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6 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
7 IN AND FOR THE COUNTY OF WASHOE
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9 LABORERS INTERNATIONAL UNION
10 OF NORTH AMERICA, LOCAL 169 and
11 RICHARD DALY,

12 Petitioners,

13 vs.

Case No. CV09-01895

Dept. No. 1

14 CITY OF SPARKS,

15 Respondent.
16 _____/

17 ORDER

18 Petitioners LABORERS INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 169
19 and RICHARD DALY (collectively "Daly"), by and through counsel Michael E. Langton, Esq.,
20 filed a *Petition for a Writ of Mandamus or in the Alternative, Writ of Prohibition*. Respondent,
21 CITY OF SPARKS ("the City"), by and through counsel Chester H. Adams, Esq., filed an
22 *Opposition*. Thereafter, Daly replied and submitted the matter for decision.

23 Daly claims the City wrongfully rejected construction bids submitted in response to a request
24 for proposals to perform construction on the Spanish Springs Sanitary Sewer Phase 3, Project Bid #
25 08/09-028-PWP WA-2009-221 ("the Project"). The record reflects the City received approximately
26 10 bids on the Project. However, in a letter dated June 9, 2009, the City's Purchasing Manager, Dan
27 Marran, rejected all submitted bid proposals. *See* Pet.'s Ex. 1. Daly seeks an order compelling the
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1 City to award the construction contract to the lowest responsive, responsible bidder pursuant to NRS
2 338.1385. Alternatively, Daly seeks an order prohibiting the City from re-bidding the Project.

3 NRS 34.160 sets forth the criteria for issuing a writ of mandamus and provides as follows:

4 The writ may be issued by the Supreme Court, a district court or a judge of the
5 district court, to compel the performance of an act which the law especially
6 enjoins as a duty resulting from an office, trust or station; or to compel the
7 admission of a party to the use and enjoyment of a right or office to which he is
8 entitled and from which he is unlawfully precluded by such inferior tribunal,
corporation, board or person. When issued by a district court or a judge of the
district court it shall be made returnable before the district court.

9 “Mandamus is a remedy which may be invoked to cause an administrative officer to perform
10 a ministerial act when the duty to perform such act is clear.” Gill v. State ex rel. Booher, 75 Nev.
11 448, 451, 345 P.2d 421, 422 (1959). “Mandamus is an extraordinary remedy which ‘will not lie to
12 control discretionary action, unless discretion is manifestly abused or is exercised arbitrarily or
13 capriciously.’” Mineral County v. State, Department of Conservation and Natural Resources, 117
14 Nev. 235, 243, 20 P.3d 800, 805 (2001) *quoting* Round Hill Gen. Imp. Dist. v. Newman, 97 Nev.
15 601, 637 P.2d 534 (1981). The burden of proof to show arbitrary and capricious action is on the
16 petitioner. Gragson v. Toco, 90 Nev. 131, 520 P.2d 616 (1974).

17 Similarly, the writ of prohibition is “the counterpart of the writ of mandate. It arrests the
18 proceedings of any tribunal, corporation, board or person exercising judicial functions, when such
19 proceedings are without or in excess of the jurisdiction of such tribunal, corporation, board or
20 person.” NRS 34.320. “The writ of prohibition is also an extraordinary remedy that is reserved to
21 the sound discretion of the issuing court.” Mineral County, 117 Nev. at 243.

22 NRS 338.1385 sets forth criteria for soliciting bids and awarding construction contracts for
23 public works projects with an estimated value in excess of \$100,000. It provides, in pertinent part,
24 as follows:

25 5. Except as otherwise provided in subsection 6 and NRS 338.1389, a public
26 body or its authorized representative shall award a contract to the lowest
responsive and responsible bidder.

27 6. Any bids received in response to an advertisement for bids may be rejected if
28 the public body or its authorized representative responsible for awarding the
contract determines that:

(a) The bidder is not a qualified bidder pursuant to NRS 338.1379 or 338.1382;

- 1 (b) The bidder is not responsive or responsible;
2 (c) The quality of the services, materials, equipment or labor offered does not
3 conform to the approved plans or specifications; or
4 (d) The public interest would be served by such a rejection.

5 Here, the City relied upon NRS 338.1385(6)(d) in rejecting all bids.¹ The record reflects the
6 City's Purchasing Manager, rejected all submitted bids because "the City discovered multiple issues
7 with the original bid documents and specifications that may have led to some (or all bidders)
8 possibly making assumptions concerning the scheduling of the job, therefore affecting prices
9 submitted to the City... In order to be fair to all bidders, the City has determined that rejection of all
10 bids is the best option." See Pet.'s Ex. 1.

11 NRS 338.1385(6)(d) vests broad discretion in a public body or authorized representative to
12 reject bids if the public interest would be served by such rejection. Daly contends the City's
13 Purchasing Manager has no authority to reject bids submitted pursuant to NRS 338.1385. Daly
14 argues the Purchasing Manager may only reject bids for public works projects with a value of less
15 than \$25,000.00. Daly contends such authority is vested solely in the Sparks City Council. The
16 Court finds Daly's contention without merit.

17 Sparks Municipal Code (SMC) 2.25.160(A) provides, in pertinent part, "any procurement
18 resulting in an expenditure of more than twenty-five thousand dollars (\$25,000.00) shall have been
19 made after formal competitive sealed bidding... authorized by the city council or their *designated*
20 *representative*" [emphasis added]. SMC 2.25.030 sets forth, in part, the "division of purchasing is
21 vested with the authority for procurement and contracts negotiation by a fiduciary relationship
22 between the purchasing manager *as the City's authorized representative* and the city manager as the
23 City's Chief administrative officer." Moreover, SMC 2.25.040 provides as follows:

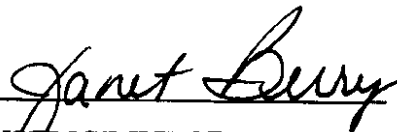
24 All rights, powers, duties and authority relating to the procurement of supplies,
25 services and construction, and the management, control, warehousing, sale and
26 disposal of supplies, services and construction now vested in or exercised by
any city department, regardless of source of funding, are hereby vested in the
city manager and the purchasing manager.

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28 ¹ The City's June 9, 2009 letter actually cites to NRS 338.1385(d). However, the citation is erroneous as there is no such
subsection to NRS 338.1385. As NRS 338.1385(6)(d) controls the rejection of bids, the Court is persuaded is the actual
subsection relied upon by the City.

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2 The Court is satisfied the City's Purchasing Manager acted within his lawful, discretionary
3 authority as the City's representative in rejecting the bids submitted for the Project. The record does
4 not suggest the Purchasing Manager manifestly abused his discretion or exercised his discretion
5 arbitrarily or capriciously.

6 Accordingly, and good cause appearing, Daly's *Petition for a Writ of Mandamus or in the*
7 *Alternative, Writ of Prohibition* is DENIED.

8 DATED: This 14th day of July 2009.

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11 DISTRICT JUDGE

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CERTIFICATE OF MAILING

Pursuant to NRCP 5(b), I certify that I am an employee of the Second Judicial District Court of the State of Nevada, County of Washoe; that on this 14th day of July 2009, I deposited in the County mailing system for postage and mailing with the United States Postal Service in Reno, Nevada, a true copy of the attached document addressed to:

Michael E. Langton, Esq.
801 Riverside Drive
Reno, NV 89503

Chester H. Adams, Esq.
Shirle Eiting, Esq.
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Christine Kuhl