



McDONALD·CARANO·WILSON^{PC}

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Reply to: Reno
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October 10, 2011

Dan Marran, CPPO, C.P.N.
Contracts and Risk Manager
City of Sparks
Community Services Engineering
P.O. Box 857
431 Prater Way
Sparks, NV 89432

Via Email and U.S. Mail

Re: Bid Protest – 2012 Permanent Patch Program – Bid No. 11-12-004

Dear Mr. Marran:

This firm represents the interests of Q & D Construction, Inc. I am writing with respect to the bid protest by West Coast Paving, Inc. of the above-referenced project and to provide you with Q & D's position with respect to the Project. As you are aware, the legislature passed SB268 in the most recent session. The purpose of SB268 was to prevent prime contractors from bid shopping subcontracts after the prime contractor was awarded a project. Therefore, pursuant to SB268, as that statute modified NRS 338.141, a prime contractor essentially has to treat itself as a subcontractor with respect to the 5% lists that must be submitted at the time of the bid and the 1% list that must be submitted within two hours of the bid. *See* SB 268, Section 13.

Q & D's bid on the above-referenced project is in compliance with NRS 338.141, as modified by Section 13 of SB 268. Specifically, because Q & D intends to perform in excess of 5% of the work on the Project, Q & D identified itself on the 5% list and identified the type of work that it would be performing. Therefore, Q & D complied with NRS 338.141, as modified.

West Coast Paving apparently tries to argue that, pursuant to the statute, a prime contractor has to list itself on both the 5% and the 1% lists, even if it is going to self-perform in excess of 5% of the work. Such a reading of the statute is non-sensical. When a contractor is going to perform in excess of 5% of the work and therefore lists itself on the 5% list, then it is clear that the contractor will be performing in excess of 5% of the work. Therefore, by definition, the contractor performing in excess of 5% of the work will also be performing in excess of 1% of the work. As such, listing itself on the 1% list would simply be redundant and irrelevant.

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By way of example, when a contractor lists a subcontractor on the 5% list, the contractor does not then proceed to list that same subcontractor on the 1% list. Therefore, if you were to follow West Coast Paving's analysis, even before the passage of SB 268, a prime contractor would have to list all 5% subcontractors both on the 5% list and the 1% list. Under West Coast Paving's analysis, if the contractor did not do so, then its bid would not be in compliance with NRS 338.141 as it existed before the passage of SB268. SB268 did not change the procedure of how the lists are submitted: it only added a requirement that the prime contractor has to comply with those same provisions for itself, as it would for its subcontractors. Thus, Q & D's bid is in compliance with NRS 338.141 and the project specifications. As such, it is entitled to be awarded the contract for this Project.

Please do not hesitate to contact me if you have any questions or would like to discuss this matter.

Very truly yours,

Paul J. Georgeson

cc: Lance Semenko, Q & D Construction, Inc.
Philip Kreitlein, Esq.
Christopher S. Cobb, P.E., Capital Projects Manager, City of Sparks, Community
Services Engineering (*Via Email and U.S. Mail*)

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