Jake Mahoney
Phone: 775-813-8291
Fax: 775-786-7114

Price held through July 2015. If project paves past July 2015, AC pricing will need to be re-negotiated with Sales Representative prior to purchase.

To insure correct pricing on your bill, notify the sales representative on this quote prior to purchasing materials for this project

MIX DESIGN QUOTED INCLUDES R.A.P.

Overtime fee assessed during the work week after stated business hours:

Asphalt and Aggregate: Flat fee of \$100.00 per hour will be assessed for the first 2 hours past stated business hours, after 2 hours overtime fee will increase to \$250.00 per hour.

Silo Loadout after plant closing:

Asphalt needed after regular plant hours must be scheduled with the scalehouse at least two hours prior to standard closing time. In addition to the quoted asphalt price, a fee of \$100.00 an hour (one-hour minimum) will be assessed to the individual customer who requires overtime loadout. Charge increases to \$250.00 an hour after 4 hours. Any asphalt material that is ordered and stored in the silo, but left unused, will be charged at the quoted asphalt price, plus an additional handling fee to remove it from the silo.

Overtime fees: Special Openings, Saturdays and Night Load Out:

We request notice before noon the previous working day when requesting special opening.

Saturday's, Night and Special Openings: A fee of \$100.00 per hour (with a 4 hour minimum and 400 ton minimum). An additional fee of \$250.00 will be assessed if minimum 400 tons isn't achieved. Hourly fee assessed increases to \$250.00 per hour after 8 hours.

We are closed Sundays. In the event a Sunday opening is needed, a charge of \$300.00 per hour will be assessed with a minimum of 400 tons and a minimum of 8 hours. If the 400 ton minimum isn't achieved, an additional flat charge of \$750.00 will be assessed.

Estimated Quantity	UM	Description	Plant	Product Code	Haul	Material	Billing
685.00	Tons	T3 64-22 3% 50 Blow RAP	Spanish Springs AC Plant	50645006	0.00	54.50	54.50

* All prices are quoted on a job by job basis, in U.S. Standard Tons, F.O.B. plant, and are based on scale weights; no reduction for moisture. When properly sampled at our plant, and tested in accordance with the appropriate ASHTO, ASTM or NDOT/Caltrans method, the products will meet the specifications provided to us.

A discount of 1% per ton for aggregate and 1.5% per ton for asphaltic concrete materials is applicable with payment 10th prox, per Western Nevada Materials Credit Agreement, plus tax. All materials are subject to availability. Normal plant operating hours are Monday thru Friday, 7:00am to 4:00pm for aggregate materials and 7:00am to 3:30pm for asphaltic concrete materials. Plant hours are subject to seasonal changes.

This quotation is specific to the Contractor and the project referenced above. The offer to sell these materials is contingent upon the Contractor completing and signing Western Nevada Materials Credit Application and Agreement, approval of Contractor's credit by Western Nevada Materials Credit Department, and acceptance of terms contained in this quotation. If Western Nevada Materials elects not to sell these materials to the Contractor on a credit basis, Western Nevada Materials may either: (1) cancel this quotation; or (2) sell to the Contractor on a cash delivery (COD) basis.

All quoted prices are subject to change without notice until customer's order has been received and accepted in writing by Western Nevada Materials. All quoted prices automatically expire 30 days after the date of the quotation unless customer's order has been received and accepted in writing by Western Nevada Materials before that time. After Western Nevada Materials accepts Customer's order in writing, the agreed prices will remain fixed and valid unless Western Nevada Materials energy cost (cost for natural gas, propane, electricity) increase more than 10%, Asphalt Concrete quoted is subject to a price adjustment based on the current posted rack price for liquid asphalt as stated above. Western Nevada Materials reserves the right to adjust the agreed price for all remaining deliveries in an amount sufficient to cover the increased cost of energy or liquid asphalt.