

1 CODE: \$3645
2 MICHAEL E. LANGTON, ESQ.
3 Nevada Bar No. 0290
4 801 Riverside Drive
5 Reno, NV 89503
6 329-7557

7 Attorney for Petitioners

FILED

2009 JUN 18 PM 4: 25

HOWARD W. CONYERS

BY R. Simpson

DEPUTY

8 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

9 IN AND FOR WASHOE COUNTY

10 LABORERS' INTERNATIONAL UNION
11 OF NORTH AMERICA, LOCAL 169,
12 and RICHARD DALY,

13 Petitioners,

14 vs.

15 CITY OF SPARKS,

16 Respondent.

CV09 01895

CASE NO. :

DEPT. NO.: |

17 PETITION FOR WRIT OF MANDAMUS OR IN THE
18 ALTERNATIVE, WRIT OF PROHIBITION

19 COME NOW Petitioners Laborers' International Union of North
20 America, Local 169, (UNION), and RICHARD DALY, (DALY),
21 individually, by and through their undersigned attorney, and
22 hereby petition this Court for a Writ of Mandamus directing
23 Respondent City of Sparks to accept the lawful bids of
24 contractors who submitted a bid to construct the federally
25 funded Spanish Springs Sanitary Sewer Phase 3 Project, City of
26 Sparks Bid #08/09-029-PWP WA-2009-221, or, in the alternative
27 that the Court issue a Write of Prohibition against Respondent
28 City of Sparks prohibiting it from rebidding the project, (the

Michael E. Langton, Esq.

801 Riverside Drive

Reno, Nevada 89503

Voice: (775) 329-7557 Fax (775) 329-7447

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"Project), and to award such contract based upon the lawful bids, or in the alternative that the Court issue a Writ of Prohibition against Respondent City of Sparks prohibiting it from rebidding the project.

This Petition is filed pursuant to Nevada Revised Statutes Chapter 3. Petitioners aver and allege as follows:

I

Petitioner Laborers' International Union of North America, Local 169 is a labor organization as defined under 29 USC § 152(5), affiliated with the AFL-CIO. The Union maintains offices in Reno, Nevada, and has jurisdiction for representing its members throughout Northern Nevada.

II

Petitioner Richard Daly is a citizen and resident of the City of Sparks, County of Washoe, State of Nevada, and is over the age of 21 years. Petitioner Daly is a full-time employee of Laborers' Local 169, serving as its Business Manager, and is authorized to act in its behalf and is also acting as an individual in filing this Petition.

III

Respondent City of Sparks is a municipal government entity, formed under the laws of the State of Nevada. The City is governed by its elected City Council members, and employs a City Manager who serves at the pleasure of the Council.

Michael E. Langton, Esq.

801 Riverside Drive

Reno, Nevada 89503

Voice: (775) 329-7557 Fax (775) 329-7447

IV

1 On or about April 27, 2009, the City published a request
2 for proposals to perform construction on the Spanish Springs
3 Sanitary Sewer Phase 3 Project. The City assigned the Project
4 Bid # 08/09-028-PWP WA-2009-221.

V

6 On or about May 20, 2009, the City received approximately
7 10 bids on the Project. Nine of the bids received by the City
8 conformed to the request for proposals referenced above.
9

VI

10 On or about June 9, 2009, the Purchasing Manager for the
11 City of Sparks, signed and distributed a letter to "All Bidders"
12 and "All Plan Holders," referencing the Project. (A copy of said
13 letter is attached hereto as Exhibit 1.) The letter stated, in
14 relevant part:
15

16 This letter is written to inform all plan holders and
17 bidders for the above referenced project that the City
18 of Sparks is rejecting all bids received on May 20,
19 2009. This action is allowed per Nevada Revised
Statutes (NRS 338.1385d) [sic] as well as the
referenced bid document. ...

20 In the course of routine due diligence in evaluating
21 bids received, the City discovered multiple issues
22 with the original bid documents and specifications
23 that may have led to some (or all bidders) possibly
24 making assumptions concerning the scheduling of the
25 job, therefore affecting prices submitted to the City.
26 Additionally, concerns over the structure of the bid
27 schedule and how data was to be reported to the State
28 of Nevada were discovered. In order to be fair to all
bidders, the City has determined that rejection of all
bids is the best option.

A new project of similar scope will be advertised for
bid sometime in the next 2 weeks. Multiple changes
will be made including specific requirements

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concerning project planning/scheduling, changes to the Bid Item Schedule and clarifications concerning contractor/subcontractor qualifications. New plan sets and specifications will be produced and distributed to all original planholders of the first bid at no cost for the sets. If plans were originally shipped to your firm, they will be shipped again in the same manner (shipping costs to be paid by receiver). Otherwise, all planholders will be notified when new plan sets can be picked up from the City. Firms that did not participate in the original bid cycle may also purchase their own sets.

...

VII

NRS 338.1385 states, in relevant part:

NRS 338.1385 Advertising for bids and compliance with certain provisions required for commencement of certain public works; quarterly reports of awarded contracts by authorized representatives; availability of plans and specifications for public inspection; award of contract to lowest responsive and responsible bidder; rejection of bids; authority to award contract without competitive bidding if no bids received in response to advertisement for bids in certain circumstances; requirements before public body may commence public work itself; exemptions. [Effective through April 30, 2013.]

1. Except as otherwise provided in subsection 9 and NRS 338.1906 and 338.1907, this State, or a governing body or its authorized representative that awards a contract for a public work in accordance with paragraph (a) of subsection 1 of NRS 338.1373 shall not:
 - (a) Commence a public work for which the estimated cost exceeds \$100,000 unless it advertises in a newspaper qualified pursuant to chapter 238 of NRS that is published in the county where the public work will be performed for bids for the public work. If no qualified newspaper is published in the county where the public work will be performed, the required advertisement must be published in some qualified newspaper that is printed in the State of Nevada and has a general circulation in the county.

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- (b) Commence a public work for which the estimated cost is \$100,000 or less unless it complies with the provisions of NRS 338.1386, 338.13862 and 338.13864.

- (c) Divide a public work into separate portions to avoid the requirements of paragraph (a) or (b).
 - 2. At least once each quarter, the authorized representative of a public body shall report to the public body any contract that the authorized representative awarded pursuant to subsection 1 in the immediately preceding quarter.
 - 3. Each advertisement for bids must include a provision that sets forth the requirement that a contractor must be qualified pursuant to NRS 338.1379 or 338.1382 to bid on the contract.
 - 4. Approved plans and specifications for the bids must be on file at a place and time stated in the advertisement for the inspection of all persons desiring to bid thereon and for other interested persons. Contracts for the public work must be awarded on the basis of bids received.
 - 5. Except as otherwise provided in subsection 6 and NRS 338.1389, a public body or its authorized representative shall award a contract to the lowest responsive and responsible bidder.
 - 6. Any bids received in response to an advertisement for bids may be rejected if 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;
 - (b) The bidder is not responsive or responsible;
 - (c) The quality of the services, materials, equipment or labor offered does not conform to the approved plans or specifications; or

Michael E. Langton, Esq.
801 Riverside Drive
Reno, Nevada 89503
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(d) The public interest would be served by such a rejection.

VIII

The rejection of the bids received for the Project on or about May 20, 2009, did not comply with the requirements of NRS 338.1385.

IX

The Purchasing Manager did not have legal authority to reject the bids for the Project received on or about May 20, 2009.

X

The City Council did not, at a public meeting, reject the bids for the Project received on or about May 20, 2009.

XI

The City of Sparks had a duty to award the bid on the Project to the entity that was the lowest responsive and responsible bidder and that submitted its bid in accordance with Nevada law as required in the Request For Bids on May 20, 2009.

XII

The City of Sparks announced its intention to rebid the Project, or a project for the same purpose, with similar scope of work. It is Petitioners' understanding that such rebid will occur on or about July 8, 2009.

XIII

1 Respondent City of Sparks has acted arbitrarily and in
2 violation of State statutes by rejecting the bids for the
3 Project received on or about May 20, 2009.

XIV

4
5 Petitioners have no plain, speedy, or adequate remedy at
6 law or equity other than this Petition.
7

XV

8
9 Petitioners have been required to obtain the services of an
10 attorney to seek this Writ.

11 **WHEREFORE**, Petitioners pray there may be issued against
12 Respondent City of Sparks an alternative Writ of Mandamus,
13 returnable within ten days, compelling Respondent to award the
14 contract on the above-referenced Project to the entity which was
15 the lowest responsive and responsible bidder and that submitted
16 its bid in accordance with Nevada law as required in the Request
17 For Bids on or about May 20, 2009, or to show cause why it
18 should not do so.

19
20 In the alternative, Petitioners pray there may be issued
21 against Respondent City of Sparks a Writ of Prohibition
22 prohibiting it from rebidding the above-referenced Project,
23 until it has complied with the laws of the State of Nevada
24 governing awarding bids on the Public Works Project referenced
25 hereinabove.
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Petitioners further pray for such other relief as the Court
deems just in the premises.

RESPECTFULLY SUBMITTED this 18 day of June, 2009.



MICHAEL E. LANGTON, ESQ.
Nevada Bar No.: 0290
801 Riverside Drive
Reno, NV 89503
(775) 329-7557

Attorney For Petitioners

Michael E. Langton, Esq.

801 Riverside Drive

Reno, Nevada 89503

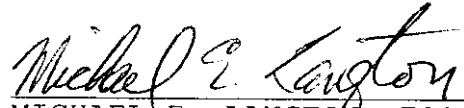
Voice: (775) 329-7557 Fax (775) 329-7447

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CERTIFICATION

1 The undersigned does hereby certify that this document does
2 not contain the Social Security Number of any party to this
3 action.

4 DATED this 18 day of June, 2009.

5
6 

7 MICHAEL E. LANGTON, ESQ.
8 Nevada Bar No.: 0290
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12 Attorney For Petitioners
13 LABORERS' INTERNATIONAL UNION
14 OF NORTH AMERICA, LOCAL UNION 169

15 **Michael E. Langton, Esq.**

16 801 Riverside Drive

17 Reno, Nevada 89503

18 Voice: (775) 329-7557 Fax (775) 329-7447

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VERIFICATION

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STATE OF NEVADA)
) ss.
COUNTY OF WASHOE)

I, **RICHARD DALY**, being first duly sworn, under the penalty of perjury, deposes and say:

That I am a citizen of the State of Nevada, a resident of the County of Washoe, City of Sparks, and over the age of 21.

I have read the contents of the Petition for Writ of Mandamus, or in the alternative, Writ of Prohibition, and am familiar with the contents therein.

To the best of my knowledge, based on personal information and belief, the allegations contained therein are true and correct.

FURTHER YOUR AFFIANT SAYETH NAUGHT.

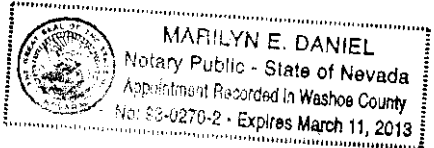
Richard Daly

RICHARD DALY

SUBSCRIBED and SWORN before me
this 18th day of June, 2009.

Marilyn E. Daniel

NOTARY PUBLIC



Michael E. Langton, Esq.
801 Riverside Drive
Reno, Nevada 89503
Voice: (775) 329-7557 Fax (775) 329-7447



PURCHASING DIVISION

June 9, 2009

All Bidders
All Plan Holders

Reference: City of Sparks Bid #08/09-028 – PWP WA-2009-221
Federally Funded Spanish Springs Sanitary Sewer Phase 3 Project

To Whom It May Concern,

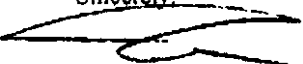
This letter is written to inform all plan holders and bidders for the above referenced project that the City of Sparks is rejecting all bids received on May 20, 2009. This action is allowed per Nevada Revised Statutes (NRS 338.1385d) as well as the referenced bid document. All bid bonds associated with this project are hereby released.

In the course of routine due diligence in evaluating bids received, the City discovered multiple issues with the original bid documents and specifications that may have led to some (or all bidders) possibly making assumptions concerning the scheduling of the job, therefore affecting prices submitted to the City. Additionally, concerns over the structure of the bid schedule and how data was to be reported to the State of Nevada were discovered. In order to be fair to all bidders, the City has determined that rejection of all bids is the best option.

A new project of similar scope will be advertised for bid sometime in the next 2 weeks. Multiple changes will be made including specific requirements concerning project planning/scheduling, changes to the Bid Item Schedule and clarifications concerning contractor/subcontractor qualifications. New plan sets and specifications will be produced and distributed to all original planholders of the first bid at no cost for the sets. If plans were originally shipped to your firm, they will be shipped again in the same manner (shipping costs to be paid by receiver). Otherwise, all planholders will be notified when new plan sets can be picked up from the City. Firms that did not participate in the original bid cycle may also purchase their own sets.

The City appreciates your time and effort in submitting bids on City projects. If you have any questions concerning this or any other bid, please feel free to contact me at dmarran@cityofsparks.us or at 775-353-2273.

Sincerely,



Dan Marran, CPPO, C.P.M.
Purchasing Manager

cc: Andy Hummel – Project Manager
Chris Cobb – Capital Project Manager

City Hall: 431 Prater Way, PO Box 857, Sparks, Nevada 89432-0857, (775)353-2325. FAX (775)353-2399