
KREITLEIN LAW GROUP, LTD

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October 13, 2011

Via Electronic Mail:
dmarran@cityofsparks.us

Dan Marran, CPPO, C.P.M.
CONTRACTS AND RISK MANAGER
City of Sparks

**Re: West Coast Paving, Inc. - Bid Protest -
2012 Permanent Patch Program - Bid #11/12-004**

Dear Mr. Marran:

This correspondence is offered in follow-up to the formal *Bid Protest* sent your office on October 6, 2011 on behalf of West Coast Paving, Inc.

In short, the Bid offered by Q & D Construction, Inc. ("Q & D") was nonresponsive as it failed to comply with the City of Sparks Bid Package instructions as well as applicable Nevada Revised Statute.

The project in question is govern by NRS 338.141(1)(b) because the City of Sparks did not supply a "list of the labor or portions of the public work which are estimated by the public body to exceed 3 percent of the estimated cost" as detailed in NRS 338.141(1)(a). The project bid documents were consistent with the requirements of NRS 338.141(1)(b) regarding the obligation to supply a 5% list of subcontractors as well as a 1% list of subcontractors by the three (3) lowest bidders.

NRS 338.141(1)(b) requires that two (2) separate lists to be supplied; a 5% list and a 1% list.

5% List: Prior to bid opening, each bidding contractor is to first supply a "5% List" listing each first tier subcontractor which will be paid 5% or more of the prime contract's total bid.

1% List: The second list described in NRS 338.141(1)(b) must be submitted by each of the three lowest bidding contractors within 2 hours after the bid opening and **must** list the name of each first tier subcontractor which will be paid an amount exceeding 1% of the prime contractor's bid, or \$50,000.00, whichever is greater.

Dan Marran, CPPO, C.P.M.

October 13, 2011

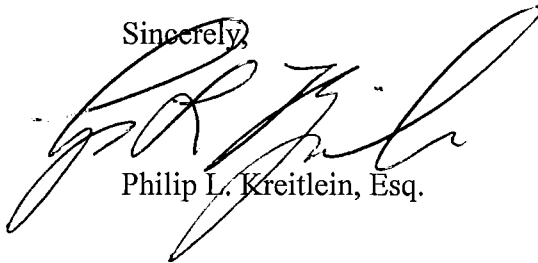
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NRS 338.141(3), as amended by SB 268, Section 13, requires a prime contractor to list its name "on a list required by paragraph (a) or (b) of subsection 1 if, as the prime contractor, the prime contractor will perform any of the work required to be listed" by subsection (1)(b). As a result, Q & D was required to list itself on both the 5% List **and** the 1% List if it was self performing.

In addition, the bid packet supplied by the City of Sparks clearly required Q & D to list itself on the 1% List when it stated: "Subcontracts and ***General Contractors who self-perform*** in amounts **exceeding one (1) percent of bid amount or \$50,000 whichever is greater.**"

Q & D failed to list itself on the 1% List as required by both NRS 338.141(3) and the City of Sparks Bid Package. As a result, the subject bid is nonresponsive. The project should be awarded to the next lowest bid that complied with the NRS and the Bid Package.

Sincerely,

A handwritten signature in black ink, appearing to read 'Philip L. Kreitlein', is written over the word 'Sincerely,'.

Philip L. Kreitlein, Esq.

PLK/me

cc: Client
File No. 1384.00