D. POST-BID OPENING RULES AND PROCEDURES

B 12 EVALUATION OF BIDS

12.01 Award Criteria
The award of the Contract shall be made to the lowest responsive and responsible Bidder as determined pursuant to the provisions of ITB 13 or to the Best Bidder who as a result of the provisions of NRS Chapter 338 becomes the lowest responsive and responsible Bidder.

12.02 Base Bid
The Bidder shall indicate the amount of its Base Bid for the Project by completing the Base Bid section of the Bid Schedule (*Attachment A to the Bid Proposal*). **The failure of the Bidder to complete the Base Bid section of the Bid Schedule shall result in the rejection of the Bid.**

12.03 Additive Alternate Bids
In addition to the Base Bid, the Bidder shall indicate the amount of each Additive Alternate Bid by completing the applicable section of the Bid Schedule (*Attachment A to the Bid Proposal*). At the time of the award of the Contract, the Owner may, in its sole discretion, elect to include any or all of the Additive Alternate Bids as part of the Project. If the Owner requests more than one Additive Alternate Bid, then each one shall be listed in order of priority and the selection for inclusion as a part of the Project shall be exercised according to such priority depending on the availability of funding for the Project. Each Additive Alternate Bid exercised by the Owner shall be added to the Base Bid in determining the lowest responsive and responsible Bidder. **The failure to complete the Additive Alternate Bid section of the Bid Schedule shall result in the rejection of the Bid Proposal.**

12.04 Additive/Deductive Unit Price Bids
In addition to the Base Bid, the Bidder shall indicate the amount of its Additive/Deductive Unit Price Bid by completing the applicable section of the Bid Schedule (*Attachment A to the Bid Proposal*). Each Unit Price is for certain portions of the Work, the quantities of which for purposes of the bid process have been estimated by the Owner and included in the Bid Documents. The Unit Prices shall remain unchanged through completion of the Project. As construction occurs on the Project, if it is determined by the Owner that the actual Work is less than or exceeds the estimated portion of the Work, the Contract Amount will be decreased or increased using the applicable Unit Price submitted to the Owner. The Unit Price multiplied by the quantity estimated in the Bid Documents shall comprise the Additive/Deductive Unit Price Bid for the applicable portion of the Work. Each Additive/Deductive Unit Price Bid shall be included as a part of the Base Bid for purposes of determining the lowest Bidder. **The failure to complete the Additive/Deductive Unit Price Bid section of the Bid Schedule shall result in the rejection of the Bid Proposal.**

12.05 Award of Contract
After the bid opening, the Purchasing and Contacts Division shall evaluate all of the Bids and formulate a recommendation as to the award of the Contract. **AWARD OF THIS PROJECT WILL BE CONTINGENT UPON FUNDING THROUGH THE SALE OF REDEVELOPMENT BONDS.** The City Council shall make the award after considering the recommendations of the Purchasing and Contracts Division. After the award by the City Council, the Purchasing and Contracts Division shall issue the Notice of Award notifying the successful Bidder of the award, and enclosing the Owner-Contractor Agreement to be executed by the Bidder and returned to the Owner. The Bidder shall utilize the Notice of Award to obtain the bonds and insurance required under ITB 8.02. Notwithstanding the award of the Contract, there is no binding or legally enforceable agreement against the City until the Owner-Contractor Agreement is actually executed by the City, and until such time of execution, the City reserves the right to rescind the award.

ITB 13 DETERMINATION OF LOWEST RESPONSIVE AND RESPONSIBLE BIDDER

13.01 Determination of Lowest
The lowest Bidder is the Bidder who has submitted the lowest Base Bid, if applicable, or the lowest total of the Base Bid and each Additive Alternate Bid selected by the Owner to be a part of the Project. The Best Bidder may become the lowest Bidder as a result of the preference set forth in NRS Chapter 338.

Submitted at City Council
Date 6/17/09 Item 104

13.02 Determination of Responsible

As a pre-requisite to the award of the Contract, the lowest Bidder or the Best Bidder must be a responsible bidder as determined by the Owner. In determining such responsibility, the Owner may take into consideration, including but not limited to, the criteria set below:

a. Whether the Bidder possesses a valid contractor's license of a class corresponding to the Work to be required by the Owner;

b. Whether the Bidder has the ability to obtain the necessary bonding for the Work to be required by the Owner;

c. Whether the Bidder has experience in restoration of historic buildings having successfully completed **one (1)** project during the last ten (10) years **according to the US Secretary of the Interior's Standards for the Treatment of Historic Properties;** the Bidder's designated Superintendent has experience in restoration of historic buildings having successfully performed superintendent responsibilities on **one (1)** project, completed during the last ten (10) years, according to the **US Secretary of the Interior's Standards for the Treatment of Historic Properties;**

d. Whether the principal personnel employed by the Bidder have the necessary professional qualifications and experience for the Work to be required by the Owner;

e. Whether the Bidder has breached any contracts with a public agency or person in this state or any other state during the five (5) years immediately preceding the date of submission of the Bid;

f. Whether the Bidder has been disqualified from being awarded a contract pursuant to NRS 338.017 or 338.13895;

g. Whether the Bidder has been convicted of a violation for discrimination in employment during the two (2) years immediately preceding the date of submission of the Bid;

h. Whether the Bidder has the ability to obtain and maintain insurance coverage for public liability and property damage within limits sufficient to protect the Bidder and all the subcontractors of the Bidder from claims for personal injury, accidental death and damage to property that may arise in connection with the work to be required by the Owner;

i. Whether the Bidder has a safety program that complies with the requirements of Chapter 618 of NRS;

j. Whether the Bidder has been disciplined or fined by the State Contractors' Board or another state or federal agency for conduct that relates to the ability of the applicant to perform the work to be required by the Owner;

k. Whether, during the five (5) years immediately preceding the date of submission of the Bid Proposal the Bidder has filed as a debtor under the provisions of the United States Bankruptcy Code;

l. Whether, during the five (5) years immediately preceding the date of submission of the Bid, the Bidder has, as a result of causes within the control of the Bidder or a subcontractor or supplier of the Bidder, failed to perform any contract:

   (i) In the manner specified by the contract and any change orders initiated or approved by the person or governmental entity that awarded the contract or its authorized representative;

   (ii) Within the time specified by the contract unless extended by the person or governmental entity that awarded the contract or its authorized representative; or

   (iii) For the amount of money specified in the contract or as modified by any change orders initiated or approved by the person or governmental entity that awarded the contract or its authorized representative.

m. Whether the Bidder has received a satisfactory or unsatisfactory overall rating on the Contractor Evaluation Form for prior public work projects of the City.

n. Whether the Bidder is listed on the Federal Debarment List.

o. Whether the Bidder or its Specialty Subcontractor(s) have successfully completed at least one (1) project similar in type or scope as the work specified on the Specialty Work Qualification Forms.

Evidence of any failure described in this Section 13.02 may include, without limitation, the assessment of liquidated damages against the Bidder, the forfeiture of any bonds posted by the Bidder, or the existence of an arbitration award or a decision by a court of law against the Bidder.

For purposes of Subsection c and o of this Section 13.02, "successfully completed" and "successfully performed" means the project was completed in a manner which was acceptable to the party contracting with the Bidder for the public work project, and that there is no arbitration or litigation filed by such party, the Bidder or any subcontractor, supplier or workman of the Bidder which is pending or completed in connection with the prior project. In the event arbitration or litigation is pending, the Bidder may provide evidence to the Owner that the disputes involved therein do not reflect negatively upon the Bidder's ability to perform the Project or, for the most part, are in favor of the Bidder. Upon request of the Owner, the Bidder shall submit collaborating evidence of the successful completion of the public work project from the Party contracting for the work.

The Bidder cannot avoid its previous work history by means of a company name change, ownership change, change in the form of business entity, change in licensing or bonding status, or bankruptcy, if any key personnel (an individual with an active ownership interest or a corporate officer) remain the same or if the Bidder's business location remains the same after the change.

13.03 Determination of Responsiveness

As a pre-requisite to the award of the Contract, and in addition to the determination that the Bidder is responsible, the lowest Bidder or Best Bidder, as the case may be, must be a responsive Bidder as determined by the Owner. In determining whether the Bidder is responsive, any one or more of the following may be considered:

a. Evidence of collusion amongst the Bidders as described in ITB 22;

b. Failure to properly complete the Bid Proposal furnished by the Owner and to otherwise comply with the requirements of ITB 5.02;

c. Failure to attend the mandatory pre-bid conference scheduled by the Owner;

d. Failure of an authorized representative to sign the Bid Proposal as required by ITB 5.02;

e. Failure to submit the Bid Security with the Bid Proposal as required pursuant to ITB 5.03;

f. Failure to complete and submit the Subcontractor Listings as required by ITB 5.04 and ITB 6.01, or circumventing the Subcontractor List requirements by disingenuous issuance of contracts or purchase orders that avoid such listing, whether these acts and omissions are intentional or otherwise;

g. Failure to submit the Good Faith Effort Form as required by ITB 7.03;

h. Failure to submit the Schedule of Values as required by ITB 7.04;

i. Failure to submit Superintendent and Project Manager Resumes as required by ITB 7.05;

j. Failure to submit the List of Completed Projects Forms as required by ITB 7.06;

k. Failure to submit the Specialty Work Qualification Forms as required by ITB 7.07;

l. Failure to provide the Certificate of Eligibility as required by ITB 7.02;

m. Failure to obtain the licensing as required by ITB 10;

n. Failure to complete the Additive Alternate Bid Section in the Bid Schedule as required by ITB 12.03;

o. Failure to complete the Additive/Deductive Unit Price Bid Section in the Bid Schedule as required by ITB 12.04;

p. Failure to comply with any other requirement of the Instructions to Bidders; or

q. Failure to submit the Federal Certifications Forms required by ITB 7.08.

The failure to comply with the requirements of the Instructions to the Bidders shall result in the automatic rejection of the Bid Proposal submitted by the Bidder if rejection is expressly provided for in the Instructions to Bidders. In the case of such automatic rejection, the requirement has been determined to be a material requirement by the Owner. For those requirements in the Instructions to Bidders for which (i) the consequences have not been expressly provided for, or (ii) the consequences state that the Bid Proposal may be rejected, the Owner shall have the discretion as to whether or not to waive the requirement entirely, or to require compliance with the requirement after the bid opening, whichever is determined to be in its best interests.

ITB 14 SUBSTITUTION OF SUBCONTRACTORS

The Bidder shall not substitute any person for itself, or substitute any Subcontractor listed on the 5% Subcontractor List or the 1% Subcontractor List except as provided pursuant to NRS Section 338.141, 338.13895 and 338.1475. If the Owner or State Labor Commissioner's Office has determined that a listed Subcontractor failed to pay prevailing wages for any reason, then this failure shall be cause for, but not necessarily the obligation of, the Owner to request a substitution of the Subcontractor.

As a requirement of the Contract executed with the Owner, the Bidder will be responsible for the acts or omissions of its Subcontractors and of the persons directly or indirectly employed by them. The Owner may request a copy of any or all subcontracts entered into by the Bidder which are a part of the Bid Proposal submitted to the Owner if such request is within the provisions of NRS 338.140(1)(d).

ITB 15 BID IRREGULARITIES

The Owner reserves the right to waive any formality or irregularity in any submitted Bid Proposal, or to reject any or all of the submitted Bid Proposals. In the case of the rejection of all of the Bid Proposals, the Owner reserves the right to advertise for new Bid Proposals, proceed to do the Work itself or take no further action, whichever is in the best interest of the Owner.

ITB 16 RESOLVING TIE BIDS

The procedure for resolving Tie Bids is to hold a public drawing. The winner of the draw shall be recommended for award of the Contract. The Purchasing and Contracts Division will notify the tied Bidders of the time and place of the drawing and invite the tied Bidders to attend, but attendance is not mandatory for the drawing. The drawing will be held in the presence of a minimum two employees of the Purchasing and Contracts Division.

ITB 17 BID PROTESTS

17.01 Protest Procedure

Any Bidder may protest to the Owner the proposed award of a contract by the Las Vegas City Council provided the Bidder complies with the procedure set forth in Resolution R-89-2004 (*Attachment 13 to the Instructions to Bidders*). The City Council will not consider any appeal unless the Bidder complies with this procedure.

Submitted via Comment Form
DEQ
6/11/19
104

MOB MUSEUM

The item before you this morning is the discussion and possible action regarding the award of the Rehabilitation for the Las Vegas Museum of Organized Crime and Law Enforcement – known as the Mob Museum. Staff is recommending award to APCO Construction who has been determined to be the lowest responsive and responsible bidder.

Flagship Construction Company filed a protest with regard to the APCO bid. Flag has three items listed in their protest.

Claim #1: APCO fails to demonstrate the requisite experience required to qualify as a responsible bidder:

The bid requirement was that the bidder or its superintendent has experience restoration of historic buildings having successfully completed one project during the last ten years according to the US Secretary of the Interior's Standards for the Treatment of Historic Properties.

APCO's superintendent – Brian Benson was verified to meet this qualification criteria for is superintendent work performed on the restoration of the Los Angeles City Hall restoration project in 2001.

Claim #2: APCO failed to disclose that it was removed from Gemstone Project (Manhattan West) and sued for related breach of contract.

The City Attorney's office investigated this matter. APCO claimed that the owner, Gemstone failed to pay for completed work and APCO exercised their contractual and statutory rights to terminate work on the project due to non-payment and Gemstone retained another prime contractor. Shortly thereafter, Gemstone itself abandoned the project due to lack of financing. APCO is pursuing payment from Gemstone for completed work. Beyond that, our bid documents focus on non-performance after a trial on the merits, not on on-going litigation of private parties.

Claim #3: APCO has submitted a bid from a subcontractor who has represented that it cannot obtain performance bonds from the Project.

We have a copy of the subcontractor bid (Cogent Electric) which clearly states that performance and payment bond is included in the price. We also have a letter from Cogent's bonding company confirming they will be able to secure bonds.

I have provided Flagship and its attorney copies of the documents city staff used to verify the qualifications of APCO and documents used to address the protest claims.

MOTION: Suggested motion:

With the recent passage of AB 48, we are incorporating revised dispute resolution language into all construction contracts going forward since the passage of the legislation. It would be my recommendation that this contract include the revised dispute resolution language. APCO has reviewed and accepted the new language.

Original bid opening date: 9/25/08

Bid cancelation date: 10/27/08

Re-bid date: 1/7/09

2nd Bid opening date: 2/5/09

Explain why the project was rebid: Upon our initial evaluation of the bids, we determined the qualification requirements for bidders, their superintendent and specialty subcontractors were too stringent. The requirements may have been suitable in a region of the country with an abundance of historic buildings where many contractors have the requisite experience but we found the requirements severely restricted the bidding pool in the Las Vegas area and most importantly, the three apparent low bids all had irregularities. It's also important to note that given the economic downturn and the city's unsuccessful attempts to sell bonds last fall, the original bid would have been canceled regardless of the issues with the specifications.

Jorge can explain in more detail the specific changes made to the revised bid to create a more open bidding environment, if you have questions.

Explain the bid due diligence process

P&C, Public Works with the assistance of the architect of record shared the responsibility of performing the bid evaluation process.

The low bidder is APCO Construction, 2nd low bidder is Flagship Construction and 3rd low bidder is Jaynes Corporation. The emphasis of this bid evaluation involved the qualification of superintendent and qualifications of the three specialty subcontractors identified as critical by the architect of record (ornamental painter, ornamental plaster, and masonry rehabilitation)

Public Works led the technical evaluation of the experience and qualifications of the superintendent and specialty contractors and concluded along with P&C and the architect of record that APCO is a responsive and responsive bidder.

City of Las Vegas

Agenda Item No.: **104.**

AGENDA SUMMARY PAGE

CITY COUNCIL MEETING OF: JUNE 17, 2009

DEPARTMENT: FINANCE AND BUSINESS SERVICES
DIRECTOR: MARK VINCENT

☐ **Consent** ☒ **Discussion**

SUBJECT:
Discussion and possible action regarding award of Bid No. 08.15341.04-LED, Las Vegas Museum Phase 3 - Rehabilitation for the Las Vegas Museum of Organized Crime and Law Enforcement located at 300 Stewart Avenue and the construction conflicts and contingency reserve set by Finance and Business Services - Department of Public Works - Award recommended to: APCO CONSTRUCTION ($11,512,000 - Parks and Leisure Activities Capital Projects Fund) - Ward 5 (Barlow)

Fiscal Impact

☐ **No Impact** ☐ **Augmentation Required**
☒ **Budget Funds Available**
Amount: $11,512,000
Funding Source: Parks and Leisure Activities CPF
Dept./Division: Public Works

PURPOSE/BACKGROUND:
This project consists of the rehabilitation of a 1933 historic building in compliance with the United States Secretary of the Interior's Standards for Historic Rehabilitation. Work will include, but not be limited to, demolition and removal of hazardous materials, seismic retrofit, remodeling and historical rehabilitation and infrastructure for interactive museum tenant improvements. Funding for this project is provided 90.8% by the Redevelopment Agency Interfund Loan and 9.2% by Parks and Recreation Bonds.

PCC: L.E. Davis
POC: Randy Nickerl - (702) 734-0198

RECOMMENDATION:
That City Council approve award of Bid No. 08.15341.04-LED (Revised), Las Vegas Museum Phase 3 - Rehabilitation to APCO Construction in the amount of $11,512,000 and approve the construction conflicts and contingency reserve of $805,840. Authority to execute the Contract is given to the Purchasing Manager per R-48-2006.

BACKUP DOCUMENTATION:
Bid Abstract

BID AB[illegible]ACT
08.15341.04-LED (REVISED)
Las Vegas Museum
Phase 3 Rehabilitation

DESCRIPTION	APCO CONSTRUCTION Lump Sum Amount	FLAGSHIP CONSTRUCTION CO. LLC Lump Sum Amount	JAYNES CORPORATION Lump Sum Amount	R & O CONSTRUCTION Lump Sum Amount
BASE BID: All Work indicated in the Drawings and Specifications in accordance with the General Conditions of the Contract.	$11,512,000.00	$12,664,629.00	$12,680,446.00	$13,129,569.00
Responsive Bidder	Yes			
Responsible Bidder	Yes			

DESCRIPTION	RAFAEL CONSTRUCTION, INC Lump Sum Amount	M & H ENTERPRISES INC. DBA MARTIN-HARRIS CONSTRUCTION Lump Sum Amount	MCCARTHY BUILDING COMPANIES, INC Lump Sum Amount	RICHARDSON CONSTRUCTION, INC Lump Sum Amount
BASE BID: All Work indicated in the Drawings and Specifications in accordance with the General Conditions of the Contract.	$13,555,000.00	$13,915,922.00	$14,462,808.00	$14,799,000.00
Architect Estimate: $19,100,000				
Responsive Bidder				
Responsible Bidder				

TO: Cheri Edelman . Please review and approve recommended award to APCO Construction

in the amount of **$11,512,000** .

Lloyd Davis — 5-26-09
Purchasing & Contracts Representative — Date

Cheri Edel — 5/26/09
Department/Division Signature — Date

AS VEGAS CITY COUNCIL

OSCAR B. GOODMAN
MAYOR

GARY REESE
MAYOR PRO TEM

STEVE WOLFSON
LOIS TARKANIAN
STEVEN D. ROSS
RICKI Y. BARLOW
DAVID W. STEINMAN
(INTERIM)

ELIZABETH N. FRETWELL
CITY MANAGER

TY OF LAS VEGAS
TEWART AVENUE
AS, NEVADA 89101

VOICE 702.229.6011
TTY 702.386.9108
www.lasvegasnevada.gov

Via Fax (702) 796-7181

May 29, 2009

Mark E. Ferrario
Kummer Kaempfer Attorneys at Law
3800 Howard Hughes Parkway
Seventh Floor
Las Vegas, Nevada 89169

Re: Evaluation Determination for APCO Construction Bid Protest
Project: Las Vegas Museum Phase 3 – Rehabilitation
Bid No. 08.15341.04-LED (Revised)

Dear Mr. Ferrario,

The Purchasing and Contracts Division of the City of Las Vegas has completed its evaluation of your protest on above project. Based on our evaluation it has been determined your protest is without merit. Following is an assessment and determination of each of your claims.

Claim #1: APCO fails to demonstrate the requisite experience required to qualify as a responsible bidder.

Your allegation is that APCO Construction failed to prove their ability to meet the criteria as stated in ITB 13.02(c) and 13.02(o) of the bid documents. ITB 13.02(c) states "Whether the Bidder has experience in restoration of historic buildings having successfully completed one (1) project during the last ten (10) years according to the US Secretary of the Interior's Standards for the Treatment of Historic Properties; **or** (clerical omission)[1] the Bidder's designated Superintendent has experience in restoration of historic buildings having successfully performed superintendent responsibilities on one (1) project, completed during the last ten (10) years, according to the US Secretary of the Interior's Standards for the Treatment of Historic Properties."

Determination:

1) APCO Construction's Superintendent, Brian Benson meets the qualification criteria as evidenced by work he completed on the Los Angeles City Hall project; therefore, APCO's listed projects did not have to meet the requirements listed in ITB 13.02(c). City staff received and verified documentation from the Los Angeles City Hall project Owner, James Treadaway, S.E., and the construction firm that the Mr. Benson's responsibilities included the oversight of 20 subcontractors for approximately $12,000,000 in restoration of the building's historical features. Based on our conversations and documents, we have determined that the Superintendent meets the qualification criteria as outlined in ITB 13.02(c).

2) ITB 13.02(o) states "Whether the Bidder or its Specialty Subcontractor(s) have successfully completed at least one (1) project similar in type or scope as the work specified on the Specialty Work Qualification Forms." APCO Construction submitted the required Specialty Work Qualification Forms for each of the specialty subcontractors and City staff has received and verified the documentation for each of the Specialty subcontractors to confirm each meets the requirements for their specialty work on this project and determined each is acceptable.

[1] Attachment 6 and transcript from pre-bid meeting (January 13, 2009) clearly indicate either the bidder "or" its superintendent were required to have experience in restoration of an historic building.

Printed with environmentally friendly soy ink.

Claim #2: APCO failed to disclose that it was removed from Gemstone Project and sued for related breach of contract.

You further stated that APCO failed to properly answer the questions on Attachment 6 as it relates to this incident. In reviewing the documents provided by APCO Construction and provided as part of your protest, the City determined that APCO had not failed to properly respond to the questions on Attachment 6.

On the Gemstone project (also know as "Manhattan West"), APCO claims that the owner, Gemstone, failed to pay for completed base contract and change order work. APCO exercised their contractual and statutory rights to terminate work on the project due to non-payment, and Gemstone retained another prime contractor. In fact, shortly thereafter, Gemstone itself abandoned the project due to the lack of financing. In addition, APCO is pursuing payment from Gemstone for completed work.

The bid documents focus on non-performance after a trial on the merits, not based on allegations in on-going litigation between two private parties. The City is not considering the on-going APCO / Gemstone litigation until after trial on the merits or other adjudication of this matter.

Claim #3: APCO has submitted a bid from a subcontractor who has represented that it cannot obtain performance bonds for the Project.

The subcontractor in question is Cogent Electric and based on documents submitted by APCO Construction and Cogent Electric, bonding for this project is not an issue. Further investigation by City staff with Cogent's bonding agency resulted in verification that Cogent will be able to obtain the required bonds for this project. A copy of verification from Cogent's bonding agent is attached to this letter.

In accordance with "Resolution No. 89-2004 - Attachment 13", you have three (3) business days after receipt of this decision to provide written notice of your intent to appeal this decision. Also, this letter confirms the meeting we scheduled yesterday to discuss the bid evaluation in more detail on Wednesday, June 3, 2009 at 4 pm. The written notice must be provided to the Purchasing & Contracts Manager who will forward the appeal for determination to the Director of Finance and Business Services. If an appeal is not received within the required timeframe then it will be assumed that the protest is resolved.

Sincerely,

Kathleen C. Rainey
Manager, Purchasing & Contracts

Encs: ITB Attachment 6
Pre-Bid Conference Transcript
Cogent Electric Bonding Verification

Cc: Cheri Edelman
John Ridilla
Jorge Cervantes
Mark Vincent
Nancy Paolino, Flagship Construction

Las Vegas Museum Phase 3 - Rehabilitation

The Las Vegas Museum Phase 3 – Rehabilitation project was initially bid out in August 27, 2008. Bids were opened on September 25, 2008 and evaluated. Seven bids were received with the three lowest bids as follows:

Flagship Construction - $13,361,418
APCO Construction - $13,900,000
Rafael Construction - $13,979,000

A formal Bid Protest on behalf of APCO Construction against Flagship Construction was submitted on October 2, 2008. The protest alleged that "Flagship's bid listed two inadequate and improperly licensed subcontractors on its 5% and 1% subcontractor listing, creating an opportunity for Flagship to illegally shop for bids for those particular scopes of work."

Because of irregularities in the bids it was decided, as authorized under the bid proposal, to reject all bids and rebid the project. The specific irregularities included that the bid submittals failed to materially satisfy the established bid criteria set forth in the Bid Proposal and specifications, and that the funding for the project was not available due to inability to sell bonds in the bond market. Challenges in satisfying the bid criteria were as a result of the requirements recommended by the project's Historical Consultant that: (1) both the General Contractor **and** his Superintendant have past experience in completing work conforming to the US Secretary of the Interior Standards for Historic Rehabilitation, and (2) a Conservator specializing in the preservation and rehabilitation of historic landmark structures **self perform** the Masonry rehabilitation, Plaster rehabilitation and restoration, and Ornamental painting.

Realizing that this type of historic building work experience is limited in this community's contractor marketplace, the bid criteria was revised to: (1) allow either the General Contractor **or** his Superintendant have past experience in completing work conforming to the US Secretary of the Interior Standards for Historic Rehabilitation, and (2) the Conservator requirement was replaced with a requirement for the subspecialty subcontractors performing the Masonry rehabilitation, Plaster rehabilitation and restoration, and Ornamental painting to have this type of experience.

The project was rebid and bids were opened on February 5, 2009. Nine bids were received with the three lowest bids as follows:

APCO Construction - $11,512,000
Flagship Construction - $12,664,629
Jaynes Corporation - $12,680,446

A formal Bid Protest on behalf of Flagship Construction against APCO Construction was submitted on February 12, 2009. The allegations included: (1) APCO failed to

demonstrate the requisite experience required to qualify as a responsible bidder, (2) APCO failed to disclose that it was removed from Gemstone Project and sued for related breach of contract, and (3) APCO has submitted a bid from a subcontractor who has represented that it cannot obtain performance bonds for the Project. The Purchasing and Contracts Division, Public Works Department, and City Attorney's Office investigate each of these claims and found them each to be without merit. The city's responses letter to Flagship's attorney is herein attached.

Based on the evaluation of the bids, it is recommended that City Council award Bid No. 08.15341-LED (Revised) Las Vegas Museum Phase 3 – Rehabilitation to the lowest bidder APCO Construction.

RE-BID
RATIONALE

ORIGINAL SPECS/BID DOCS	REVISED SPECS/BID DOCS
Spec. 011000, 1.6 Conservator: A. The following scopes of work shall be performed by a qualified Conservator, specializing in the preservation and rehabilitation of historic landmark structures: 1. Masonry Rehabilitation 2. Plaster Rehabilitation and restoration 3. Ornamental painting. B. Prequalified Conservators are as follows; other Conservators may be submitted for review by Owner/Consultant during the bidding phase, and may be included via Addendum: 1. Griswold Conservation Associates 2. Evergreene Painting Studios, Inc.	Spec. 011000, 1.6 Conservator was deleted in its entirety.
Spec. 040120, 1.4 E. Qualification Data: For restoration specialists (Conservator), including field supervisors and restoration workers, terra cotta manufacturer, and chemical-cleaner manufacturer.	Spec. 040120, 1.4 E. Qualification Data: For restoration specialists, including field supervisors and restoration workers, terra cotta manufacturer, and chemical-cleaner manufacturer. Also see Specialty Subcontractor Responsible Bidder Qualification Form.
Spec. 040120, 1.5 A. Restoration Specialist Qualifications: Engage an experienced, preapproved masonry restoration and cleaning firm to perform work of this Section.	Spec. 040120, 1.5 A. Restoration Specialist Qualifications: Engage an experienced, approved masonry restoration and cleaning firm to perform work of this Section.
ITB 7.05 Submittal: Superintendent Project Resume Within one (1) business day after the completion of the opening of the Bid Proposals, the three apparent low Bidders shall submit the Superintendent's resume who will be assigned to the Project. The Superintendent must have experience in Historic Rehabilitation projects **conforming with the US Secretary of the Interior Standards for Historic Rehabilitation**. Such person must be acceptable to the Owner.	ITB 7.05 Submittal: Names and Resumes Superintendent and Project Manager Within one (1) business day after the completion of the opening of the Bid Proposals, the three apparent low Bidders shall submit the name of the Superintendent and the Project Manager who will be assigned to the Project along with their project resumes. Such persons must be acceptable to the Owner.

	ITB 7.07 was modified to read as follows: **7.07 Submittal: Specialty Work Qualification Forms** Within one (1) business day after the completion of the opening of the Bid Proposals, the three apparent low Bidders shall submit the Specialty Work Qualification Forms *(Attachment 7 to the Instructions to Bidders).*
ITB 13.02 Determination of Responsible c. Whether the Bidder has experience in Historical Rehabilitation having successfully completed **one (1)** projects during the ten (10) years immediately preceding the date of submission of the Bid Proposal **conforming with the US Secretary of the Interior Standards for Rehabilitation** similar to the Work required by the Owner; For purposes of Subsection c of this Section 13.02, "successfully completed" means the Bidder has completed at least **one (1)** project **conforming with the US Secretary of the Interior Standards for Rehabilitation similar to the work required by the Owner** in a manner which was acceptable to the party contracting with the Bidder for the public work project,	ITB 13.02 Determination of Responsible c. Whether the Bidder has experience in restoration of historic buildings having successfully completed **one (1)** project during the last ten (10) years **according to the US Secretary of the Interior's Standards for the Treatment of Historic Properties;** the Bidder's designated Superintendent has experience in restoration of historic buildings having successfully performed superintendent responsibilities on **one (1)** project, completed during the last ten (10) years, according to the **US Secretary of the Interior's Standards for the Treatment of Historic Properties;** For purposes of Subsection c and o of this Section 13.02, "successfully completed" and "successfully performed" means the project was completed in a manner which was acceptable to the party contracting with the Bidder for the public work project, and that there is no arbitration or litigation filed by such party, the Bidder or any subcontractor, supplier or workman of the Bidder which is pending or completed in connection with the prior project. 13.02 o. was added: Whether the Bidder or its Specialty Subcontractor(s) have successfully completed at least one (1) project similar in type or scope as the work specified on the Specialty Work Qualification Forms.

Attachment 6, List of Completed Projects: 1. Has the bidder acting as the prime contractor successfully completed **one (1)** project in the past **10 years**, preferably in Clark County, **conforming with the US Secretary of the Interior Standards for Rehabilitation similar to the work required by the Owner** as described in this bidding document? If yes, complete project information on attached sheets. ☐YES ☐ NO	Attachment 6, List of Completed Projects: 1. Does the Bidder or its Superintendent have experience in restoration of historic buildings completed in accordance with the US Secretary of Interior's Standards for the Treatment of Historic Properties? ☐YES ☐ NO* If the Bidder has the experience, then complete Form B. If the Superintendent has the experience, then complete Form A for the Bidder and Form C for the Superintendent. * If neither the Bidder nor its Superintendent has the required experience, then refer to ITB 13.02 concerning Determination of Responsible. Forms A, B and C were added.

KUMMER KAEMPFER
ATTORNEYS AT LAW
LAS VEGAS OFFICE

MARK E. FERRARIO
mferrario@kkbrf.com
702.693.4208

KUMMER KAEMPFER BONNER
RENSHAW & FERRARIO

LAS VEGAS OFFICE
3800 Howard Hughes Parkway
Seventh Floor
Las Vegas, NV 89169
Tel: 702.792.7000
Fax: 702.796.7181

RENO OFFICE
5585 Kietzke Lane
Reno, NV 89511
Tel: 775.852.3900
Fax: 775.852.3982

CARSON CITY OFFICE
510 W. Fourth Street
Carson City, NV 89703
Tel: 775.884.8300
Fax: 775.882.0257

February 12, 2009

Via Fax (702) 464-2578 and Regular Mail
Kathleen C. Rainey
Manager of Purchasing and Contracts
City of Las Vegas
400 Stewart Avenue
Las Vegas, Nevada 89101

Re: **Bid Protest of APCO Construction**
Project: Las Vegas Museum Phase 3 – Rehabilitation
Bid No. 08.15341.04-LED (Revised)
Our Client/Original Successful Bidder: Flagship Construction Company, LLC

Dear Ms. Rainey,

Flagship Construction Company, LLC ("Flagship") hereby files a formal bid protest with regard to the bid of APCO Construction ("APCO") for the Las Vegas Museum Phase 3 Project (the "Project") which was bid on Thursday, February 5, 2009. APCO does not qualify as a responsive or responsible bidder as detailed by the following:

APCO fails to demonstrate the requisite experience required to qualify as a responsible bidder.

To be the responsive and responsible bidder, APCO must show either that it has historical renovation experience or that its superintendant has historical renovation experience. *See Bidders Instructions, Section 13.02(c) attached as Exhibit 1.* APCO must also show that it has similar experience to this Project in size and scope. *See Exhibit 1 at Section 13.02(o).* APCO has failed to demonstrate that it has the required experience with historical renovation and/or projects of similar size and scope. Further, APCO failed to demonstrate that its superintendant has the required experience for historical renovation and/or projects of similar size and scope. Accordingly, APCO cannot qualify as a responsive or responsible bidder.

APCO failed to demonstrate it has experience with historical renovation and/or projects of similar size and/or scope.

APCO has never completed a project matching this Project in size or scope. Further, APCO does not have any experience with the restoration of historic buildings. Accordingly, APCO does not qualify to be General Contractor on the Project.

The Bidders Instructions require that APCO have "successfully completed at least one (1) project with similar scope as the work specified on the Specialty Work Qualification form." *See Exhibit 1, at Section 13.02(o).* APCO must have experience in restoration of buildings "having successfully completed one project during the last ten years according to the US Secretary of the Interior's Standards for the Treatment of Historic Properties." *See Exhibit 1, at Section 13.02(c).* None of the projects identified by APCO in its List of Completed Projects meets these criteria.

APCO listed several projects including: Cannery Casino Theater Addition, CB4 Window Wall Replacement at the McCarran International Airport, the Aliante Library construction, Las Vegas Paving Office addition, Iron Mountain Phase III addition. *See APCO's List of Completed Projects attached as Exhibit 2.* Cannery Casino Theater Addition is the largest of these projects, comprising a 66,445 Square Foot addition and a contract award of $17,400,000. While this project is similar in size, it was not a historic project, and no renovation work was required. It is dissimilar in scope, and it does not demonstrate any experience that relates to restoration of historic buildings. The remaining projects are dissimilar in both scope and size, and in sum are insufficient to establish the requisite experience. Accordingly, APCO should be disqualified as a responsible bidder for the Project.

APCO fails to demonstrate that its Superintendant has experience in restoration of historic buildings.

APCO identified Brian D. Benson as its Superintendant assigned to oversee the Las Vegas Museum Project. Benson does not qualify to be a superintendant on the Project.

The Bidders Instructions require APCO's designated Superintendant to have "experience in restoration of historic buildings having successfully completed one project during the last ten years according to the US Secretary of the Interior's Standards for the Treatment of Historic Properties." *See Exhibit 1, Section 13.02(c).* APCO states that its Superintendant has experience in the restoration of historic buildings. *See APCO's Responses to Questions on Attachment 6, attached hereto as Exhibit 3.* APCO points to Benson's experience supervising the renovation of an exterior elevator shaft for the Los Angeles City Hall Seismic Retrofit and Historical Renovation. *See Benson Resume and Clark Construction Letter attached hereto as Exhibit 4.* Benson supervised the installation of glass and brass materials in the exterior elevator. While the Los Angeles City Hall renovation project is a 911,000 square foot project with a cost of over $100 Million. In all probability, the elevator renovation component must represent a very small percentage of the overall Las Angeles project.

Benson did not act as an overall superintendant on any historical restoration project within the past 10 years. The elevator portion of the Las Angeles renovation project is dissimilar to the LV Museum Project, and Benson's marginal experience does not meet the requirements set forth in the Bidders Instructions. APCO should be disqualified as a responsible bidder.

APCO failed to disclose that it was removed from Gemstone Project and sued for related breach of contract.

In its bid documentation, APCO failed to disclose that on August 15, 2008 APCO was terminated as General Contractor on a $78,938,160.00 contract with Gemstone Development West, Inc. ("Gemstone"). Further, APCO is currently engaged in litigation against Gemstone wherein Gemstone alleges that APCO manipulated subcontractor bids in order to exclude redline changes to the Architectural Plans in those bids, failed to provide adequate quality and workmanship, submitted invalid change orders for work contained within its contractual scope, failed to provide sufficient back up documentation for change order requests and caused numerous project delays. *See Gemstone Development West, Inc.'s Answer to Complaint and Counterclaims attached hereto as Exhibit 5. See also Review Journal Article Entitled "Work on ManhattanWest Project Suspended" attached hereto as Exhibit 6.*

Nonetheless, when asked whether APCO "failed to perform any contract as a result of causes within the control of the bidder or a subcontractor or supplier of the bidder," APCO answered "No." *See Exhibit 3, Question/Response No. 2.* When asked if APCO "failed to perform any portion of the Work that caused the Owner and/or others, i.e., the surety company, etc.) to exercise its right to complete the Work in the contract," APCO responded "No." *See Exhibit 3, Question/Response No. 3.* When asked whether APCO has been "involved in any failure to complete or breach of contract for any reason including customer directed suspensions, disbarments or disqualifications," APCO responded "No." *See Exhibit 3, Question/Response No. 4.* It is clear APCO's bid responses were inaccurate.

Further, the substantive allegations of the Gemstone litigation merits significant concern for the City. Gemstone's allegations raise questions regarding APCO's quality and workmanship, experience as a general contractor, billing practices and bid practices. Specifically, Gemstone alleges that APCO specifically instructed subcontractors to ignore redline changes to the architectural drawings when placing their bids. *See Exhibit 5 at p. 14, ln. 23-30.*

APCO has submitted a bid from a subcontractor who has represented that it cannot obtain performance bonds for the Project.

APCO identified Cogent Networks as its subcontractor for electrical work. However, on or about February 5, 2009, Cogent declined to provide a bid for Flagship on this Project. Cogent's Vice President, Donna Bradley stated to Flagship representatives that Cogent would not be bidding this project because they already knew they could not obtain a sufficient performance bond to qualify for the Project. *See the Affidavits of Cadwell Collins and Linda Newsted attached hereto as Exhibit 7.* Cogent indicated that it had lost nearly six million dollars in work in the past months due to difficulty in supplying project performance bonds. *See Exhibit 7.* We believe this will be supported by other general contractors who approached Cogent to bid this project for them. As a result, we believe APCO has obtained bids from at least one subcontractor APCO knows will be unable to meet the project bonding specifications. One of the largest cost elements in any bid is the cost of bonding. APCO has based its current bid on a subcontractor bonding cost that cannot practically be obtained.

If Cogent cannot bond, this will lead APCO to bid shop Cogent's scope of work after the close of bidding. This bid shopping process will very likely raise APCO's final contract amount.

As you may recall, the City had previously recommended that Flagship be awarded the Las Vegas Museum Project, due to the combination of Flagship's historical experience and low bid. Unfortunately, the City then decided to reject all bids and hold a revised bid. Flagship suspects this decision was based at least in part upon APCO's Bid Protest submitted October 2, 2008. *See APCO's Original Bid Protest attached hereto as Exhibit 8.* Ironically, in its protest, APCO accused Flagship of bidding inadequate subcontractors with the intention to shop its bid. APCO states, "the Federal District Court of Nevada confirmed that N.R.S. §338.141 was enacted to prevent 'the evil of bid shopping' and to limit the practice of shopping for bids'." *See Exhibit 8 p.2, ¶1.* APCO continued quoting testimony by an Associated General Contractors of America Representative to the Nevada legislature: "bid shopping is not a practice the state wants as part of public works projects...The construction industry believes bid shopping gives unfair advantage to those involved [i.e. general contractors who shop bids and subcontractors who peddle bids] is unethical and is adamantly opposed to the practice." Now, it appears that APCO will now have the opportunity to employ similar bid shopping tactics.

Flagship did not believe there was any basis for rejecting its bid under ITB 15 in October of 2008. *See Letters to the City on behalf of Flagship attached as Exhibit 9.* At the time the City made the decision to rebid the project, Flagship was concerned that the revised bidding would cause additional problems and lead to bid shopping. Unfortunately, Flagship's concerns have proven to be justified.

Flagship continues to believe that it is the lowest responsive and responsible bidder. This is true, especially in the context of Flagship's extensive construction experience combined with the extensive historical renovation experience of their proposed superintendant. Flagship requests that the City deem APCO's bid non-responsive and non-responsible, and proceed to award the Contract to Flagship.

Sincerely,

KUMMER KAEMPFER BONNER RENSHAW & FERRARIO

Leslie A. Godfrey for:

Mark E. Ferrario

MEF/lsg
cc: Nancy Paolino and Theresa Bolsendahl

EXHIBIT 1

EXHIBIT 1

13.02 Determination of Responsible

As a pre-requisite to the award of the Contract, the lowest Bidder or the Best Bidder must be a responsible bidder as determined by the Owner. In determining such responsibility, the Owner may take into consideration, including but not limited to, the criteria set below:

a. Whether the Bidder possesses a valid contractor's license of a class corresponding to the Work to be required by the Owner;

b. Whether the Bidder has the ability to obtain the necessary bonding for the Work to be required by the Owner;

c. Whether the Bidder has experience in restoration of historic buildings having successfully completed **one (1)** project during the last ten (10) years **according to the US Secretary of the Interior's Standards for the Treatment of Historic Properties;** the Bidder's designated Superintendent has experience in restoration of historic buildings having successfully performed superintendent responsibilities on **one (1)** project, completed during the last ten (10) years, according to the **US Secretary of the Interior's Standards for the Treatment of Historic Properties;**

d. Whether the principal personnel employed by the Bidder have the necessary professional qualifications and experience for the Work to be required by the Owner;

e. Whether the Bidder has breached any contracts with a public agency or person in this state or any other state during the five (5) years immediately preceding the date of submission of the Bid;

f. Whether the Bidder has been disqualified from being awarded a contract pursuant to NRS 338.017 or 338.13895;

g. Whether the Bidder has been convicted of a violation for discrimination in employment during the two (2) years immediately preceding the date of submission of the Bid;

h. Whether the Bidder has the ability to obtain and maintain insurance coverage for public liability and property damage within limits sufficient to protect the Bidder and all the subcontractors of the Bidder from claims for personal injury, accidental death and damage to property that may arise in connection with the work to be required by the Owner;

i. Whether the Bidder has a safety program that complies with the requirements of Chapter 618 of NRS;

j. Whether the Bidder has been disciplined or fined by the State Contractors' Board or another state or federal agency for conduct that relates to the ability of the applicant to perform the work to be required by the Owner;

k. Whether, during the five (5) years immediately preceding the date of submission of the Bid Proposal the Bidder has filed as a debtor under the provisions of the United States Bankruptcy Code;

l. Whether, during the five (5) years immediately preceding the date of submission of the Bid, the Bidder has, as a result of causes within the control of the Bidder or a subcontractor or supplier of the Bidder, failed to perform any contract:

   (i) In the manner specified by the contract and any change orders initiated or approved by the person or governmental entity that awarded the contract or its authorized representative;
   (ii) Within the time specified by the contract unless extended by the person or governmental entity that awarded the contract or its authorized representative; or
   (iii) For the amount of money specified in the contract or as modified by any change orders initiated or approved by the person or governmental entity that awarded the contract or its authorized representative.

m. Whether the Bidder has received a satisfactory or unsatisfactory overall rating on the Contractor Evaluation Form for prior public work projects of the City..

n. Whether the Bidder is listed on the Federal Debarment List.

o. Whether the Bidder or its Specialty Subcontractor(s) have successfully completed at least one (1) project similar in type or scope as the work specified on the Specialty Work Qualification Forms.

Evidence of any failure described in this Section 13.02 may include, without limitation, the assessment of liquidated damages against the Bidder, the forfeiture of any bonds posted by the Bidder, or the existence of an arbitration award or a decision by a court of law against the Bidder.

For purposes of Subsection c and o of this Section 13.02, "successfully completed" and "successfully performed" means the project was completed in a manner which was acceptable to the party contracting with the Bidder for the public work project, and that there is no arbitration or litigation filed by such party, the Bidder or any subcontractor, supplier or workman of the Bidder which is pending or completed in connection with the prior project. In the event arbitration or litigation is pending, the Bidder may provide evidence to the Owner that the disputes involved therein do not reflect negatively upon the Bidder's ability to perform the Project or, for the most part, are in favor of the Bidder. Upon request of the Owner, the Bidder shall submit collaborating evidence of the successful completion of the public work project from the Party contracting for the work.

The Bidder cannot avoid its previous work history by means of a company name change, ownership change, change in the form of business entity, change in licensing or bonding status, or bankruptcy, if any key personnel (an individual with an active ownership interest or a corporate officer) remain the same or if the Bidder's business location remains the same after the change.

13.03 Determination of Responsiveness

As a pre-requisite to the award of the Contract, and in addition to the determination that the Bidder is responsible, the lowest Bidder or Best Bidder, as the case may be, must be a responsive Bidder as determined by the Owner. In determining whether the Bidder is responsive, any one or more of the following may be considered:

a. Evidence of collusion amongst the Bidders as described in ITB 22;

b. Failure to properly complete the Bid Proposal furnished by the Owner and to otherwise comply with the requirements of ITB 5.02;

c. Failure to attend the mandatory pre-bid conference scheduled by the Owner;

d. Failure of an authorized representative to sign the Bid Proposal as required by ITB 5.02;

e. Failure to submit the Bid Security with the Bid Proposal as required pursuant to ITB 5.03;

f. Failure to complete and submit the Subcontractor Listings as required by ITB 5.04 and ITB 6.01, or circumventing the Subcontractor List requirements by disingenuous issuance of contracts or purchase orders that avoid such listing, whether these acts and omissions are intentional or otherwise;

g. Failure to submit the Good Faith Effort Form as required by ITB 7.03;

h. Failure to submit the Schedule of Values as required by ITB 7.04;

i. Failure to submit Superintendent and Project Manager Resumes as required by ITB 7.05;

j. Failure to submit the List of Completed Projects Forms as required by ITB 7.06;

k. Failure to submit the Specialty Work Qualification Forms as required by ITB 7.07;

EXHIBIT 2

EXHIBIT 2

ATTACHMENT 6
LIST OF COMPLETED PROJECTS

FORM A: Bidder's Project Experience

Project Name: Cannery Casino Theater Addition

Project Address: 2121 E. Craig Road

North Las Vegas, NV

Owner's Name: Cannery Casino Resorts

Owner's Point of Contact: Paul Collins

Phone Number: (702) 285-9660

Project Description: Construct a 14-plex cinema tenant improvement building of 66,445 SF lobby level 9,990 SF projection room level interior concrete slab on grade floors, second level steel frame and concrete floors, sprinklered metal interior stud partitions with gypsum board, normal HVAC, plumbing & electrical. Project also includes addition to existing casino of restaurant, executive offices, bingo room and sports book room.

Award Amount $17,400,000

Year Completed: 2006

Was this project completed late? ☐ YES ☒ NO

Did the contract contain liquidated damages or penalty clauses? ☒ YES ☐ NO

If yes, were damages assessed? ☐ YES ☒ NO

What was the amount assessed? _____

Were any judgments entered pertaining to this project? ☐ YES ☒ NO

BID PROPOSAL PAGE

ATTACHMENT 6
LIST OF COMPLETED PROJECTS

FORM A: Bidder's Project Experience

Project Name: CB4 Window Wall Replacement

Project Address: McCarran International Airport, Las Vegas, NV

Owner's Name: Department of Aviation

Owner's Point of Contact: Tom Kordus

Phone Number: (702)261-5164

Project Description: Construct Additions, Renovations & Alterations to existing structure without interference with ongoing public activities.

Award Amount $7,070,000.00

Year Completed: 2007

Was this project completed late? ☐ YES ☒ NO

Did the contract contain liquidated damages or penalty clauses? ☒ YES ☐ NO

If yes, were damages assessed? ☐ YES ☒ NO

What was the amount assessed? _____

Were any judgments entered pertaining to this project? ☐ YES ☒ NO

BID PROPOSAL PAGE

ATTACHMENT 6
LIST OF COMPLETED PROJECTS

FORM A: Bidder's Project Experience

Project Name: Aliante Library

Project Address: 2400 W. Deer Springs Way, Las Vegas, NV 89084

Owner's Name: City of North Las Vegas

Owner's Point of Contact: Bob Garlow

Phone Number: (702) 633-1974

Project Description: This Project consists of the construction of a 15,000 S.F. single story branch Library to be located at Deer Springs Way, east of Aliante Parkway, within the Aliante development in the City of North Las Vegas.

Award Amount $4,680,804.00

Year Completed: 2006

Was this project completed late? ☐ YES ☒ NO

Did the contract contain liquidated damages or penalty clauses? ☒ YES ☐ NO

If yes, were damages assessed? ☐ YES ☒ NO

What was the amount assessed? _____

Were any judgments entered pertaining to this project? ☐ YES ☒ NO

BID PROPOSAL PAGE

ATTACHMENT 6
LIST OF COMPLETED PROJECTS

FORM A: Bidder's Project Experience

Project Name: Las Vegas Paving Office Addition

Project Address: 4420 S. Decatur Blvd., Las Vegas, NV 89103

Owner's Name: Las Vegas Paving

Owner's Point of Contact: Robert Mendenhall

Phone Number: (702)251-5800

Project Description: This Project consists of a 30,000 S.F. office Addition, 2-Story Metal Frame, Brick Veneer.

Award Amount $3,657,736.00

Year Completed: 2004

Was this project completed late? ☐ YES ☒ NO

Did the contract contain liquidated damages or penalty clauses? ☐ YES ☒ NO

If yes, were damages assessed? ☐ YES ☐ NO

What was the amount assessed? _____

Were any judgments entered pertaining to this project? ☐ YES ☒ NO

BID PROPOSAL PAGE

ATTACHMENT 6
LIST OF COMPLETED PROJECTS

FORM A: Bidder's Project Experience

Project Name: Iron Mountain - Phase III

Project Address: 4105 N. Lamb Blvd., Las Vegas, NV 89115

Owner's Name: Iron Mountain Records Management

Owner's Point of Contact: Warren Robinson

Phone Number: (562)345-6900

Project Description: This Project consists of a 30,000 S.F. three wall Addition to an existing storage facility building including all required Mechanical, Electrical & Plumbing Systems.

Award Amount $1,573,655.00

Year Completed: 2005

Was this project completed late? ☐ YES ☒ NO

Did the contract contain liquidated damages or penalty clauses? ☐ YES ☒ NO

If yes, were damages assessed? ☐ YES ☐ NO

What was the amount assessed? _____

Were any judgments entered pertaining to this project? ☐ YES ☒ NO

BID PROPOSAL PAGE

EXHIBIT 3

EXHIBIT 3

ATTACHMENT 6
LIST OF COMPLETED PROJECTS

Bidder: APCO Construction

Bidders must respond to each of the below questions.

1. Does the Bidder or its Superintendent have experience in restoration of historic buildings completed in accordance with the US Secretary of Interior's Standards for the Treatment of Historic Properties?

   ☒ YES ☐ NO*

   If the Bidder has the experience, then complete Form B. If the Superintendent has the experience, then complete Form A for the Bidder and Form C for the Superintendent.

   * If neither the Bidder nor its Superintendent has the required experience, then refer to ITB 13.02 concerning Determination of Responsible.

2. Has the bidder failed to perform any contract as a result of causes within the control of the bidder or a subcontractor or supplier of the bidder?

   ☐ YES ☒ NO

3. Has the bidder failed to perform any portion of the Work that caused the Owner and/or others, (i.e., the surety company, etc.) to exercise its right to complete the Work in the contract?

   ☐ YES ☒ NO

4. Has the bidder been involved in any failure to complete or breach of contract for any reason including, customer-directed suspensions or disbarments/disqualifications?

   ☐ YES ☒ NO

5. Has the bidder been disciplined or fined by the State Contractors' Board or another state or federal agency for conduct that relates to the ability of the bidder to perform the Work required by the City for this Project?

   ☐ YES ☒ NO

6. Has the bidder been convicted of a violation for discrimination in employment?

   ☐ YES ☒ NO

BID PROPOSAL PAGE

EXHIBIT 4

EXHIBIT 4

ATTACHMENT 6
LIST OF COMPLETED PROJECTS

FORM C: Superintendent

Provide the following information for the Bidder's Project Superintendent that demonstrates that he/she has performed General Contractor Project Superintendent duties as defined as: "Superintendent: Contractor's representative at the site who is responsible for continuous field supervision, coordination, completion of the work and, unless another person is designated, for the prevention of accidents" within the last 10 years on a project that was required by a federal, state, local municipality to comply with the *Secretary of the Interior's Standards for the Treatment of Historic Properties (Secretary's Standards)*, Projects that were funded by Non-Profits or Private Entities, but were required by permit to meet the *Secretary's Standards*, are also eligible.

If you do not know if the project was required to meet the *Secretary's Standards*, contact the Owner or Architect of Record for the project for this information.

Name of Superintendent: Brian D. Benson

Total years experience as Superintendent: 16 years

Project name: Los Angeles City Hall

Street: 200 N. Main Street

City: Los Angeles

State: California

Project Description: Please See attached documentation.

Year Completed: 2001

Client/Building Owner: City of Los Angeles
Contact name:
Telephone number:
Email:

Architect of Record:
Albert C. Martin & Associates now AC Martin Partners
Contact name: Christopher Martin
Telephone number: (213) 683-1900
Web Site: www.acmartin.com

Architect of Record:
Levin & Associates Architects
Contact name: Brenda Levin
Telephone number: (213) 623-9207
Email: info@levinarch.com
Web Site: www.levinarch.com

BID PROPOSAL PAGE

CLARK
CONSTRUCTION

Date: 1/22/2009

From: Greg Groleau
Clark Construction Group, LLC
714 W. Olympic Blvd. Suite 1036
Los Angeles, CA 90015

RE: Los Angeles City Seismic Retrofit and Historical Renovation

To: To Whom It May Concern,

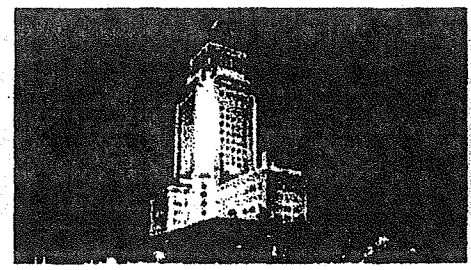
This letter is to certify that Brian Benson was indeed a Project Superintendent on the Los Angeles City Hall Seismic Retrofit and Historical Renovation. Brian performed his duties in strict compliance with the Secretary of Interior Rehabilitation Guidelines. Brian was directly responsible for supervising the restoration and re-construction off an exterior elevator that was comprised of brass and glass, this elevator is located at the N. Spring St entrance to city hall. Brian received strong reviews for dedication and hard work. I would personally recommend Brian Benson for this type of project.

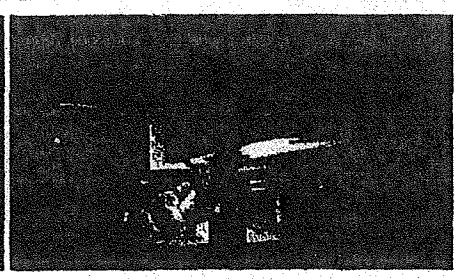
Sincerely,

Greg Groleau
Vice President
Clark Construction Group, LLC

CLARK CONSTRUCTION

Los Angeles City Hall





Project	Los Angeles City Hall
City	Los Angeles
State	California
Architect	Albert C. Martin & Associates
Owner	City of Los Angeles
Category	Office/Corporate
Cost	100,000,000+
Size	911000 *SQF*
Completion	2001
Summary	This project consisted of the seismic rehabilitation and upgrade of a 28-story, 911,000 SF municipal building originally built in 1927. Work includes excavation of a subbasement and installation of a system of hydraulic jacks to support the structure while approximately 550 seismic isolators were installed. Excavation of an exterior perimeter moat and saw cut of the perimeter walls from their foundations was also performed to allow the structure to float or sway during an earthquake. A seismically reinforced shearwall extends from the foundation the height of the building. In addition, the interior of the first five floors was renovated, including historic restoration of the ornate rotunda, grand staircases and other public areas.

- Los Angeles City Hall Website

Press Releases

- Los Angeles City Hall Earns Modernization Award from Buildings Magazine (4/14/2003)
- Los Angeles City Hall Earns Historical Restoration Project of the Year Award (9/25/2002)

Testimonials

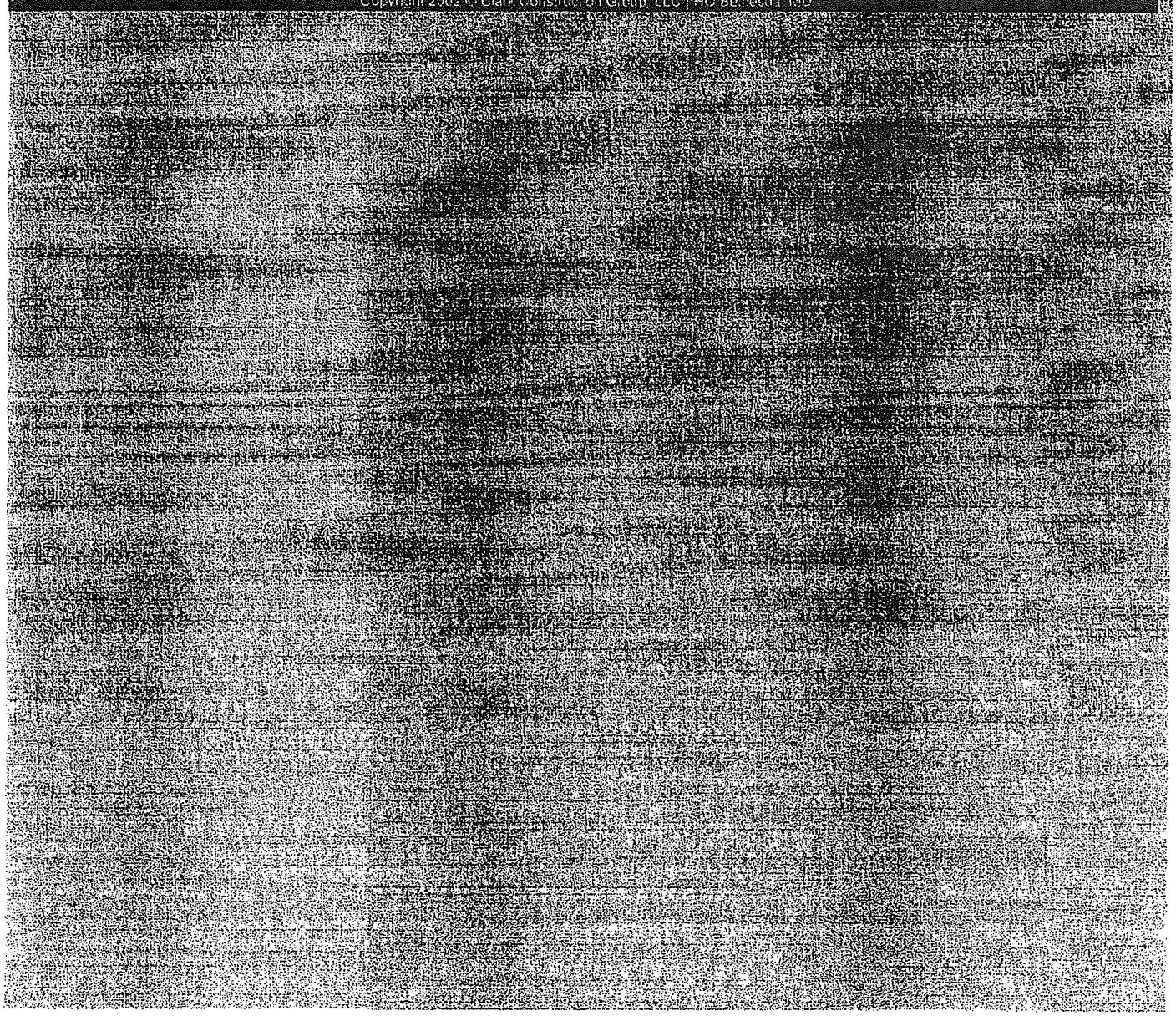
- *There are no testimonials associated with this project.*

Awards

- 2003 AGC Build America Award - Renovation
- 2003 Buildings Magazine Modernization Award Winner
- 2002 LA Business Council Architectural Awards Winner - Commercial Mid-Rise category
- 2002 LA Business Council Architectural Awards Grand Prize – Best Completed Project
- 2002 Los Angeles Conservatory Preservation Award
- 2002 American Public Works Association Project of the Year – Historic Restoration Project over $10 million
- 2001 Building Team of the Year – American Institute of Architects Los Angeles Chapter

Back

Copyright 2002 © Clark Construction Group, LLC | HQ Bethesda, MD



CLARK
CONSTRUCTION

Home
Capabilities
Portfolio
Employment
Subcontracting
Divisions
News
Contact Us
Search

Portfolio

Search Projects

Representative Projects

- Correctional/Judicial
- Educational
- Green Building
- Healthcare
- Hospitality
- Industrial/Distribution
- Mass Transportation
- Mixed-Use/Retail
- Monumental/Unique
- Office/Corporate
- Public Assembly
- Residential
- Science
- Sports

Los Angeles City Hall Earns Historical Restoration Project of the Year Award

Wednesday, September 25, 2002

LOS ANGELES – When it was completed in 1928, 32-story Los Angeles City Hall was the tallest building in the city. It has appeared in countless Hollywood films and television productions, making the building synonymous with the city itself. After a series of earthquakes weakened the structure, it was closed in 1998 for a seismic retrofit and modernization. The Department of Public Works for the City of Los Angeles selected Clark Construction Group, LLC of Costa Mesa, Calif. as the general contractor for the three-year, $128 million project. The American Public Works Association recognized the team's success with the Project of the Year Award for Historical Restoration/ Preservation in the $10 million plus category.

Strengthening the building added 30,000 cubic yards of concrete, 3,000 tons of structural steel, 5,000 tons of reinforcing steel, and an additional 68,467 million pounds of dead weight to the structure. Five hundred and twenty six isolators and sliders as well as 64 viscous dampers were installed. The seismic upgrade allows City Hall to sustain minimal damage and remain functional after a magnitude 8.2 earthquake.

In addition to meeting rigorous safety and damage mitigation standards, the building's distinctive façade, mosaics, artwork, articulated ceilings and period ornamental details were preserved. For example, historic electrical light fixtures were removed from their settings, cleaned, and restored to comply with current energy codes. Art conservators researched and analyzed the original 1928 paint colors in the main hallways so they could be replicated into the new construction.

The shearwalls are an intrinsic part of the seismic rehabilitation to the building, as such the installation of the shearwall structure required removing any pre-existing structures or finishes that stood in its path. When shearwalls intersected historic fabric or historic walls, the historic fabric was removed, catalogued, crated and stored. Since demising walls cut across the path of the shearwalls on many floors, those existing walls were cut back to give the Clark team space to work.

City Hall joins an elite group of buildings in Los Angeles to undergo a total ground to sky refurbishment. The building was restored to its original Art Deco grandeur, while state-of-the-art seismic isolation systems offer a protection that few other Los Angeles buildings enjoy. Through Clark's leadership, the project was brought in on schedule and within budget.

▸ Back

Copyright 2002 © Clark Construction Group, LLC - MD Bethesda, MD

Levin & Associates Architects

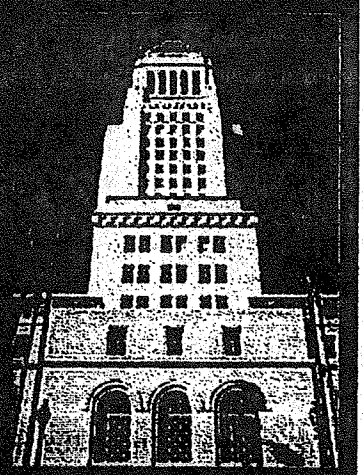
EDUCATION

ARTS & CULTURE

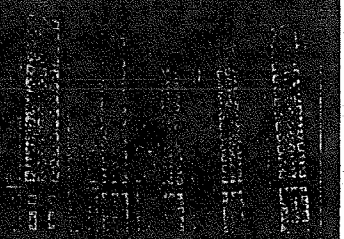
CIVIC & SOCIAL

URBAN REVITALIZATION

NEWS







Los Angeles City Hall
Completion: 2001
Downtown Los Angeles
City of Los Angeles
911,000 square feet

Designed in 1925 by architects John Austin, Albert C. Martin and John Parkinson, the 27 story, 911,000 became the city's tallest building from its completion in 1928 until the late 1960s. During the past 72 years, the tower has been damaged by regional earthquakes. Exterior terra cotta cladding and interior unreinforced masonry walls have cracked.

As historic preservation architects for the Seismic rehabilitation which was initiated in 1998, Levin & Associates, in collaboration with Albert C. Martin Partners, Architects and Engineers, has developed the approach, standards and

Albert C. Martin FAIA
Partner of Albert C. Martin Partners

alternatives which guide the seismic and code-upgrade methodology for the building's historic areas.

The hierarchy of historic significance for each area established by Levin has enabled the engineers to propose solutions which preserve the most historically-significant areas. The firm articulated and negotiated alternative code compliance strategies in coordination with the State Office of Historic Preservation, and devised architectural plans for each area of impact.

EXHIBIT 5

EXHIBIT 5

Electronically Filed
01/15/2009 04:50:53 PM

CLERK OF THE COURT

Gregory S. Gilbert, Esq.
Nevada Bar No. 6310
Sean D. Thueson, Esq.
Nevada Bar No. 8690
HOLLAND & HART LLP
3800 Howard Hughes Pkwy., 10th Floor
Las Vegas, Nevada 89169
Phone: (702) 669-4600
Fax: (702) 669-4650
Attorneys for Defendant
Gemstone Development West, Inc.

DISTRICT COURT

CLARK COUNTY, NEVADA

APCO CONSTRUCTION, a Nevada corporation, Plaintiff, v. GEMSTONE DEVELOPMENT WEST, INC., et al., Defendants.	CASE NO.: A571228 DEPT NO.: XVI **GEMSTONE DEVELOPMENT WEST, INC.'S ANSWER TO COMPLAINT AND COUNTERCLAIMS**

Defendant Gemstone Development West, Inc. ("Defendant"), by and through its attorneys, Holland & Hart LLP, and for its Answer to Plaintiff, APCO Construction's ("Plaintiff") First Amended Complaint ("Complaint") on file herein, answers, denies, and alleges as follows:

GENERAL ALLEGATIONS

1. Answering Paragraph 1 of Plaintiff's Complaint, Defendant admits the allegations contained therein.

2. Answering Paragraph 2 of Plaintiff's Complaint, Defendant is without sufficient knowledge to either admit or deny the allegations contained therein and therefore denies the allegations.

3. Answering Paragraph 3 of Plaintiff's Complaint, Defendant admits the allegations contained therein.

4. Answering Paragraph 4 of Plaintiff's Complaint, Defendant denies the allegations contained therein.

HOLLAND & HART LLP
3800 Howard Hughes Parkway, 10th Floor
Las Vegas, NV 89169
Phone: (702) 669-4600 ♦ Fax: (702) 669-4650

5. Answering Paragraphs 5 and 6 of Plaintiff's Complaint, Defendant admits the allegations contained therein.

6. Answering Paragraphs 7-9 of Plaintiff's Complaint, Defendant denies the allegations contained therein.

7. Answering Paragraph 10 of Plaintiff's Complaint, Defendant admits there were valid changes made during the course of the Project not within Plaintiff's contractual scope of work, and denies the remaining allegations contained therein.

8. Answering Paragraph 11 of Plaintiff's Complaint, Defendant denies the allegations contained therein.

9. Answering Paragraph 12 of Plaintiff's Complaint, Defendant admits Plaintiff submitted requests for extension of time that did not adhere to Plaintiff's contractual obligations, were unsupported, unjustified, or included in Plaintiff's contractual obligations, that Plaintiff refused and/or failed to submit requests that complied with Plaintiff's contractual obligations, and denies the remaining allegations contained therein.

10. Answering Paragraphs 13-15 of Plaintiff's Complaint, Defendant denies the allegations contained therein.

11. Answering Paragraph 16 of Plaintiff's Complaint, Defendant admits the allegations contained therein.

12. Answering Paragraph 17 of Plaintiff's Complaint, Defendant admits that on or about July 2, 2008, Defendant sent Plaintiff a letter as required by NRS 624 concerning withholdings from Plaintiff's payment application, but denies Plaintiff had no prior warning.

13. Answering Paragraph 18 of Plaintiff's Complaint, Defendant admits the allegations contained therein.

14. Answering Paragraph 19 of Plaintiff's Complaint, Defendant admits as of July 17, 2008, Defendant had not yet paid Plaintiff for the May Application, however, denies that any amount was due as of that date.

15. Answering Paragraph 20 of Plaintiff's Complaint, Defendant admits Plaintiff sent a letter alleging it would stop work, and denies the remaining allegations contained therein.

HOLLAND & HART LLP
3800 Howard Hughes Parkway, 10th Floor
Las Vegas, NV 89169
Phone: (702) 669-4600 ◆ Fax: (702) 669-4650

16. Answering Paragraph 21 of Plaintiff's Complaint, Defendant admits the allegations contained therein.

17. Answering Paragraph 22 of Plaintiff's Complaint, Defendant admits Plaintiff stopped work on the Project, and denies the remaining allegations contained therein.

18. Answering Paragraph 23 of Plaintiff's Complaint, Defendant admits it paid Plaintiff the amount it was lawfully withholding, and Plaintiff resumed work on the Project.

19. Answering Paragraph 24 of Plaintiff's Complaint, Defendant admits the parties exchanged correspondence related to issues Defendant was having with Plaintiff related to Plaintiff's work on the Project and contractual scope of work.

20. Answering Paragraphs 25-26 of Plaintiff's Complaint, the referenced statutes speak for themselves and therefore no response from Defendant is warranted.

21. Answering Paragraph 27 of Plaintiff's Complaint, Defendant admits the allegations contained therein.

22. Answering Paragraphs 28-29 of Plaintiff's Complaint, Defendant denies the allegations contained therein.

23. Answering Paragraph 30 of Plaintiff's Complaint, Defendant admits it withheld amounts from Plaintiff's June Application for unapproved, improper, and/or unsupported change orders, and denies the remaining allegations contained therein.

24. Answering Paragraph 31 of Plaintiff's Complaint, Defendant admits the allegations contained therein.

25. Answering Paragraph 32 of Plaintiff's Complaint, Defendant admits Plaintiff sent a letter alleging it would stop work at the Project, and denies the remaining allegations contained therein.

26. Answering Paragraphs 33-34 of Plaintiff's Complaint, Defendant admits the allegations contained therein.

27. Answering Paragraphs 35-39 of Plaintiff's Complaint, Defendant denies the allegations contained therein.

28. Answering Paragraph 40 of Plaintiff's Complaint, Defendant admits Plaintiff

HOLLAND & HART LLP
3800 Howard Hughes Parkway, 10th Floor
Las Vegas, NV 89169
Phone: (702) 669-4600 • Fax: (702) 669-4650

stopped work at the Project on August 21, 2008, stated it intended to terminate the Agreement on September 5, 2008, and denies the remaining allegations contained therein.

29. Answering Paragraph 41of Plaintiff's Complaint, Defendant admits Plaintiff failed to cure the breaches set forth in the Termination Letter and that Agreement was terminated on August 23, 2008.

30. Answering Paragraphs 42-43 of Plaintiff's Complaint, Defendant denies the allegations contained therein.

31. Answering Paragraph 44 of Plaintiff's Complaint, Defendant admits the allegations contained therein.

FIRST CAUSE OF ACTION

(Breach of Contract)

32. Answering Paragraph 45 of Plaintiff's Complaint, Defendant repeats and realleges its answers to Paragraphs 1 through 44, inclusive, as if fully set forth and incorporates them herein by reference.

33. Answering Paragraph 46 of Plaintiff's Complaint, Defendant admits the allegations contained therein.

34. Answering Paragraphs 47-51 of Plaintiff's Complaint, Defendant denies the allegations contained therein.

SECOND CAUSE OF ACTION

(Breach of the Duty of Good Faith and Fair Dealing)

35. Answering Paragraph 52 of Plaintiff's Complaint, Defendant repeats and realleges its answers to Paragraphs 1 through 51, inclusive, as if fully set forth and incorporates them herein by reference.

36. Answering Paragraph 53 of Plaintiff's Complaint, Defendant admits the allegations contained therein.

37. Answering Paragraphs 54-58 of Plaintiff's Complaint, Defendant denies the allegations contained therein.

THIRD CAUSE OF ACTION

HOLLAND & HART LLP
3800 Howard Hughes Parkway, 10th Floor
Las Vegas, NV 89169
Phone: (702) 669-4600 • Fax: (702) 669-4650

(Violation of NRS 624 Prompt Payment Act)

38. Answering Paragraph 59 of Plaintiff's Complaint, Defendant repeats and realleges its answers to Paragraphs 1 through 58, inclusive, as if fully set forth and incorporates them herein by reference.

39. Answering Paragraphs 60-68 of Plaintiff's Complaint, Defendant denies the allegations contained therein.

FOURTH CAUSE OF ACTION

(Defamation)

40. Answering Paragraph 69 of Plaintiff's Complaint, Defendant repeats and realleges its answers to Paragraphs 1 through 68, inclusive, as if fully set forth and incorporates them herein by reference.

41. Answering Paragraphs 70-77 of Plaintiff's Complaint, Defendant denies the allegations contained therein.

FIFTH CAUSE OF ACTION

(Declaratory Relief)

42. Answering Paragraph 78 of Plaintiff's Complaint, Defendant repeats and realleges its answers to Paragraphs 1 through 77, inclusive, as if fully set forth and incorporates them herein by reference.

43. Answering Paragraph 79 of Plaintiff's Complaint, Defendant admits it terminated the Agreement and Plaintiff disputes this fact.

44. Answering Paragraph 80 of Plaintiff's Complaint, Defendant admits the allegations contained therein.

45. Answering Paragraph 81 of Plaintiff's Complaint, Defendant denies the allegations contained therein.

46. Answering Paragraph 82 of Plaintiff's Complaint, Defendant admits the allegations contained therein.

47. Answering Paragraph 83 of Plaintiff's Complaint, Defendant denies the allegations contained therein.

HOLLAND & HART LLP
3800 Howard Hughes Parkway, 10th Floor
Las Vegas, NV 89169
Phone: (702) 669-4600 • Fax: (702) 669-4650

HOLLAND & HART LLP
3800 Howard Hughes Parkway, 10th Floor
Las Vegas, NV 89169
Phone: (702) 669-4600 • Fax: (702) 669-4650

SIXTH CAUSE OF ACTION

(Unjust Enrichment)

48. Answering Paragraph 84 of Plaintiff's Complaint, Defendant repeats and realleges its answers to Paragraphs 1 through 83, inclusive, as if fully set forth and incorporates them herein by reference.

49. Answering Paragraphs 85-87 of Plaintiff's Complaint, Defendant admits Plaintiff performed work on the Project, but does not have sufficient information to either admit or deny the remaining allegations and therefore denies the allegations contained therein.

50. Answering Paragraphs 88-91 of Plaintiff's Complaint, Defendant denies the allegations contained therein.

SEVENTH CAUSE OF ACTION

(Monies Due and Owing)

51. Answering Paragraph 92 of Plaintiff's Complaint, Defendant repeats and realleges its answers to Paragraphs 1 through 91, inclusive, as if fully set forth and incorporates them herein by reference.

52. Answering Paragraphs 93-95 of Plaintiff's Complaint, Defendant denies the allegations contained therein.

EIGHTH CAUSE OF ACTION

(Interference with Contractual Relations)

53. Answering Paragraph 96 of Plaintiff's Complaint, Defendant repeats and realleges its answers to Paragraphs 1 through 95, inclusive, as if fully set forth and incorporates them herein by reference.

54. Answering Paragraph 97 of Plaintiff's Complaint, Defendant does not have information sufficient to respond to the allegations and therefore denies the allegations contained therein.

55. Answering Paragraph 98-104 of Plaintiff's Complaint, Defendant denies the allegations contained therein.

NINTH CAUSE OF ACTION

(Lien Foreclosure)

56. Answering Paragraph 105 of Plaintiff's Complaint, Defendant repeats and realleges its answers to Paragraphs 1 through 104, inclusive, as if fully set forth and incorporates them herein by reference.

57. Answering Paragraphs 106-108 of Plaintiff's Complaint, Defendant denies the allegations contained therein.

58. Answering Paragraphs 109-110 of Plaintiff's Complaint, Defendant admits the allegations contained therein.

59. Answering Paragraphs 111-114 of Plaintiff's Complaint, Defendant denies the allegations contained therein.

TENTH CAUSE OF ACTION

(Breach of Duty – Violation of NRS 627)

60. Answering Paragraph 115 of Plaintiff's Complaint, Defendant repeats and realleges its answers to Paragraphs 1 through 114, inclusive, as if fully set forth and incorporates them herein by reference.

61. Answering Paragraphs 116-119 of Plaintiff's Complaint, Defendant admits the allegations contained therein.

62. Answering Paragraphs 120-127 of Plaintiff's Complaint, Defendant denies the allegations contained therein.

ELEVENTH CAUSE OF ACTION

(Priority of Deeds of Trust)

63. Answering Paragraph 128 of Plaintiff's Complaint, Defendant repeats and realleges its answers to Paragraphs 1 through 127, inclusive, as if fully set forth and incorporates them herein by reference.

64. Answering Paragraphs 128-135 of Plaintiff's Complaint, the documents speak for themselves and therefore no response is required of Defendant.

65. Answering Paragraphs 136-138 of Plaintiff's Complaint, Defendant denies the allegations contained therein.

HOLLAND & HART LLP
3800 Howard Hughes Parkway, 10th Floor
Las Vegas, NV 89169
Phone: (702) 669-4600 • Fax: (702) 669-4650

HOLLAND & HART LLP
3800 Howard Hughes Parkway, 10th Floor
Las Vegas, NV 89169
Phone: (702) 669-4600 ♦ Fax: (702) 669-4650

GENERAL DENIAL

All allegations of the Complaint that have not been expressly admitted, denied, or otherwise responded to are denied.

AFFIRMATIVE DEFENSES

As and for separate affirmative defenses, Defendant alleges:

First Affirmative Defense

Plaintiff has failed to state a claim against Defendant upon which relief can be granted.

Second Affirmative Defense

Plaintiff has suffered no damages as a result of any claim contained in the Complaint.

Third Affirmative Defense

Any obligation or duty, contractual or otherwise, that Plaintiff claims to be owed by Defendant has been fully performed, satisfied, and/or discharged.

Fourth Affirmative Defense

Any and all damages sustained by Plaintiff are the result of the negligence of Plaintiff or third party or parties over whom Defendant has no control.

Fifth Affirmative Defense

Plaintiff's claims are barred in whole or in part by the applicable period of limitations and/or the doctrine of laches.

Sixth Affirmative Defense

Plaintiff is barred by the doctrine of unclean hands and by its own failure to deal in good faith and deal fairly with Defendant.

Seventh Affirmative Defense

Defendant has appropriately, completely, and fully performed and discharged any and all of its respective obligations and legal duties arising out of the matters alleged in the Complaint and any recovery by Plaintiff would be unjust and inequitable under these circumstances and, therefore, barred by the doctrine on "preponderance of the equities."

Eighth Affirmative Defense

The conduct of Defendant alleged to be wrongful was induced by Plaintiff's own conduct.

Ninth Affirmative Defense

At the time and place, and under the circumstances alleged, the injuries of Plaintiff, if any, and the damages of Plaintiff, if any, were caused solely by the breach of contract, and the breach of warranty, expressed or implied, and the acts or omissions of Plaintiff or some third party or parties over whom Defendant had no control, and for whose acts Defendant is not responsible nor liable to Plaintiff.

Tenth Affirmative Defense

Plaintiff has suffered no adverse consequences as a result of the actions, if any, by Defendant in this action.

Eleventh Affirmative Defense

If Defendant failed to perform any contractual obligation owed to Plaintiff, which it expressly denies, there existed a valid excuse for such nonperformance.

Twelfth Affirmative Defense

Defendant is entitled to legal and equitable rescission upon any contract that may exist between the parties.

Thirteenth Affirmative Defense

Defendant is entitled to legal and equitable reformation upon any contract that may exist between the parties.

Fourteenth Affirmative Defense

Any and all actions taken by Defendant were just, fair, privileged, with good cause, in good faith, and without malice.

Fifteenth Affirmative Defense

Plaintiff has "unclean hands" or otherwise engaged in misconduct making equitable relief inappropriate.

Sixteenth Affirmative Defense

A valid contract exists between Plaintiff and Defendant; thus, any claim for unjust enrichment is invalid.

Seventeenth Affirmative Defense

HOLLAND & ART LLP
3800 Howard Hughes Parkway, 10th Floor
Las Vegas, NV 89169
Phone: (702) 669-4600 • Fax: (702) 669-4650

Plaintiff's claims are barred as it has failed to perform conditions precedent.

Eighteenth Affirmative Defense

Plaintiff's claims for relief against Defendant are barred by Plaintiff's prior breach of any alleged agreement.

Nineteenth Affirmative Defense

Defendant is informed, believes, and thereon alleges that the duty to perform under any contract, guarantee, obligations, or amendment, as alleged in Plaintiff's Complaint is excused by reason of a breach of a condition precedent by Plaintiff.

Twentieth Affirmative Defense

Defendant is informed, believes, and thereon alleges that the duty to perform under any contract, guarantee, obligations, or amendment, as alleged in Plaintiff's Complaint is excused by reason of a breach of a condition subsequent by Plaintiff.

Twenty-first Affirmative Defense

Plaintiff has failed to mitigate any damages and losses claimed to have been suffered by Plaintiff.

Twenty-second Affirmative Defense

Plaintiff has failed to adhere to the contractual requirements which must be performed before commencing an action under the contract. Accordingly, Defendants hereby reserves all its contractual defenses.

Twenty-third Affirmative Defense

Any award of punitive damages would be in violation of the Fifth and Fourteenth Amendments to the Constitution of the United States as well as the Nevada Constitution.

Twenty-fourth Affirmative Defense

The Amended Complaint fails to state facts sufficient to justify an award of punitive damages and/or fails to allege a legal basis for punitive damages.

Twenty-fifth Affirmative Defense

Because the Amended Complaint is couched in conclusory and vague terms, Defendant cannot fully anticipate all affirmative defenses that may be applicable to this case. Accordingly,

HOLLAND & HART LLP
3800 Howard Hughes Parkway, 10th Floor
Las Vegas, NV 89169
Phone: (702) 669-4600 ◆ Fax: (702) 669-4650

Defendant hereby reserve the right to assert additional affirmative defenses.

Twenty-sixth Affirmative Defense

Pursuant to Nev. R. Civ. P. 11, as amended, all possible affirmative defense may not have been alleged herein insofar as sufficient facts were not available after reasonable inquiry upon the filing of Defendant's Answer, and therefore, Defendant reserves the right to amend its Answer to allege additional affirmative defenses if subsequent investigation so warrants.

COUNTERCLAIMS

Counterclaimant Gemstone Development West, Inc. ("Gemstone"), by and through its attorneys, Holland & Hart LLP, and for its Counterclaims against APCO Construction ("Counterdefendant"), states and alleges as follows:

PARTIES

1. Gemstone Development West, Inc. is a Nevada corporation, and a resident of Nevada legally doing business in Clark County.

2. Upon information and belief, Counterdefendant APCO Construction is a Nevada Corporation and a contractor licensed in the State of Nevada to perform general construction work.

GENERAL ALLEGATIONS

A. THE AGREEMENT

3. On or about September 6, 2007, Gemstone and Counterdefendant entered into the ManhattanWest General Construction Agreement for GMP (the "Agreement").

4. The Agreement provided Counterdefendant would provide general contractor construction services for Gemstone related to the ManhattanWest mixed-use development project located at 9205 Russell Road, Las Vegas, Nevada (the "Project").

5. The Agreement defined Counterdefendant's scope of work, Work being defined as "all construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment and services provided or to be provided by [Counterdefendant] to fulfill [Counterdefendant]'s responsibilities. The Work may constitute the whole or a part of the Project."

6. The Agreement included a list of the "Contract Documents," which stated: "List of

HOLLAND & HART LLP
3800 Howard Hughes Parkway, 10th Floor
Las Vegas, NV 89169
Phone: (702) 669-4600 • Fax: (702) 669-4650

Contract Documents. Notwithstanding any provision of this Agreement, all items and/or improvements set forth in the documents set forth below are included in the scope of the Work pursuant to the Agreement; provided however, that the Contract Sum is subject to adjustment via Change Order for any changes in the following drawings after the June 1, 2007."

7. Further, the Agreement states:

> Note: If an item/improvement is included in the list set forth in Section 2 or within the documents set forth in Section 3, such item/improvement shall be deemed to be within the scope of the Work. If a conflict arises between the details of the specific design (as opposed to the existence) of any item/improvement in both the list set forth in Section 2 and within the documents set forth in Section 3, the details set forth within the documents set forth in Section 3 shall control.
>
> Note: Section 1 is a comprehensive list of all exclusions from the scope of the Work, and due to its expertise in construction matters, General Contractor is in the best position to determine the items that should be excluded pursuant to Section 1 and included pursuant to Sections 2 and 3. Consequently, to the extent that a conflict arises regarding the inclusion or exclusion of an item/improvement from the scope of the Work, it shall be assumed that such item/improvement is included in the scope of the Work.
>
> Note: The Contract Documents set forth in this Section 3 are in progress and are being provided to the General Contractor for its use in establishing a GMP. Such documents are incomplete and the General Contractor has included appropriate contingencies in the GMP for all items that are not fully detailed, in progress, or shown.

8. As such, all changes to any of the Contract Document made prior to June 1, 2007, are included in the Contract Sum.

9. Gemstone engaged Counterdefendant to construct the entire Project for a guaranteed maximum price of $153,472,300.00.

10. The Project contains twelve buildings numbered one through twelve and was therefore divided into phases. Phase I of the Project consists of Buildings 2, 3, 7, 8, and 9 ("Phase I").

11. Pursuant to the Schedule of Values prepared by Defendant, the guaranteed maximum price of Phase I was $78,938,160.00.

12. Phase I construction commenced May 2007. Pursuant to Section 4.01 of the General Contract, Defendant agreed to complete Phase I construction no later than October 17, 2008.

13. Construction of Buildings 1, 4, 5, 6, 10, 11, and 12 was included in Phase II ("Phase II"), however, Phase II of the Project was never begun.

HOLLAND & HART LLP
3800 Howard Hughes Parkway, 10th Floor
Las Vegas, NV 89169
Phone: (702) 669-4600 • Fax: (702) 669-4650

14. Pursuant to Section 10.01(a) of the Agreement, Gemstone has the right to remove any portion of the work from the scope of the Agreement:

> (a) Developer may, without cause, terminate this Agreement in whole, or in part, at any time prior to the completion of the Work. It is expressly understood that such a partial termination may include, without limitation, the removal of the construction or completion of one or more of the Buildings from the scope of the Work. Developer shall give General Contractor 20 days written notice, specifying the extent of termination and the effective date. In the event of such termination, General Contractor shall only be entitled to recover from Developer (a) payment for any Work (including the applicable General Contractor Fees and Costs) completed since the Progress Payment prior to such termination and (b) General Contractor's reasonable demobilization costs not to exceed an aggregate of $10,000. In no event shall General Contractor be entitled to profit or markup on services or work not performed.

15. Pursuant to written notice delivered to Counterdefendant August 6, 2008, Gemstone removed Phase II from Counterdefendant's scope of work under the Agreement before any of the Phase II work was commenced.

16. Consequently, Counterdefendant guaranteed Phase I of the Project would be constructed for $78,938,160.00 (the "Contract Amount").

B. CONTRACT DOCUMENTS PRIOR TO JUNE 1, 2007

17. On May 30 and 31, 2007, Gemstone held a Redi-Check meeting with the entire design team, including Shawn Bowne from Counterdefendant.

18. The purpose of the Redi-Check was to coordinate the independent Project designs and make any necessary revisions to provide the most complete set of drawings for pricing purposes.

19. Consequently, ten copies of the drawings were printed and distributed at the Redi-Check. Each participant, including Shawn Bowne, made comments that were written directly onto the drawing (the "Redlines").

20. At the end of the meeting, Mara Rempel of OZ Architecture, Inc. took all of the drawings that had writing on them back to Denver where they were scanned and put onto the official Project FTP site as of June 1, 2007, and the documents became known as the "Redlines."

21. Additionally, the Project Manual dated May 25, 2007, was distributed at the Redi-Check.

HOLLAND & HART LLP
3800 Howard Hughes Parkway, 10th Floor
Las Vegas, NV 89169
Phone: (702) 669-4600 • Fax: (702) 669-4650

HOLLAND & HART LLP
3800 Howard Hughes Parkway, 10th Floor
Las Vegas, NV 89169
Phone: (702) 669-4600 • Fax: (702) 669-4650

22. Each participant, including Shawn Bowne, received or was offered a copy of the Project Manual.

C. COUNTERDEFENDANT'S INSTRUCTIONS TO SUBCONTRACTORS TO IGNORE THE REDLINES

23. Prior to entering into the Agreement, Counterdefendant obtained bids from subcontractors to perform Work at the Project.

24. The purpose of the bids was to establish the cost to construct the Project and to include the cost in the Agreement.

25. Counterdefendant, including Shawn Bowne, however, instructed the subcontractors to ignore the Redlines for their bids.

26. Further, Counterdefendant failed to provide the Project Manual to the subcontractors.

27. Because they were part of the design team, the electrical, plumbing, and HVAC subcontractors all knew from the Redi-Check and other design meetings that the Redlines were supposed to be in the Guaranteed Maximum Price of the Agreement.

28. Consequently, each of them excluded the work associated with the Redlines from their respective bids and delivered to Counterdefendant written notices of such express exclusions.

29. In addition, as the electrical, plumbing, and HVAC subcontractors, foresaw a problem with Counterdefendant's instructions, they also provided an estimated price for the work associated with the Redlines.

30. Counterdefendant, however, did not inform Gemstone of the express exclusions from the subcontractors' bids and even forbade the subcontractors from providing the express exclusions to Gemstone.

D. WORK ON THE PROJECT AND THE ISSUES WITH COUNTERDEFENDANT BEGIN

31. After work on the Project began, Gemstone began experiencing issues with both the quality of Counterdefendant's work, as well as issues with Counterdefendant submitting change orders for work included in its contractual scope of work. Some of the issues include, but are not limited to:

a. Gemstone experienced numerous issues with regard to the concrete. This included

concrete not installed correctly pursuant to the plans and specifications, such as short pours, over pours, and concrete not installed so it would be plumb and square.

b. Repairs to the concrete work alone cost Gemstone millions of dollars in labor, materials, and lost time on the Project.

c. Further, Counterdefendant submitted change order requests for items clearly within it contractual scope of work, such as the bottom rebar mat for elevated decks. The mats were clearly indicated and included in the Contract Drawings.

d. Counterdefendant also submitted change orders for work required by the Redlines and the Project Manual, including electrical, plumbing, and HVAC work.

e. Other change order submitted by Counterdefendant simply did not adhere to the contractual requirement to provide sufficient back-up documentation to be evaluated by Gemstone and its consultants.

f. When Gemstone requested sufficient back-up documentation, Counterdefendant refused to cooperate and instead alleged the change orders were deemed approved.

g. Alleged change order requests were also submitted after work had allegedly been performed, and had not been approved by Gemstone.

h. Counterdefendant retained a fire security subcontractor who was not properly licensed or qualified to perform the work, and as a result, Gemstone incurred damages to fix, repair, and replace the work.

i. Counterdefendant submitted payment requests to Gemstone for subcontractors' work and Gemstone paid Defendant for this work, but Counterdefendant failed to obtain the standard lien waivers prior to paying the subcontractors as required; thus, some subcontractors subsequently went out of business, and suppliers have placed liens on the Project in excess of $1.3 million dollars.

j. Counterdefendant failed to prosecute the work in an expeditious manner, failed to provide proper manpower or staffing for the Project, and failed to complete the Project as required by the Agreement in the time required by the Agreement.

E. GEMSTONE TERMINATES COUNTERDEFENDANT FROM PROJECT

HOLLAND & ART LLP
3800 Howard Hughes Parkway, 10th Floor
Las Vegas, NV 89169
Phone: (702) 669-4600 ♦ Fax: (702) 669-4650

HOLLAND & HART LLP
3800 Howard Hughes Parkway, 10th Floor
Las Vegas, NV 89169
Phone: (702) 669-4600 ♦ Fax: (702) 669-4650

32. On August 15, 2008, Gemstone delivered a 48 hour notice to cure numerous breaches of the Agreement by Counterdefendant (the "Termination Notice").

33. Counterdefendant was informed if the breaches were not cured, the Agreement would terminate.

34. Counterdefendant failed to cure the breaches; as such, the Agreement was terminated with cause effective August 24, 2008.

35. Gemstone immediately engaged Camco Pacific Construction Company, Inc. ("Camco") to complete Phase I of the Project.

36. Prior to termination, Counterdefendant repeatedly failed to perform its contractual obligations under the Agreement and despite repeated numerous attempts by Gemstone to get the Project on schedule, Counterdefendant refused to adhere to its contractual obligation to complete its work by October 2008.

37. Aside from the schedule delays, which have caused Gemstone significant damages, there are also numerous quality and workmanship issues at the Project as a result of Counterdefendant's mismanagement.

38. Many of these issues were discovered after Counterdefendant was terminated as Counterdefendant concealed many of the issues from Gemstone while on the Project.

39. Pursuant to Section 10.02(c) of the Agreement, upon termination of Counterdefendant, Gemstone is not required to make any additional payments to Counterdefendant until the Project is completed.

40. As such, Gemstone is not required to make any further payments to Counterdefendant after August 24, 2008.

41. Moreover, Counterdefendant was terminated prior to the end of August 2008. Payment applications are compiled and submitted for each month after the month is completed. Consequently, the payment application for August 2008 was compiled and submitted by Camco, and the subsequent payments to the subcontractors pursuant to the August payment application was made through Camco.

F. GEMSTONE DISCOVERS BILLING ISSUES AFTER TERMINATING COUNTERDEFENDANT

42. Subsequent to Gemstone terminating Counterdefendant, in October 2008, Gemstone discovered unprecedented billing irregularities that occurred during Counterdefendant's time as general contractor on the Project.

43. After the termination, Gemstone discovered Counterdefendant: (1) made mistakes during construction that resulted in cost overruns (the "Mistake Costs"), and (2) failed to include adequate funds in the Project budget for certain portions of Counterdefendant's contracted scope of work (the "Scope Hole Costs").

44. Counterdefendant hid the Mistake Costs and Scope Hole Costs from Gemstone by: 1) refusing to deliver a complete set of executed subcontracts to Gemstone, and 2) by executing "internal change orders" with subcontractors without Gemstone's knowledge that fixed the mistakes or covered the missing scopes.

45. Further, during the course of the Project, Counterdefendant prohibited Gemstone from communicating with the subcontractors about the terms of their subcontract agreements and failed to deliver such agreements to Gemstone; thus Counterdefendant was able to hide the mistakes and its actions from Gemstone and Gemstone only became aware of the deception after Counterdefendant's termination.

46. To pay for the cost overruns without informing Gemstone, Counterdefendant manipulated the Project budget. Defendant would use funds from other portions of the Project budget by adjusting line item amounts.

47. Because the Agreement was a guaranteed maximum price contract, Counterdefendant had the ability to adjust line items. The adjustments, however, were made without regard for how much Phase I of the Project would cost to complete.

48. The adjustments made by Counterdefendant did not leave sufficient funds in the Project budget to complete the subsequent work. In short, Counterdefendant would "rob Peter to pay Paul," delaying Gemstone's discovery of the deception.

49. In hindsight, it is apparent Counterdefendant must have realized the resulting shortfall from its re-allocation of funds would be discovered by Gemstone the further along the Project went because in June 2008, Counterdefendant began making demands for immediate

HOLLAND & HART LLP
3800 Howard Hughes Parkway, 10th Floor
Las Vegas, NV 89169
Phone: (702) 669-4600 • Fax: (702) 669-4650

payment of change orders that were not appropriate and/or had not been negotiated with Gemstone or the subcontractors.

50. In response to Gemstone's request to properly document, compile, and negotiate change orders, Counterdefendant simply threatened to stop work.

51. By August 2008, Counterdefendant was submitting and demanding immediate payment of additional change orders for which no back-up could be provided.

52. In light of all the material breaches of the Agreement by Counterdefendant, Gemstone had no choice but to terminate Counterdefendant for cause.

53. Counterdefendant then filed a lien, approximately half of which is alleged change orders.

G. COUNTERDEFENDANT FILES A FRIVOLOUS LIEN ON THE PROJECT

54. On November 6, 2008, subsequent to filing this action, Counterdefendant recorded a Notice of Lien on the Project (the "Lien") in the amount of $20,782,659.95 (the "Lien Amount").

55. At the time, Counterdefendant was well aware of Gemstone's intentions of pursuing Counterdefendant for its breach of the Agreement, poor workmanship, delays, repairs, and liquidated damages.

56. The amount of damages suffered by Gemstone is substantial; thus, Counterdefendant filed a frivolous Lien without merit in bad faith.

57. Counterdefendant's Lien, according to the Lien itself, is broken down as follows:

Contract amount:	$60,325,901.89
Change Orders:	$ 9,168,116.32
Total:	$69,494,018.21
Total Payments:	$48,711,358.26
Alleged Lien:	$20,782,659.95

58. The Lien includes amounts Counterdefendant alleges are owed through August 2008, but payment to subcontractors for August 2008 was made through Camco.

59. Excluding change orders, the Lien includes:

Retention:	$ 5,964,426.21

HOLLAND & HART LLP
3800 Howard Hughes Parkway, 10th Floor
Las Vegas, NV 89169
Phone: (702) 669-4600 • Fax: (702) 669-4650

August Pay App: $ 5,276,181.54

Total: $11,240,607.75

60. Gemstone has the right to withhold retention until at least Phase I is complete; thus, this amount must be reduced from the Lien.

61. Further, Gemstone paid the August payment application through Cameo; thus, this amount related to the August Payment Application must also be reduced from the Lien.

62. Of the $9,542,052.20 difference, only $373,935.88 is not alleged change orders ($9,542,052.20 - $9,168,116.32).

63. Thus, approximately half of Counterdefendant's Lien is retention and its alleged August payment application, and the other half is for alleged change orders.

64. On August 20, 2008, after it was given notice the Agreement would be terminated and just days before the Agreement was actually terminated, Counterdefendant delivered change order requests with an aggregate value of $8,173,482.00 (the "Late Change Order Requests").

65. The Late Change Order Requests included amounts that were not requested by any subcontractors and represented work that had not even been started by Counterdefendant prior to the Termination.

66. Counterdefendant claimed all the underlying work had been completed and demanded immediate payment.

67. Gemstone properly denied any payment on the Late Change Order Requests in writing.

68. Upon information and belief, the Late Change Order Requests are contained in the Lien.

69. Gemstone representatives were told by Counterdefendant's representative after Counterdefendant received the Notice of Termination that Counterdefendant would lien the Project in an amount Gemstone would not be able to bond around.

70. Moreover, because of the additional costs associated with Counterdefendant's breaches, as well as the frivolous Lien on the Project, Gemstone's lenders have halted all financing to construct the Project.

HOLLAND & HART LLP
3800 Howard Hughes Parkway, 10th Floor
Las Vegas, NV 89169
Phone: (702) 669-4600 • Fax: (702) 669-4650

EXHIBIT 6

EXHIBIT 6

MobileR.

reviewjournal.com

Jobs / Cars / Homes / Shopping / Travel / Weddings / Golf / Best of Las Vegas /

LAS VEGAS REVIEW-JOURNAL NEWS SPORTS BUSINESS LIVING ENTERTAINMENT FASHION OPINION W

Breaking News

SAVE THIS EMAIL THIS PRINT THIS MOST POPULAR RSS FEEDS POST /

Dec. 16, 2008
Copyright © Las Vegas Review-Journal

Work on ManhattanWest project suspended

By HUBBLE SMITH
LAS VEGAS REVIEW-JOURNAL

Construction has been suspended on the ManhattanWest mixed-use condo development in southwe the developer said today.

Funding for the $350 million project is no longer available and it's uncertain when new financing wil Development Chief Executive Officer Alex Edelstein said.

Edelstein is looking to form a group to purchase the senior notes at a discount and finish the project, but that's going to take some time, he said.

"The main problem is a mismatch of what it costs to build one of these things and what people are willing to pay for condos and office space," he said. "We are very sorry to have to suspend construction. We are looking for ways to finish it. We're going to try and get it done."

ManhattanWest plans call for 700 condo units in 12 buildings, including a nine-story tower that has already been topped off. It would also encompass 150,000 square feet of office space over 50,000 square feet of retail and underground parking.

The project at the Beltway and Russell Road is near completion, but recent economic events have created an extremely difficult environment for real estate development, Edelstein said.

"It started out as just a real estate problem and now it's a global problem. Real estate is hurt because the larger economy is busted," he said. "If you'd told me a year ago Las Vegas would have severe layoffs in the casinos and a severe drop in tourism and negative population growth, I would have laughed."

Gemstone incurred "significant financial impacts" from alleged material contractual breaches by its former general contractor, Apco Construction, Edelstein said. That's the main reason cited by lenders for terminating

Share & Save

ADVERTISEMENT

Most Popular Stories
- Big storm coming weekend
- Wynn announces Encore, Wynn worke
- Wynn announces Encore, Wynn worke
- Wynn announces Encore, Wynn worke
- Fassel to coach ne team

financing.

The increased costs include charges to rework and rebuild parts of the project that were built improperly.

Existing buyers remain under contract as Gemstone works to complete the project. The sales center remains closed.

Gemstone, which built the Manhattan condo community at Las Vegas Boulevard and Serene Avenue, acquired 20 acres in 2006 for about $30 million. It was financed by Theraldson Financial Group, the same lender on Manhattan.

Other mixed-use developments have met a similar fate in Las Vegas. Paxton Walk suspended sales earlier this year and Sullivan Square never progressed past excavation. Two condo projects -- Mira Villa and Vantage Lofts -- halted construction and filed for bankruptcy.

Contact reporter Hubble Smith at hsmith@reviewjournal.com or 702-383-0491.

- Early morning fire to Henderson home
- Democrats reject I mortgages
- Investors with loc list
- New call center ex jobs to Las Vegas
- New call center ex jobs to Las Vegas
- Motorcyclist killed
- Casino operator st property
- Las Vegas-based A $100 million loss

MULTIMEDIA


CCTV Apolo Setting Hote
Play


A-Rod's Higl Coach Says Rebound
Play


Australian F Pick Up Pie Fires
Play

Leave Your Comment

Terms & Conditions
The following comments are provided by readers and are the sole responsiblity of the authors. The reviewjc review comments before publication nor guarantee their accuracy. By publishing a comment here you agre comment policy. If you see a comment that violates the policy, please notify the web editor.

Some comments may not display immediately due to an automatic filter. These comments will be reviewed **do not submit a comment more than once.**

Name:

Email:

EXHIBIT 7

EXHIBIT 7

GENERAL AFFIDAVIT

State of Nevada
County of Clark

BEFORE ME, the undersigned Notary, Virginia Classick
[name of Notary before whom affidavit is sworn], on this 11th *[day of month]* day of February *[month]*, 2009, personally appeared Cadwell Collins *[name of affiant]*, known to me to be a credible person and of lawful age, who being by me first duly sworn, on ____ (his or her) oath, deposes and says:

Per the conversation I had on the afternoon of 5th of February with Donna Bradley Vice President of Cogent Electric, she alluded to the difficulty and frustration she was having with the owners of her company not allowing their local office in procurring performance and payment bond. In addition Donna identified that Cogent electric had lost nearly 6 million dollars in work in the past months, due to the fact of not being to supply a PP bond. She apologized about the situation and noted to keep them in mind for projects that would not require a bond so Cogent would bid.

[set forth affiant's statement of facts]

Cadwell Collins
[signature of affiant]

Cadwell Collins
[typed name of affiant]

4052 Dean Martin Drive LV NV 89103
[address of affiant, line 1]

[address of affiant, line 2]

Subscribed and sworn to before me, this 11th *[day of month]* day of February *[month]*, 2009.

[Notary Seal:]

VIRGINIA M. CLASSICK
Notary Public State of Nevada
No. 07-4645-1
My appt. exp. Aug. 22, 2011

Virginia Classick
[signature of Notary]

Virginia Classick
[typed name of Notary]

NOTARY PUBLIC

My commission expires: August 22, 2011.

GENERAL AFFIDAVIT

State of Nevada
County of Clark

BEFORE ME, the undersigned Notary, Virginia Classick
[name of Notary before whom affidavit is sworn], on this 11th *[day of month]* day of February *[month]*, 2009, personally appeared Linda Newsted *[name of affiant]*, known to me to be a credible person and of lawful age, who being by me first duly sworn, on _____ *[his or her]* oath, deposes and says:

On February 3, 2009 I called Donna Bradley from Cogent Electric to verify that she will be bidding Las Vegas Museum and to ensure we (Flagship) was on the list to recieve a bid proposal from her. She explained that she wouldn't be bidding because she couldn't bond the project due to other projects.

[set forth affiant's statement of facts]

Linda Newsted
[signature of affiant]

Linda Newsted
[typed name of affiant]

4052 Dean Martin Drive LV, NV 89103
[address of affiant, line 1]

[address of affiant, line 2]

Subscribed and sworn to before me, this 11th *[day of month]* day of February *[month]*, 2009.

[Notary Seal:]

VIRGINIA M. CLASSICK
Notary Public State of Nevada
No. 07-4645-1
My appt. exp. Aug. 22, 2011

Virginia Classick
[signature of Notary]

Virginia Classick
[typed name of Notary]

NOTARY PUBLIC

My commission expires: Aug 22, 2011.

EXHIBIT 8

EXHIBIT 8

FENNEMORE CRAIG, P.C.

Suite 1400 Bank of America Plaza
300 South Fourth Street
Las Vegas, Nevada 89101
(702) 692-8000

John Randall Jefferies
Direct Phone: (602) 916-5313
Direct Fax: (602) 916-5513
rjefferi@fclaw.com

Law Offices
Phoenix (602) 916-5000
Tucson (520) 879-6800
Nogales (520) 281-3480
Las Vegas (702) 692-8000
Denver (303) 291-3200

October 2, 2008

BY HAND DELIVERY

Ms. Kathleen C. Rainey
Manager, Purchasing & Contracts
City of Las Vegas
City Hall, 1st Floor
400 Stewart Avenue
Las Vegas, NV 89101-2986

Re: City of Las Vegas Museum Phase 3 – Rehabilitation
Bid No. 08.15341.04-LED
Bid Protest of APCO Construction

Dear Ms. Rainey:

This law firm represents APCO Construction ("APCO") and has been authorized to submit this formal protest to the proposed award of the above-referenced contract to Flagship Construction, LLC ("Flagship"). Flagship's bid listed two inadequately and improperly licensed subcontractors on its 5% and 1% subcontractor lists, creating an opportunity for Flagship to illegally shop the bids for those particular scopes of work. That provides Flagship with an unwarranted and damaging competitive advantage over APCO and other bidders. As a result of this deficiency, Flagship's bid must be deemed non-responsive to the solicitation requirements, and the City should therefore award this contract to APCO as the lowest responsive and responsible bidder. To do otherwise would set a dangerous precedent that will have long term impacts upon the integrity of the City's' procurement program.

The primary defects in Flagship's bid arise out of its failure to comply with both the anti-bid shopping policies underlying N.R.S. §338.141[1] and the Instructions to Bidders ("ITB") by listing two inadequately licensed subcontractors. With regard to this statute, the Nevada legislature commented:

> [The legislature] finds and declares that it is the policy of this state to ensure that the public receives the full benefits for fair competition among contractors and subcontractors in public works and has therefore

[1] N.R.S. § 338.141 requires, *inter alia*, bidders to provide the 5% and 1% subcontractor lists.

> enacted [N.R.S. 338.141] to limit the practice of shopping for bids for the construction, alteration and repair of public improvements.[2]

Moreover, the Federal District Court of Nevada confirmed that N.R.S. §338.141 was enacted to prevent "the evil of bid shopping" and to "limit the practice of shopping for bids."[3] And an Associated General Contractors of America representative testified before the Nevada legislature "that bid shopping is not a practice the state wants as part of public works projects. ... [T]he construction industry believes bid shopping gives an unfair advantage to those involved [i.e. general contractors who shop bids and subcontractors who peddle bids], is unethical, and is adamantly opposed to the practice."[4] "The purpose of bidding is to secure competition, save public funds, and to guard against favoritism, improvidence and corruption."[5] As Gulf Oil Corp. v. Clark County points out, the structure of the bidding process exists to prevent even the appearance of such impropriety.[6]

Similarly, the ITB for this project contains specific instructions aimed, in part, at preventing bid shopping by requiring prime contractors to do the proper due diligence to confirm the proper licensure and capabilities of the listed subcontractors. For example, section 13.03(f) requires compliance with these respective subcontractor lists as a prerequisite to a finding of responsiveness and proscribes "circumventing the Subcontractor list Requirements by disingenuous issuance of contractors or purchase orders that avoid such listing, whether these acts and omissions are intentional or otherwise."[7] The ITB further mandates compliance by the bidder and subcontractors with the licensing requirements of Nevada Revised Statutes "during the bidding phase and ... through the completion of the project."[8]

Evaluating Flagship's bid in conjunction with these anti-bid shopping prohibitions confirms that Flagship's bid was non-responsive and should be rejected. To do otherwise would allow bidders to pick and choose ITB requirements to achieve an unwarranted competitive advantage. For example,

---

[2] Act of July 12, 1993, ch 514, Section 1, 1993 Nev. Stat. 2130 (codified in part at Nev. Rev. Stat. Ann. Section 338.141 (Michie 1994)).

[3] Clark Pacific v. Krump Constr. Inc., 942 F.Supp. 1324, 1341, 1339 (D.Nev. 1996)("Because it was the apparent purpose of the Nevada legislature in enacting S.B. 474 to prevent bid-shopping in public works contracts, the court must read [N.R.S. 338.141] to give effect to that purpose").

[4] Id. (citing Hearings on S.B. 474 before the Comm. On Gov't Affairs, 67th Nevada Legis. Sess. (1993)).

[5] Gulf Oil Corp. v. Clark County, 94 Nev. 116, 118, 575 P.2d 1332, 1333 (1978).

[6] Id.

[7] ITB § 13.03(f) reads: "As a pre-requisite to the award of the Contract, and in addition to the determination that the Bidder is responsible, the lowest Bidder or Best Bidder, as the case may be, must be a responsive Bidder as determined by the Owner. In determining whether the Bidder is responsive, any one or more of the following may be considered: ... Failure to complete and submit the Subcontractor Listings as required by ITB 5.04 and ITB 6.01, or circumventing the Subcontractor List requirements by disingenuous issuance of contracts or purchase orders that avoid such listing, whether these acts and omission are intentional or otherwise."

[8] ITB 10.

on Attachment 3, Flagship lists Kitson Specialty Contracting, LLC ("Kitson") for bid specification 040120 – Masonry Rehabilitation.[9] The specifications for this scope require "maintenance of unit masonry consisting of brick and terra cotta clay masonry rehabilitation" and "replicating extant marble radiator covers."[10] Kitson's license number is 0040097, as noted on the 1% subcontractor list,[11] and is classified as a C-15D.[12] Under its license, Kitson is only permitted to perform "waterproofing" including "the application of solutions of rubber, latex, asphalt, pitch, tar and other materials to surfaces to prevent water in any form from penetrating surfaces."[13] Given the nature of work at issue on this project for this scope of work, the applicable subcontractor must possess a C-18 Masonry license.[14] Because Kitson is inadequately licensed, it cannot perform the work designated by Flagship on Attachments 3 and 8. Incidentally, APCO received a price quotation from Kitson to perform the masonry rehabilitation work. Upon learning that Kitson was improperly licensed, however, APCO removed them from its bid because of the licensing limitations[15] and listed instead a properly licensed subcontractor – Henderson Masonry and its C-18 masonry license – for this scope of work.[16]

Similarly, Flagship's 5% subcontractor list includes Evergreene Painting Studios, Inc. ("Evergreene") for bid section 011000 – Conservator.[17] On the 1% subcontractor list, Flagship lists Evergreene with license number 0054721 to perform "conservator, plaster & painting" work.[18] Per the specifications, that work requires three separate license classifications to perform the following work: (1) masonry restoration,[19] (2) plastering, and (3) restoration painting. Evergreene only has C4A and C4B licenses.[20] Under its licenses, Evergreene could only properly perform the third of the three required scopes of work, yet Flagship listed Evergreene for all three. Flagship further failed to list any properly licensed subcontractors for the other necessary scopes of work, even though it was required to

---

[9] A copy of Flagship's Bid's Attachment 3 is attached as Exhibit 1.
[10] Specifications Section 040120 – Masonry Rehabilitation, Part 1.2(A).
[11] A copy of Flagship's Bid's Attachment 8 is attached as Exhibit 2.
[12] A printout of Kitson's license classification is attached as Exhibit 3.
[13] N.R.S. 624.320(2)(d).
[14] The description under a C-18 license: "The Board will grant to qualified applicants a license in the specialty of masonry. The Board designates such a license as a "classification C-18" license. A person who holds a classification C-18 license may select, cut and lay brick, other baked clay products, rough cut and dressed stone, artificial stone, precast blocks and structural glass brick or block at random or in courses, with or without mortar. He may not apply tile to existing surfaces." See N.R.S. 624.350.
[15] See APCO's Attachment 3, where Kitson is properly crossed out with initials, attached as Exhibit 4.
[16] A printout of Henderson Masonry's license classification is attached as Exhibit 5.
[17] See Exhibit 1.
[18] See Exhibit 2.
[19] And interestingly, Flagship listed improperly licensed Kitson to perform the work that improperly licensed Evergreene was to supervise.
[20] A printout of Evergreene's license classification is attached as Exhibit 6. Under a C-4(a) license, Evergreene may: "Apply any type of paint, varnish, shellac, stain, protective coatings and wax." Under a C-4(b) license, Evergreene may: "Attach papers, fabrics and plastics to the surfaces of buildings and their appurtenances."

do so per the ITB. So, since the "plastering" scope of work on this project requires a C-17B license, and since Evergreene would be unable to complete the plastering scope of work with its licenses, Flagship is in a position to illegally shop its bid for this scope of work.[21]

Conversely, APCO's bid lists Henderson Masonry, a properly licensed subcontractor, to perform the conservator scope. APCO further listed itself for the plastering work,[22] and Evergreene solely for the restoration painting. Significantly, Flagship did not list itself as self-performing any scope of work on this project.

Flagship's inclusion of these inadequately licensed subcontractors provides an opportunity for Flagship to now shop this bid after opening, in direct contravention of Nevada law and the ITB itself. As things stand, Flagship enjoys a competitive advantage and can use its purported low bidder position to obtain more favorable estimates from appropriately licensed subcontractors and thereby increase its profits, an advantage not provided to those bidders that properly complied with the ITB. The City should not condone Flagship's attempts to circumvent the licensing and listing requirements. The 5% and 1% subcontractor lists exist, in part, to prevent exactly what Flagship is in a position to do. And as the ITB itself notes, it does not matter whether Flagship's actions were intentional or otherwise – it violated the strict bid rules, rendering its bid non-responsive.

In addition to these deficiencies concerning Flagship's listing of inadequately licensed subcontractors, Flagship's bid contains yet another problem. On Attachment 6, the list of completed projects, Flagship claims to have performed work "conforming with the US Secretary of the Interior Standards for Rehabilitation similar to the work require by the Owner."[23] However, reviewing Flagship's attached description of the project demonstrates that the listed project did not actually conform to the Department of the Interior Standards as Flagship incorrectly claimed. This error is yet another reason why Flagship's bid should be deemed non-responsive.

This requirement to include properly licensed subcontractors on the 5% and 1% subcontractor lists is not a minor irregularity, and it should be rigidly enforced. In fact, APCO faced a similar concern and had a bid rejected on a project with the State of Nevada Public Works Board for similar issues. In a July 5, 2005 letter, the State described the dangerous precedent that such bid irregularities hold for procurement projects:

---

[21] The description for a C-17(b) license is: "PLASTERING (subclassification C-17b): The coating of surfaces with a plaster, made of a mixture of such materials as sand, cement, quicklime, hydrated lime and water, and the installation of lath or other base for the plaster." N.R.S. 624-340(2)(b).
[22] APCO further listed itself to self-perform rough carpentry and asbestos abatement.
[23] See Flagship's Attachment 6, included here as Exhibit 7.

> "Contractors submitting bids must be required to take responsibility for properly submitting bid documents. The failure to list subcontractors, subcontractor with adequate license limits and proper licenses does not indicate to me that APCO fulfilled such a responsibility. The SPWB will not set a policy that allows a prime contractor to list subcontractors and subcontractor information under NRS 338.141(1)(b) and possibly create a system that encourages bid shopping. To do so would create a system whereby bid shopping could occur and place one prime contractor in a position of unfair advantage over another."[24]

As a result of these deficiencies in Flagship's submission, which are a direct violation of both the solicitation requirements and Nevada law, APCO requests that the City immediately reject Flagship's bid for this project as being non-responsive and award the contract to APCO as the lowest responsible and responsive bidder. Flagship's submission is deficient and incomplete, and the City cannot legally award the contract to Flagship.

Sincerely,

FENNEMORE CRAIG, P.C.

John Randall Jefferies
Christopher H. Byrd

JRJ/wds
Enclosures

cc: Mr. Randy Nickerl, APCO Construction

2114913

[24] See July 5, 2005 letter from Daniel K. O'Brien, P.E. of the State of Nevada Public Works Board, attached as Exhibit 8.

EXHIBIT 9

EXHIBIT 9

KUMMER KAEMPFER BONNER RENSHAW & FERRARIO

ATTORNEYS AT LAW

LAS VEGAS OFFICE

WILLIAM J. WRAY
wwray@kkbrf.com
702.693.4254

LAS VEGAS OFFICE
3800 Howard Hughes Parkway
Seventh Floor
Las Vegas, NV 89169
Tel: 702.792.7000
Fax: 702.796.7181

RENO OFFICE
5585 Kietzke Lane
Reno, NV 89511
Tel: 775.852.3900
Fax: 775.852.3982

CARSON CITY OFFICE
510 W. Fourth Street
Carson City, NV 89703
Tel: 775.884.8300
Fax: 775.882.0257

October 9, 2008

Via Fax (702) 464-2578 and Regular Mail
Ms. Kathleen C. Rainey
Manager of Purchasing and Contracts
City of Las Vegas
400 Stewart Avenue
Las Vegas, Nevada 89101

Re: Response to Bid Protest of APCO Construction
Project: Las Vegas Museum Phase 3 – Rehabilitation
Bid No. 08.15341.04-LED
Our Client/Successful Bidder: Flagship Construction Company, LLC
Flagship's Construction Company, LLC's Supporting Bid Documents

Dear Ms. Rainey:

As you know from prior correspondence, our office represents Flagship Construction Company, LLC ("Flagship"), in connection with the Bid Protest filed by APCO Construction Company.

This letter is in follow-up to my letter sent to you yesterday, setting forth Flagship's analysis and response to the Bid Protest. This letter encloses copies of additional documents utilized or generated by Flagship in preparation of its bid as it relates to the trade contractor work in question as requested in your letter of October 7, 2008. The enclosed documents include bid documents and correspondence submitted by various prospective subcontractors for the trade work in question, and Flagship's sample spreadsheets and bid analysis utilized in analyzing scopes of work, general project requirements and determining which subcontractors to use and list in connection with the subject scopes of trade work. If you cannot read the faxed copies of the spreadsheets, I can e-mail PDF copies which may be easier to read. Also, it should be noted that other general drywall bidders (other than the one listed by Flagship) excluded the ornamental plaster scope of work from their bids.

The enclosed documents contain confidential, trade secret and proprietary information. The documents are being provided for review and consideration by the City of Las Vegas and its personnel only, in connection with the subject Bid Protest. The documents are not to be shared, published, distributed or otherwise disclosed to others, particularly competitors, subcontractors or potential subcontractors of Flagship, inasmuch as the same would be a breach of trade secret information and would give others an unfair competitive advantage.

Please contact the undersigned if you have any questions or comments, or if you require any additional information or documents.

Very truly yours,

KUMMER KAEMPFER BONNER
RENSHAW & FERRARIO

William J. Wray, Esq.

WJW/rh
Enclosure as stated.

cc: Nancy Paolino (via fax)

Project Name: LAS VEGAS MUSEUM PHASE 3
Estimate Number:
Estimator:

Division of Work: 09250
DRYWALL

Y = Indicates the item is INCLUDED (Type "Y" into the cell)
N = Indicates the item is EXCLUDED (Type "N" into the cell)
Q = Indicates the item is in QUESTION (Type "Q" into the cell)
? = Indicates the Value for the item is a PECC PLUG (Type "?" into the cell)
$ = Indicates the Value for the item is a OTHER SUB PLUG (Type "$" into the cell)

Division of Work: 09250 DRYWALL
Bid Date: 07/5/08 - 1:30 PM

FSCC

Estimator:	
Telephone#	
Contact	
Phone Number	
Scope of Work	Dry Wall
MISCELLANEOUS SCOPE ITEMS	
Notice and Memo As Required	
All Trips For Plan & Specifications - NO BOOK NOTE	
Field Measure Any Areas Not In your Estimates	
Layout	
Supervision Work with Any Sub Contractors	
Comply with Local Safety Requirements	
Comply with Safety Requirements	
Comply with OSHA Regulations for Scaffolds & Equipment	
Temp Toilet Facilities	
Project Insurance	
Mobilize - Demobilize - Permits & Bonds of Project	
Purchase of All Tools and Equipment - Field Personnel Equipment	
Permit Inspection	
Consultants	
Shop Drawings & Submittals	
As Built Set of Plans	
Material Storage Containers	
Work Area Cleanup	
Workers Comp & General Liability Insurance Coverage's	
MISCELLANEOUS SCOPE ITEMS TOTAL	
This is a Prevailing Wage Project	
Base Bid	
DRYWALL & STUD & STUDS	
LEED PROJECT REQUIREMENTS	
CREDIT MR 4.1 AND 4.2 FOR CUSTOMIZED MTL FRAMING & SUPPLIERS	
CREDIT EQ 4.1 FOR GYPSUM BOARD	
CREDIT MR 5.1 AND 5.2 FOR GYPSUM BOARD	
WALL TYPE A PER AE-600	AE-600
ELEVATOR SHAFT WALLS	AE-618
ATTIC & HIGH & FLAT FURR FRAMING	AE-811
WALL IN TEL FRAMING & DRYWALL BASEMENT PARAPET & DRYWALL INCLUDING ALL AT OFFICE BUILDING IN BASE BID PER ADD #11	AE-810 & AE-1001 & AE-1002
PENTHOUSE WALLS W/ 24" GLASS MATT GYP. / LAYERS EA SIDE	1, 2, & WAL-300
CEILING GYP BD GYP & FIRST PARAPET - PAINTED TO MATCH DOWN	
LOWERING TRACKWORK	WAL-300
1ST FLOOR FRAMING & DRYWALL	AE-100
LOADING DOOR FAN ENCLOSURE 8" MTL STUDS @ 16" OC W/ 24" GYP ON THE INT SIDE GLASS MATT ON THE EXT	1, 5, & WAL-301
2ND FLOOR FRAMING & DRYWALL	AE-100
3RD FLOOR FRAMING & DRYWALL	AE-104
ATTIC FRAMING & DRYWALL	AE-105
ROOF PARAPET 8" STUDS @ 16" OC W/ GLASS MAT GYP BOARD	AE-108 & WAL-301
COLUMN ENCLOSURE	AE-114
HARD LID CLOSE & SOFFITS	
ACOUSTICAL CEILINGS	
LEED PROJECT REQUIREMENTS	
CREDIT EQ 8.2	
ARMSTRONG LAY-IN ACOUSTICAL MEMBRANE WHITE	
ARMSTRONG VINYL FACED CLEANROOM ACOUSTICAL WHITE	
ACOUSTIC Fiberglass INSULATION	
2" THICK - FLAT BLACK FACING WITH BLACK FIBERS	
ARCHITECTURAL CONCRETE SELECT BOARD BLACK ABOVE DECK BOARD	
ATTIC SCUTTLE PER ARCHITECTURAL DRAWINGS & SPECIFICATIONS	
UNIT FLOOR ROOMS	
1ST LEVEL - 101, 102, 103, 104, 105, 106, 107, 108, 109	
SECOND FLOOR ROOMS	
2ND	
PAINTING	
STEEL GRATING @ EXT STAIRS	AB-100 & STEEL PIPE
OBSERVATION SCREEN WALL - 2" SMOOTH FACE - PAINTED	AB-100
TRASH ENCLOSURE TRELLIS	WAB-401
DAILY UNIT RACKS	WAB-401
TRASH ENCLOSURE GATE - TO MATCH 6" 14 GA SOLID PANEL - PAINTED	WAB-401
CLEAN & REFINISH EXIST WALL / DOOR - BY PAINTING CONSERVATOR	AM # 29 AE-101
PAINT FACE OF EXIST CMU RETAINING WALLS - DOWN TOWARDS "CRACKSAND"	AM # 48 AB-102
REFINISH EXISTING BURGLAR BARS @ WINDOWS (10 EA)	AM # 13 AD-201
CLEAN / PAINT ENTRANCE BRASS HANDRAILS	AM # 19 AD-101
REFINISH EXISTING QUAD RAILS @ AREA WELLS	AM #37 AE-102
REFINISH EXISTING AREA WELL GRATES	AM #38 AD-102
EXT @ PENTHOUSE	AE-206
STAIRS & HANDRAILS	AE-413
EXIST MTL WALL INSULATION	AM # 38 ELEV DWGS
EXIST DOORS & FRAMES	AM # 38 ELEV DWGS
EXIST ROOF DRAINS / CANOPIES	AM # 30 ELEV DWGS
BASE BID	$0.00
SUBCONTRACTOR BOND	$0.00
ALTERNATES - INCLUDED IN BASE BID PER ADDENDUM # 1	
ADDENDA ACKNOWLEDGED	

Project Name: LAS VEGAS MUSEUM PHASE 3
Estimate Number:
Estimator:

Division of Work: 09211 PLASTERING

Y	Indicates this item is INCLUDED (Type "Y" into this cell)
N	Indicates this item is EXCLUDED (Type "N" into this cell)
Q	Indicates this item is in QUESTION (Type "Q" into this cell)
F	Indicates the Value for this item is a FSCC PLUG (Type "F" into this cell)
S	Indicates the Value for this item is a OTHER SUB PLUG (Type "S" into this cell)

Division of Work: 09211 PLASTERING
Bid Date: 8/25/08 - 1:30 PM

Subcontractor ——>
Contact ——>
Phone Number ——>

Scope of Work	Dwg Detail									
MISCELLANEOUS SCOPE ITEMS										
Multiple Mobilizations As Required										
ALL Work Per Plans & Specifications - NO DEVIATIONS										
Field Measure ALL Areas Prior to any Fabrication										
Layout										
Coordinate Work with ALL Sub Contractors										
Comply with FSCC Safety Requirements										
Comply with OSHA Safety Requirements										
Comply with FSCC Construction Schedule & Milestones										
Space Tax Included										
Freight Included										
Unloading - Unloading - Handling & Staging of Product										
Removal of All Trash and Placement in FSCC provided Dumpster										
Permits Included										
Inspections										
Shop Drawings & Submittals										
Pre-Qualified with FSCC										
Liquated Damage Coverage										
BOND Rate IF APPLICABLE										
Workers Comp & General Liability Insurance Coverage's										
MISCELLANEOUS SCOPE ITEMS TOTAL										
This is a Prevailing Wage Project										
Base Bid										
LEED PROJECT REQUIREMENTS										
PATCH & REPAIR										
PLASTER FINISH @ INFILLS										
PATCH @ REMOVED WALLS										
GYPSUM PLASTERING										
GYPSUM VENEER PLASTERING										
SEAMLESS ACOUSTIC CLG COATING										
CLG @ HISTORIC COURTROOM & 3RD FLOOR CORRIDOR										
MFGS QUALIFICATIONS - MIN. OF 5 YEARS	098316-1 / 1.4A									
INSTALLERS QUALIFICATIONS - MIN. OF 5 YEARS, SIMILAR IN COMPLEXITY - MFG MUST CERTIFY INSTALLER BEFORE BIDDING, INSTALLING, & MAINTAINING THE *PRODUCT SYSTEM*	098316-1 / 1.4B									
SOUND SOLUTIONS CONSTRUCTION SERVICES - BASWAphon CLASSIC 40mm	098316-1 / 2.1A									
BASE BID				$0.00		$0.00		$0.00		$0.00		$0.00
SUBCONTRACTOR BOND										
ALTERNATES - INCLUDED IN BASE BID PER ADDENDUM # 1										
ADDENDA ACKNOWLEDGED										

Project Name: LAS VEGAS MUSEUM PHASE 3
Estimate Number:
Estimator:

Division of Work: 04000 CONSERVATOR

Y	Indicates this item is INCLUDED (Type "Y" into this cell)
N	Indicates this item is EXCLUDED (Type "N" into this cell)
Q	Indicates this item is in QUESTION (Type "Q" into this cell)
F	Indicates the Value for this item is a FSCC PLUG (Type "F" into this cell)
S	Indicates the Value for this item is a OTHER SUB PLUG (Type "S" into this cell)

Division of Work: 04000 CONSERVATOR
Bid Date: 8/25/08 - 1:30 PM

Subcontractor Checklist										
Subcontractor ———										
Contact ———										
Phone Number ———										
Scope of Work	Dwg. Detail									
MISCELLANEOUS SCOPE ITEMS										
Multiple Mobilizations As Required										
ALL Work Per Plans & Specifications - NO DEVIATIONS										
Field Measure ALL Areas Prior to any Fabrication										
Layout										
Coordinate Work with ALL Sub Contractors										
Comply with FSCC Safety Requirements										
Comply with OSHA Safety Requirements										
Comply with FSCC Construction Schedule & Milestones										
Sales Tax Included										
Freight included										
Unloading - Unloading - Handling & Staging of Product										
Removal of All Trash and Debris in FSCC Provided Dumpster										
Permits Included										
Inspections										
Shop Drawings & Submittals										
Pre-Qualified with FSCC										
Liquid Damage Coverage										
BOND Rate IF APPLICABLE										
Workers Comp & General Liability Insurance Coverage's										
MISCELLANEOUS SCOPE ITEMS TOTAL		$0.00		$0.00		$0.00		$0.00		$0.00
This is a Prevailing Wage Project										
Base Bid										
LEED PROJECT REQUIREMENTS										
EXTERIOR MASONRY / STONE / CONCRETE										
MASONRY RE-POINTING										
MASONRY REPLACEMENT										
TERRA COTTA CRACK REPAIR										
TERRA COTTA PATCH REPAIR										
TERRA COTTA REPLICATIONS										
LIMESTONE REPOINTING										
CONCRETE REPAIR										
REPOINTING OF JOINTS @ GRANITE STAIRS										
GRANITE STAIR PATCHING										
CLEANING OF EXT SURFACES										
CAULKING										
BASE BID		$0.00		$0.00		$0.00		$0.00		$0.00
SUBCONTRACTOR BOND										
ALTERNATES - INCLUDED IN BASE BID PER ADDENDUM # 1										
ADDENDA ACKNOWLEDGED										

EVERGREENE
PAINTING STUDIOS, INC.

September 25, 2008

Flagship Construction Co., LLC
Pierre Vedel
4052 Dean Martin Drive
Las Vegas, NV 89103

Phone: 702.739.1722
Fax: 702.739.1724

Re: Las Vegas Museum, Las Vegas, NV

Dear Pierre,

Please find herein our scope of work for the restoration work at the Las Vegas Museum. We are pricing the conservation work which consists of plaster restoration, historic decorative paint conservation and replication, and limited restoration of the exterior terra cotta, as per the plans and specs, including Addendums 1 and 2. We are prequalified for conservation work, and licensed in the state of Nevada.

Our scope of work for the Conservation is summed up as follows:

Plaster Restoration: Includes all flat and ornamental repair and replication as per the specs and drawings. We have included veneer plaster on GWB. We have not included any GWB. We have included an allowance of 240 lin. feet of channeling and patching. For additional patching of channeling we are providing a unit price of $35/ ft for flat repairs.
Ornamental Paint: Includes the conservation of the existing historic finishes, the paint removal in the lobby and court room, and the replication of the historic wood graining finish. Our price for the Conservation work, including all plaster and the paint conservation is **$845,500.** This price includes a P&P Bond. This price does not include taxes, if applicable.

CONSERVATOR

We have *not* included work to the exterior canopy. Our pricing for masonry or stone is limited to the following.

Masonry: Includes the filling of cracks and losses at the exterior terra cotta only. Our price does not include pointing or cleaning. Our price for this scope of work is ~~$28,800~~. This price does not include scaffolding.

USE HENDERSON

We are also proving a general painting price from our associated company Continental Painting, a minority contractor who is licensed in the state of Nevada. Continental's price includes all the general painting outside the conservators work. Their price is **$415,592.** Their scope includes:

Prime and finish	Gypsum board walls
	Gypsum board soffits
	Gypsum board ceilings
	Plaster walls
	Plaster ceilings
Prime and epoxy	Walls per schedule
Paint	Hollow metal doors
	Hollow metal door frames
	Stairwells
	Exposed ceilings
	Mechanicals same color and sheen with adjacent ceiling
High perfor. paint	Loading dock canopy
	Bike racks
	Window and area well grates
	Exterior side of new and refurbished windows
	Existing retaining walls at exterior
	Metal siding at penthouse
	Metal mesh roof at refuse area
Strip and refinish	Railing in stairwell #1 – Chemical stripping included
Blockfill and finish	New CMU at exterior refuse and mechanical yard walls
Refurbish	Existing millwork base, chair rail and picture rail
	Existing wood doors, frames and sidelights
Stain, seal & varnish	Existing millwork base, chair rail and picture rail
	Existing wood doors, frames and sidelights
	Interior side of new and refurbished windows
	New millwork to match refinished millwork
	New wood doors and frames to match refurbished millwork
Furnish	Performance and payment bond

Qualifications:

- All work to be completed on regular time prior to May 1, 2010.
- Touch-up of damage due to other trades is not included.
- Stripping and repainting of exterior handrails will be completed by others.
- No work included to existing windows, cleaning will be completed by others.
- All conservation painting will be completed by others.
- Refurbishing of wood paneling at 1st floor will be completed by others.

If you have any questions, or need any further clarifications, please don't hesitate to call.

Sincerely,

Terry VanderWell
EverGreene Painting Studios, Inc.

cc: Jeff Greene, EPS

EVERGREENE
PAINTING STUDIOS, INC.

FACSIMILE TRANSMITTAL SHEET

TO:	FROM:
Pierre Vedel	Terry VanderWell
COMPANY:	**DATE:**
Flagship Construction Co, LLC	8/25/08
FAX NUMBER:	**TOTAL NUMBER OF PAGES (INCLUDING COVER)**
702-739-1724	3
PHONE NUMBER:	**RE:**
702-739-1722	Las Vegas Bid

☐ URGENT ☐ FOR REVIEW ☐ PLEASE REPLY

NOTES/COMMENTS:

This message contains information from EverGreene Painting Studios, Inc. that may be confidential and is intended solely for the use of the addressee. If you are not the addressee, your disclosure, copying, or use of the contents of this message is prohibited. If this message has been sent to you in error, please notify the sender by return phone or fax and discard this message appropriately.

New York
450 West 31st Street, 7th Floor, New York, NY 10001-4608
Tel: (212) 244-2800 Fax: (212) 244-6204
www.evergreene.com

Chicago
711 South Boulevard, Suite 7, Oak Park, IL 60302-2921
Tel: (708) 358-1642 Fax: (708) 358-1656
info@evergreene.com

EVERGREENE
PAINTING STUDIOS, INC.

September 25, 2008

Flagship Construction Co., LLC
Pierre Vedel
4052 Dean Martin Drive
Las Vegas, NV 89103

Phone: 702.739.1722
Fax: 702.739.1724

Re: Las Vegas Museum, Las Vegas, NV

Dear Pierre,

Please find herein our scope of work for the restoration work at the Las Vegas Museum. We are pricing the conservation work which consists of plaster restoration, historic decorative paint conservation and replication, and limited restoration of the exterior terra cotta, as per the plans and specs, including Addendums 1 and 2. We are prequalified for conservation work, and licensed in the state of Nevada.

Our scope of work for the Conservation is summed up as follows:

Plaster Restoration: Includes all flat and ornamental repair and replication as per the specs and drawings. We have included veneer plaster on GWB. We have not included any GWB. We have included an allowance of 240 lin. feet of channeling and patching. For additional patching of channeling we are providing a unit price of $35/ ft for flat repairs.
Ornamental Paint: Includes the conservation of the existing historic finishes, the paint removal in the lobby and court room, and the replication of the historic finishes, as identified in the specs, including in the corridors. Also included is the replication of the historic wood graining finish. Our price for the Conservation work, including all plaster and the paint conservation is **$845,500.** This price includes a P&P Bond. This price does not include taxes, if applicable.

We have *not* included work to the exterior canopy. Our pricing for masonry or stone is limited to the following.

Masonry: Includes the filling of cracks and losses at the exterior terra cotta only. Our price does not include pointing or cleaning. Our price for this scope of work is **$ 28,800.** This price does not include scaffolding.

We are also proving a general painting price from our associated company Continental Painting, a minority contractor who is licensed in the state of Nevada. Continental's price includes all the general painting outside the conservators work. Their price is **$415,592.** Their scope includes:

Prime and finish	Gypsum board walls
	Gypsum board soffits
	Gypsum board ceilings
	Plaster walls
	Plaster ceilings
Prime and epoxy	Walls per schedule
Paint	Hollow metal doors
	Hollow metal door frames
	Stairwells
	Exposed ceilings
	Mechanicals same color and sheen with adjacent ceiling
High perfor. paint	Loading dock canopy
	Bike racks
	Window and area well grates
	Exterior side of new and refurbished windows
	Existing retaining walls at exterior
	Metal siding at penthouse
	Metal mesh roof at refuse area
Strip and refinish	Railing in stairwell #1 – Chemical stripping included
Blockfill and finish	New CMU at exterior refuse and mechanical yard walls
Refurbish	Existing millwork base, chair rail and picture rail
	Existing wood doors, frames and sidelights
Stain, seal & varnish	Existing millwork base, chair rail and picture rail
	Existing wood doors, frames and sidelights
	Interior side of new and refurbished windows
	New millwork to match refinished millwork
	New wood doors and frames to match refurbished millwork
Furnish	Performance and payment bond

Qualifications:

- All work to be completed on regular time prior to May 1, 2010.
- Touch-up of damage due to other trades is not included.
- Stripping and repainting of exterior handrails will be completed by others.
- No work included to existing windows, cleaning will be completed by others.
- All conservation painting will be completed by others.
- Refurbishing of wood paneling at 1st floor will be completed by others.

If you have any questions, or need any further clarifications, please don't hesitate to call.

Sincerely,

Terry VanderWell
EverGreene Painting Studios, Inc.

cc: Jeff Greene, EPS

EVERGREENE
PAINTING STUDIOS, INC.

September 23, 2008

Flagship Construction Co., LLC
Pierre Vedel
4052 Dean Martin Drive
Las Vegas, NV 89103

Phone: 702.739.1722
Fax: 702.739.1724

Re: Las Vegas Museum, Las Vegas, NV

Dear Pierre,

Please find herein our scope of work for the restoration work at the Las Vegas Museum. We are pricing the conservation work which consists of plaster restoration, historic decorative paint conservation and replication, and the restoration of the exterior terra cotta. Our scope of work for the Conservation is summed up as follows:

Plaster Restoration: Includes all flat and ornamental repair and replication as per the specs and drawings. We have included veneer plaster on GWB. We have not included any GWB. We have included an allowance of 240 lin. feet of channeling and patching. For additional patching of channeling we are providing a unit price of $35/ ft for flat repairs.
Ornamental Paint: Includes the conservation of the existing historic finishes, the paint removal in the lobby and court room, and the replication of the historic finishes, as identified in the specs, including in the corridors. Also included is the replication of the historic wood graining finish.
Masonry: Includes the filling of cracks and losses at the exterior terra cotta. Our price does not include pointing or cleaning.

We are also proving a general painting price as follows.

Prime and finish	Gypsum board walls
	Gypsum board soffits
	Gypsum board ceilings
	Plaster walls
	Plaster ceilings
Paint	Hollow metal doors
	Hollow metal door frames
	Loading dock canopy
	Bike racks
	Window and area well grates
	Exterior side of new windows

Blockfill and finish	New CMU at exterior refuse and mechanical yard walls
Strip	Existing millwork
	Existing wood doors and frames
Stain, seal & varnish	Existing millwork
	Existing wood doors and frames
	Interior side of new windows
	New millwork to match refinished millwork
	New wood doors and frames to match refinished millwork

Qualifications:
All work to be completed on regular time prior to May 1, 2010.
Touch-up of damage due to other trades is not included.
No work included to existing retaining wall as shown on sheet AS-102 note #46.
Stripping and repainting of exterior handrails will be completed by others.
No work included to existing windows.

If you have any questions, or need any further clarifications, please don't hesitate to call.

Sincerely,

Terry VanderWell
EverGreene Painting Studios, Inc.

EVERGREENE
PAINTING STUDIOS, INC.

FACSIMILE TRANSMITTAL SHEET

TO:	FROM:
Pierre Vedel	Terry VanderWell
COMPANY:	**DATE:**
Flagship Construction Co, LLC	8/24/08
FAX NUMBER:	**TOTAL NUMBER OF PAGES (INCLUDING COVER)**
702-739-1724	3
PHONE NUMBER:	**RE:**
702-739-1722	Las Vegas Bid

☐ URGENT ☐ FOR REVIEW ☐ PLEASE REPLY

NOTES/COMMENTS:

This message contains information from EverGreene Painting Studios, Inc. that may be confidential and is intended solely for the use of the addressee. If you are not the addressee, your disclosure, copying, or use of the contents of this message is prohibited. If this message has been sent to you in error, please notify the sender by return phone or fax and discard this message appropriately.

New York
450 West 31st Street, 7th Floor, New York, NY 10001-4608
Tel: (212) 244-2800 Fax: (212) 244-6204

Chicago
711 South Boulevard, Suite 7, Oak Park, IL 60302-2921
Tel: (708) 358-1642 Fax: (708) 358-1656

www.evergreene.com
info@evergreene.com

MARK SAUER CONSTRUCTION

Corporate Office
19712 Temescal Canyon Road
Corona, CA 92881-5656

Executive Office
3696 Park Hill Dr.
Corona, CA 92881-8438

Mark Sauer Construction, Inc.
Phone: (951) 279-4245
Fax: (951) 279-5917
Website: www.msauer.com
Email: contact@msauer.com
Small Business Cert. # 0035176

Excellence since 1986!
California License # 500572 B Nevada License # 0068157 B

Facsimile

FROM:
Mark Sauer
MSC, Inc.

Date: ~~9/24/08~~ REVISED 9/25/08
 # OF PAGES: 12
REGARDING: Las Vegas Museum Phase 3 Rehabilitation

Attached please find our proposal for the Historic Conservator scope of work on this project. This has also been sent electronically.

Attached:

1. **Proposal doc**	**2 pages**	REVISED
2. **Exhibit "A" Scope of Work**	**3 pages**	
3. **Exhibit "B" Included / Excluded**	**1 page**	
4. **Exhibit "C" Conservator Qualification Questionnaire**	**3 pages**	
5. **Exhibit "D" Bid form schedule of values**	**2 pages**	

Please call with any questions.

Thank You

Mark Sauer
President, MSC, Inc.

* DISREGARD PROPOSAL
FAXED 9/24/08

MARK SAUER CONSTRUCTION

Corporate Office
19712 Temescal Canyon Road
Corona, CA 92881-5656

Executive Office
3696 Park Hill Dr.
Corona, CA 92881-8438

Mark Sauer Construction, Inc.
Phone: (951) 279-4245
Fax: (951) 279-5917
Website: www.msauer.com
Email: contact@msauer.com
Small Business Cert. # 0035176

Excellence since 1986!
California License # 500572 B Nevada License # 0068157 B

PROPOSAL

REVISED 9/25/08

Job Name + Location:
Las Vegas Museum Phase 3 Rehabilitation
300 Stewart Ave.
Las Vegas, NV. 89101
Bid # 08-15341.04-LED
PWP# CL208-461

Mark Sauer Construction, Inc. (MSC) will provide the following:
- **All work reflected in the attached EXHIBIT "A" REVISED**
- **Generally Included and Additionally Specifically Excluded attached EXHIBIT "B" REVISED**
- **Conservator Qualification Questionnaire attached EXHIBIT "C"**
- **Schedule of Values (2 pages) For Bid Form Purpose ONLY attached EXHIBIT "D" REVISED**

Cost of Base Bid: REVISED 9/25/08
One Million One Hundred Ninety Nine Thousand Three Hundred Seventy Seven and 00/xx $1,199,377.00

General Notes:
1) **MSC will provide all necessary labor, materials, and equipment to execute the work described in this proposal and in the plans and specifications provided for this bid.**
2) **This proposal includes only work described herein and no other.**
3) **The Owner is responsible to provide access to each work area.**
4) **The Owner is responsible to provide electrical and water service.**
5) **MSC is not responsible for delays caused by Owner, Architect, Engineer, Managing Agency, Local Building Official, or lender. MSC shall be compensated for all rental costs; labor standing time (minimum cost $125 per day), and administrative costs (minimum cost $125 per day) in the event any project is delayed by others.**
6) **MSC is not responsible and not liable for theft, unlawful entries, or vandalism beyond our control.**
7) **MSC is not responsible for error and omissions by designers, architects, engineers or owners.**
8) **Site to be left broom clean.**

Excluded from this Proposal:
-Unless Otherwise Noted-
1) **Cost of permits, cost of fees, cost of street encroachment permits.**
2) ~~**Cost of Bonds.**~~

3) Cost of testing, handling, abatement of all health hazard materials.
4) Cost of special inspection.
5) Cost of course of construction / fire insurance.
~~6) Movement, handling, or storage of all furniture, books, office equipment, artwork, or any/all personal items not physically attached to the building or structure.~~
~~7) All movement, protection, handling of high-tech or computer equipment is the responsibility of the owner.~~
8) Movement or alteration of any/all concealed pipes, ducts, electrical wiring, fire life systems, and alarm systems.
9) MSC is not responsible for base deficiencies in the building or structure. This includes but not limited to damaged lumber, concealed structural damage, or inferior previous construction.

Terms:
1) This proposal is good for _____30_____ days.
2) This proposal shall be attached to any signed contract and shown as an "Exhibit".
3) Request for Pay to be based on percentage of completion.
4) Payment due a maximum of net 30 days. Late charges will be levied at highest legal level.
5) All Change Orders to be done in writing and a value of profit and overhead paid to MSC.
6) This proposal allows for retention only if applicable. Maximum 10%. All retention due to MSC is payable no more then 35 days following substantial completion of our own work.
7) If any issue is not covered in this document then provisions from the General Conditions of the Contract for Construction, AIA Document A201 1987 edition will be used for interpretation.

Notice to Owner:

"Under the California Mechanics' Lien Law, any contractor, subcontractor, laborer, supplier, or other person or entity who helps to improve your property, but is not paid for his or her work or supplies, has a right to place a lien on your home, land, or property where the work was performed and to sue you in court to obtain payment.

Any question concerning a contractor may be referred to the Registrar, Contractors State License Board, P. O. Box 26000, Sacramento, California. 95826

_____*Mark Sauer*_____Dated____*9/25/08*___REVISED
Mark Sauer, President Mark Sauer Construction, Inc.

_____Dated_____
Accepted

⇒ MSC has received Addendum's 1+2

MARK SAUER CONSTRUCTION

Corporate Office
19712 Temescal Canyon Road
Corona, CA 92881-5656

Executive Office
3696 Park Hill Dr.
Corona, CA 92881-8438

Mark Sauer Construction, Inc.
Phone: (951) 279-4245
Fax: (951) 279-5917
Website: www.msauer.com
Email: contact@msauer.com
Small Business Cert. # 0035176

Excellence since 1986!
California License # 500572 B Nevada License # 0068157 B

Project
Las Vegas Museum Phase 3 Rehabilitation
300 Stewart Ave.
Las Vegas, Nevada 89101

EXHIBIT "A"

9/25/08 REVISED

Scope of Work:
Mark Sauer Construction, Inc. (MSC) proposals is for the Historic Restoration portion of the project. Our bid is consistent with the specifications as a qualified conservator.
The conservator work items excluded are:

1. **All paint, staining, faux paint, etc.**
2. **All flooring.**
3. **All marble.**
4. **All Exterior Masonry Restoration (see double strike through on Key Notes & Spec. Section)**

- **A complete, itemized scope of work has been issued by MSC with our bid.**

Plan pages and specification sections that will be part of the MSC scope of work:

Plan Page & Key Note List:			Specification Sections:
G	000 Reference Only		011000 Reference
G	001 Reference Only		013233
C	1 Reference Only		013300
SF	102 Reference Only		013591
SF	103 Reference Only		014000
SF	104 Reference Only		014339
SF	105 Reference Only		~~266160 Reference Only~~
SF	106 Reference Only		~~040120~~
AE	102 Key Note #'s 27, 30, 42, 63, 71, 77, 78, 80, 83, 98		042000
AE	103 Key Note #'s 63, 64(no paint) 83		050100 Reference Only
AE	104 Key Note #'s 63, 83		061053 Reference Only
AE	105 Key Note #'s N/A		064023
AE	201 Key Note #'s 35, ~~47~~, 76		081433
AE	202 Key Note #'s 22, 24, 36, ~~47~~, 74, ~~77~~		085209
AE	203 Key Note #'s 22, 23, ~~47~~, 50, ~~76~~, 76, ~~77~~		087100 Restoration Portion Only
AE	204 Key Note #'s 22, ~~47~~, 74		088000

~~AE~~	~~305 Reference Only~~		089000
~~AE~~	~~210 Key Note #'s 3, 4, 5, 6, 9, 10, 13, 17, 24~~		092300
~~AE~~	~~211 Key Note #'s 3, 14, 13, 20, 24~~		
~~AE~~	~~212 Key Note #'s 7, 9, 10, 11, 12, 13, 20, 30~~		
~~AE~~	~~213 Key Note #'s 2, 4, 5, 6, 7, 9, 11, 12, 13, 23, 26, 27~~		
~~AE~~	~~214 Reference Only "masonry repairs"~~		
~~AE~~	~~401~~		
AE	402 Key Note #'s Doors Only		
AE	410 Key Note #'s 7, 24, 29, 30, 31, 40, 52(no paint) 66		
AE	411 Key Note #'s 6a, 7, 33, 34, 47, 97		
AE	412 Key Note #'s 29		
AE	420 Key Note #'s 6a, 7, 23, 25, 40, 52(no paint) 82, 83		
AE	421 Key Note #'s 6a, 7, 36, 40, 94		
AE	422 Key Note #'s 6a, 7, 36, 94		
AE	430 Key Note #'s 6a, 6b, 7, 18, 22, 24, 36		
AE	431 Key Note #'s 6a, 6b, 7, 36, 94		
AE	403AL 6b, 7, 8, 63,		
AE	470 Reference Only		
AE	510 Reference Only		
AE	511 Reference Only		
AE	512 Reference Only		
AE	513 Ticket Counter "Complete" (no paint)		
AE	514 Reference Only		
AE	515 Ticket Counter "Complete" (no paint)		
AE	516 Exclude Detail 2-8		
AE	517 Judges Desk "Complete" (no paint)		
AE	518 Reference Only		
~~AE~~	~~520~~		
AE	521 Reference Only		
AE	522 Detail #11 only		

~~AE~~	~~523~~		
~~AE~~	~~630~~		
AE	601 All doors + HDW, casing, trim etc. LESS glass door type "P"		
AE	602 All new, replacement, and restored windows		
AE	603 Reference Only		
AE	604 Reference Only		
AE	605 Reference Only		
AE	702 Key Note #'s 13		
AE	703 Key Note #'s 15, 21		
~~AE~~	~~704~~		
IC	001 Reference Only		

Sincerely,

Mark Sauer
President, MSC, Inc.

MARK SAUER CONSTRUCTION

Corporate Office
19712 Temescal Canyon Road
Corona, CA 92881-5656

Executive Office
3696 Park Hill Dr.
Corona, CA 92881-8438

Mark Sauer Construction, Inc.
Phone: (951) 279-4245
Fax: (951) 279-5917
Website: www.msauer.com
Email: contact@msauer.com
Small Business Cert. # 0035176

Excellence since 1986!
California License # 500572 B Nevada License # 0068157 B

Las Vegas Museum
Phase 3 Rehabilitation

EXHIBIT "B"

9/25/08 REVISED

Generally Included:

- ⇒ All labor, equipment, and materials to accomplish the scope of work provided (unless otherwise stated as "excluded")
- ⇒ Supervision of all our own work
- ⇒ All labor compliance reporting
- ⇒ All shop drawings, submittals and mock-ups for our work.
- ⇒ Daily reports on request.
- ⇒ Copy of weekly safety meetings
- ⇒ Storage containers for our own work.
- ⇒ Pick up and delivery of Owner stored items and deliver to site.

Additionally Specifically Excluded:

General:

1. Time Impact Reports (TIA's) or Primavera schedule reports
2. Water or electrical service
3. Job site toilets or wash stations
4. Demolition
5. Dumpsters or debris removals
6. Scaffold or lift equipment.

Trade / Scope:

1. All Masonry ~~Masonry Cleaning (see spec section 040120 pages 15-18)~~
2. Marble installation, repairs, restoration (see spec section 040120 pages 7-10)
3. All flooring of all types
4. General glass and glazing other then historic window work.
5. Glass wall/door type "P"
6. All work in the basement (other then doors and hardware shown on door schedule page AE 601)
7. Plaster (other then repair or restoration of decorative moldings and historic details)
8. New millwork and counter tops (except for work at the new "ticket counter" see scope)
9. Window treatment
10. General cleaning or cleaning of historic fabric
11. All electronic door devises, card readers etc.
12. All painting, stripping, staining, faux painting, etc.
13. All rough carpentry
14. Structural repairs to the canopy

EXHIBIT "D"
PAGE 2

Las Vegas Museum
Schedule of Values per Addemdum #2

Scope of Work by Mark Sauer Construction, Inc.

REVISED 9/25/08

Line Item	Line Item Description	Base Bid	Description of What is included MSC
1.0	General Requirements	$179,467.00	
1.4	Bonding and Insurance	$16,800.00	
~~4.0~~	~~Masonry~~	~~$0.00~~	~~Exterior Masonry Restoration~~
6.0	Wood and Plastics	$464,908.00	Doors, hardware, Windows, All Wood Trim
9.0	Finishes	$203,368.00	Judge's Desk / Ticket Counter / Mail Boxes / Directory Boards / Safe
13.0	Special Construction	$270,476.00	Conservator's Interior Plaster
32.0	Exterior Improvements	$64,318.00	Conservator's Work On Canopy
	Total	$1,199,337.00	

This schedule does not reflect the actual line item values for MSC. This is provided for the **BID FORM PURPOSE ONLY**

09/25/2008 10:30 9512795917 MARK SAUER CONS PAGE 12/12

09/25/2008

FLAGSHIP CONSTRUCTION

M&H BUILDING SPECIALTIES

Re: **HISTORIC LAS VEGAS MUSEUM PHASE III**

We are pleased to prepare the following estimate per drawings and specs provided by Westlake Reed Leskosky Architects Plans dated 06/26/ We acknowledge Addenda: 1,2....

Scope of Work: *(WE WILL ONLY ACCEPT BASE BID FULL SCOPE)*
BASE BID:

SECTION 054000:	**COLD FORMED METAL FRAMING**	
SECTION 092119:	**GYPSUM BOARD SHAFT WALL ASSEMBLIES**	
SECTION 092216:	**NON-STRUCTURAL METAL FRAMING**	
SECTION 092900:	**GYPSUM BOARD**	**$ 618,575.**
SECTION 072143:	**E. I. F. S.**	
SECTION 092613:	**GYPSUM VENEER PLASTERING**	
	(EXCLUDES ANY HISTORICAL ORNAMENTAL PLASTER)	**$ 704,995.**
SECTION 095123:	**ACOUSTICAL TILE CEILINGS**	**$ 43,965.**
	BASE BID TOTAL	**$ 1,367,535.**
	BOND ADD $15,280.	

INCLUSIONS: Engineering, Lay out, Stocking materials, clean up to Contractors furnished dumpster, all finishes as per Finish schedule, Scaffolds, lifts, Denshield backer for tile, Exterior Durock sheathing, Flat strap backing, Sound caulk at partitions shown on Wall Types, Patching of existing plaster as identified (except any Historical Plaster Conservator), Plaster patch above ceilings as shown, Exterior framing Of Roof Penthouse....

EXCLUSIONS: Bond, Demo, Dumpster, Overtime, Shift work, Heat, Electricity, Ventilation, Water supply & clean out area, Light suspension wires, Insulation, Fire stopping, Fire caulking, wood furring blocking, plywood or framing, Setting HM frames or doors, PAINTING, Joint sealers, Access Panels, Acoustical Insulation, Structural Z purlins, Decorative column covers, Corner guards, any gypsum board as part of the roof system, Section 072100 THERMAL/SOUND INSULATION, Section 074213 METAL WALL PANELS or any hat channel furring for panels, Section 078100 APPLIED FIRE PROOFING, Section 092300 GYPSUM PLASTERING—Historical Ornamental Plastering or patching or lathing for areas to receive Ornamental Plaster, Special Finishes, Section 098316 SEAMLESS ACOUSTIC CEILING COATING –or substrate for, Section 098403 ACOUSTICAL FINISH INSULATION, Work on Exterior of Building (except work mentioned @ Roof Penthouse), High Impact Wall Coating, Patching or repairs of damage from other trades..

THIS PROPOSAL IS VALID FOR THIRTY (30) DAYS AND WILL EXPIRE AND BE DEEMED REJECTED UNLESS YOU DELIVER A WRITTEN ACCEPTANCE OF THIS PROPOSAL TO M&H BUILDNG SPECIALTIES INC. WITHIN THIRTY DAYS AFTER THE DATE IT IS DELIVERED TO YOU. DUE TO MATERIAL SHORTAGES, ALL DRYWALL AND STEEL PRODUCTS ARE BEING ALLOCATED. THESE MATERIALS MAY BECOME LONG LEAD ITEMS BECAUSE LIMITED QUANTITIES ARE AVAILABLE. M&H BUILDING SPECIALTIES INC. WILL MAKE EVERY EFFORT TO MEET THE DEADLINES CONTAINED IN THE BID DOCUMENTS, BUT WILL NOT BE LIABLE TO YOU IF THE MATERIALS AND/OR PROJECT ARE DELAYED BECAUSE OF MATERIAL SHORTAGE..

This proposal is based on a logical sequence of work. Tax is included in our number. Our Nevada Contractor's License Numbers are **Carpenters** 0015400 Type C-3, **Painters** 0041010 Type C-4, and **Plasterers** 0051255 Type C-17
If you have any questions please feel free to contact our office.
Respectfully Submitted,
M&H Building Specialties, Inc.

Brad Olson
Sr. Estimator email: bolson@mhbsinc.com

9-729-1772

HARDY PAINTING & DRYWALL

State Contractor Lic. #18046B
Contractor Limit — Unlimited

6465 W. Sahara, #200
Las Vegas, NV 89146
(702) 362-4118 • Fax (702) 362-3043

9

LOW BID

Proposal

Page No. of Pages

Attn: Pierre Vedel		September 25, 2008
PROPOSAL SUBMITTED TO	PHONE	DATE
Flagship Construction	Fax (702) 739-1724	
STREET	JOB NAME	
	Las Vegas Museum Phase 3 Addendums Acknowledged	
CITY, STATE AND ZIP CODE	JOB LOCATION	
ARCHITECT	DATE OF PLANS	JOB PHONE

We hereby submit specifications and estimates for:

We propose to furnish labor, materials, equipment, and supervision to complete:
See attached sheet for scope of work.

Flavio

Complete the above work for the sum of $1,187,528.00

Add $13,181.00 on top of the above number for bonding rates.

This proposal excludes the following: **GENERAL CONSTRUCTION:** All wood framing, furring, or blocking, demising wall framing, draft stops, access panels, pony wall support posts/braces, fire taoting, fire caulking, fire proofing, insulation, Styro Studs, Frymolds, soundboard, MDF sheathing, Durarock, GPRG products, Monokote, anchor bolts, hold downs, demolition, firestafing, caulking, aluminum end wall caps, EIFS, plaster or stucco, acoustical ceilings, caulking around acoustical ceilings or grid, uni-strut and all-thread. **FINISHES AND COATINGS:** Specialty coatings and finishes, woodwork finishes, architectural finishes, aluminum mullion finishes, retaining wall finishes, fencing finishes, Elastomeric finishes, Anti-Graffiti coatings, graphics, signage painting, traffic striping, water-proofings, concrete sealers, painting at roof top, roof address painting, painting ductwork, color coding piping, pipe identification, EIFS finishes, painting window frames. **OTHER:** furnishing and hanging doors, door frames, or door hardware, FRP, wallcovering labor and materials, parabolic lenses, light coves, luminous ceilings, compression posts, hold down clips, light fixture support wires, temporary power or lighting, climate control, overtime, night work, bonding costs, Engineering special inspections and permit fees.

We Propose to furnish material and labor - complete in accordance with the above specifications, for the sum of

One Million One Hundred Eighty Seven Thousand Five Hundred Twenty Eight Dollars and No Cents dollars ($ 1,187,528.00).

Payment to be made as follows:

-704,977

All material is guaranteed to be as specified. All work to be completed in a workmanlike manner according to standard practices. Any alteration or deviation from above specifications involving extra costs will be executed only upon written orders and will become an extra charge over and above the estimate. All agreements contingent upon strikes, accidents or delays beyond our control. Owner to carry fire, tornado and other necessary insurances. Our workers are fully covered by Workman's Compensation Insurance.

Authorized Signature - Flavio Ramirez

NOTE: This proposal may be withdrawn by us if not accepted within 30 days.

Acceptance of Proposal The above prices, specifications and conditions are satisfactory and are hereby accepted. You are authorized to do the work as specified. Payment will be made as outlined above.

Signature _____

Date of Acceptance _____

Signature _____

Hardy Painting & Drywall

6465 W. Sahara, Suite 200, Las Vegas, NV, 89146 (702) 362-4118 Fax (702) 362-3043
Licensed Contractor #018046B

$ 700,000 Plaster

SCOPE OF WORK

We propose to furnish labor, materials, equipment, and supervision to complete:
Metal stud framing with 3 5/8" 20ga 16"oc on wall types A, E, F, G, L and P.
2 ½" C-H 20ga 24"oc studs for shaft wall (wall type D) and wall type D3 and G1.
6" 18ga 16"oc metal studs on wall types E1, G2 and L1.
Furring columns with 3 5/8" 20ga 16"oc, 2 ½" 20ga 16"oc and 6" 18ga 16"oc.
Infill framing holes with 3 5/8" 20ga studs, install acoustical sealant at top and bottom of the wall, hard lids, soffits and headers with 3 5/8" 20ga 16"oc studs.
Install 1" shaft liner and 2 layers or ½" gyp board type x on shaft walls.
Install ½" water resistant cement backer board for wet areas.
Install 5/8" gyp board with plaster finishes, patch and repair existing plaster, bid includes corner bead and tie in applications, gypsum plaster per print requirements (over concrete, masonry, new gyp surfaces), bid includes all scaffold requirements at all levels, plaster and masking debris to be removed to job provided dumpsters.

$ 700,000

Paint new plaster, paint acoustical ceiling coffers at the court room ceiling, paint doors and frames, paint guardrails and hand rails at the stairs, paint baseboard, paint exterior patio at the north elevation, paint exposed to structure, paint exterior CMU wall, paint trash enclosure, paint galvanized bike racks, paint bollards, paint hand rails and guardrails at exterior of the building.
Install acoustical ceiling tiles Armstrong Mesa 682 2' x 2' White, patch, repair and paint existing grid system and ACT in level 1.
Install sound attenuation insulation 2", 3" and 3 ½". Bid includes plaster renovation and exterior EIFS at the roof.

Won't do will exclude

ADDITIONAL EXCLUSIONS:
Any plywood, provide and install access doors, corner guards, paint shelving, conservator plaster due by others in hallways and court room, no caulking, sealant, metal flashings, Z-bar metal, window or door flashing, decorative plaster trims, molds or ornamental plaster bid. All wall and ceiling areas on print show to be conservator not bid.

@ 800 per

INCL. EIFS

Thank you,

Flavio Ramirez,
Estimator/Project Manager
Hardy Painting & Drywall
Phone (702) 362-4118
Fax (702) 362-3043
Cell (702) 324-3803

~~$ 482,000~~ $ 482,551

rehab masonry

HENDERSON Masonry LLC

PROPOSAL ONLY 008-132

NEVADA LICENSE NUMBER: 52532A Limit $5,000,000

Phone (702) 667-1538 ~ Fax (702) 565-0184
221 Sunpac Avenue ~ Henderson, NV 89011

DATE: 9/25/2008

PROPOSAL SUBMITTED TO:			FOR WORK AT:	
TO: General Contractors			PROJECT & NO: Las Vegas Museum - Phase 3 Rehabilitation	
ADDRESS:			ADDRESS:	
CITY:			CITY: Las Vegas	
STATE:	ZIP:		STATE: Nevada	ZIP:
PHONE:	FAX:	Att: Estimating	ARCHITECT: West Lake Reed Leskosky, dated-6-26-08 Addenda 1&2 Acknowledge	

We hereby propose to perform all the labor & materials necessary for the completion of:

Division 40120 - Exterior/Interior Masonry Restoration to Include;
Terra Cotta - Furnish and install new, perform crack repair, patching and repoint existing
Brick - Salvage exterior brick, install, repair and repoint.
Limestone- patch and repoint
Granite steps - patch and repoint

~~$1,082,662.00~~ $1106,316

Standard exclusions are listed below. Also excludes flashing, caulking, fireproofing, abatement and scaffolding access by others.

Any material is guaranteed to be as specified, and the above work to be performed in accordance with the drawings and specifications submitted for above work and completed in a substantial workmanlike manner for the sum of:
one million eighty two thousand six hundred sixty two dollars & 00/100*****$1,082,662.00
With payments to be made as follow:

Exclusions: Engineering, Testing, Permits, Barricades, shop drawings, bond costs, construction water, bolts, embeds, foam dovetail slots, clips, insulation, drilling, doweling or welding, caulking, sealing, waterproofing or anti-graffiti coatings. Footings and rebar by others. Any and all gate hardware
Head joints over 1" will be an extra cost to G.C. Haul Off Spoils from other trades, shoring supplied by others.
WE WILL NOT BE HELD RESPONSIBLE FOR ANY AND ALL UNDERGROUND UTILITIES.
All alteration or deviation from above specifications involving extra costs, will be executed only upon written orders, and will become an extra charge over and above estimate. All agreements contingent upon strikes, accidents or delays beyond our control. Owners to carry fire, tornado and other necessary insurance upon above work. Workman's Compensation and Public Liability Insurance on above work to be taken out by Henderson Masonry

Respectfully Submitted: Michael J. McConnell Jr. Per: _____

Note - This proposal may be withdrawn by us if not accepted within 20 days.

ACCEPTANCE OF PROPOSAL

The above prices, specifications and conditions are satisfactory and are hereby accepted. You are authorized to do the work as specified. Payment will be made as outlined above.

Accepted: _____ Signature: _____

Date: _____ Signature: _____

LOW BID

KITSON SPECIALTY CONTRACTING INC.
Restoration - Caulking - Waterproofing
CA Lic. # 621546 - AZ Lic. #324330
NV Lic. #40097

September 25, 2008

To: General Contractor

SENT 21-162

Re: Las Vegas Museum – Phase 3
BID

Section 040120: Masonry Rehabilitation

Include:

1. Masonry repointing: 7,000 l.f.
2. Masonry replacement: 800 sf
3. Terra Cotta crack repair: 400 l.f.
4. Terra Cotta patch repair: 50 sf
5. Limestone repointing.
6. Repointing of granite joints at entry steps
7. Granite patching: 200 sf
8. Cleaning of exterior surfaces.
9. Terra Cotta replications: furnish and install 20 pieces.

Section 079200 Joint Sealants

Include: Window perimeters; copper flashing metal-to-metal seams.

General Qualifications:

1. Assume one (1) job move-in;
2. Assume daytime, weekday working hours;
3. Includes prevailing wage;
4. Exclude scaffolding and access equipment;
5. Exclude hazardous material abatement;
6. Testing and inspection fees;
7. Exclude any work at interior of building.
8. Exclude limestone patching. → INCLUDED
9. Acknowledge addendum #1 & #2.
10. Price based upon full scope of work, inclusions and exclusions as indicated, and acceptable payment terms. This proposal to be integral with any contract offered.

11. Window frame perimeter joint sealant substrate preparation consists of solvent wipe and dusting only. No new frame paint will be removed. Assume manufacturers standard colors to be used.
12. Masonry and Terra Cotta anchors to be installed at replacement areas only.
13. It is understood that the "Granite patching" refers to limestone patching.
14. Terra Cotta crack repair called for on drawings but not mentioned in spec. KSC to inject crack with epoxy resion and touch–up face of T-C to match adjacent as closely as possible.

Our price, taxes included:

MASONRY REHABILITATION.....$805,100.00

JOINT SEALANTS.....$20,400.00

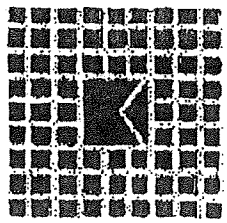
PAYMENT AND PERFORMANCE BOND.....ADD$14,600.00

Thank you for the opportunity to submit pricing on this job. Should have any questions, please do not hesitate to ask.

Sincerely,

Will Fauerbach
Kitson Specialty Contracting Inc.

WF:Nf



KITSON SPECIALTY CONTRACTING INC.
Restoration - Caulking - Waterproofing
CA Lic. #621546 - AZ Lic. #124030 - NV Lic. #40097

FAX COVER SHEET

Date:	**September 25, 2008**	**Time:**
Attention:	**Estimating**	**Fax: (702) 739-1724**
Company:	**Flagship Construction**	
From:	**Will Fauerbach**	
Number of pages (including cover sheet:		
Regarding:	**Las Vegas Museum**	
Included:	**Proposal**	

10370 Slusher Drive, Suite 9, Santa Fe Springs, CA 90670

Office: (562) 941-1949 ~ Fax: (562) 941-6408

www.KitsonContracting.com

KUMMER KAEMPFER

KUMMER KAEMPFER BONNER
RENSHAW & FERRARIO

ATTORNEYS AT LAW
LAS VEGAS OFFICE

WILLIAM J. WRAY
wwray@kkbrf.com
702.693.4254

LAS VEGAS OFFICE
3800 Howard Hughes Parkway
Seventh Floor
Las Vegas, NV 89169
Tel: 702.792.7000
Fax: 702.796.7181

RENO OFFICE
5585 Kietzke Lane
Reno, NV 89511
Tel: 775.852.3900
Fax: 775.852.3982

CARSON CITY OFFICE
510 W. Fourth Street
Carson City, NV 89703
Tel: 775.884.8300
Fax: 775.882.0257

October 27, 2008

Via Fax (702) 464-2578 and Regular Mail
Ms. Kathleen C. Rainey
Manager of Purchasing and Contracts
City of Las Vegas
400 Stewart Avenue
Las Vegas, Nevada 89101

Re: DEMAND FOR CITY OF LAS VEGAS TO ACT IN ACCORDANCE WITH LAW
Bid Protest of APCO Construction
Project: Las Vegas Museum Phase 3 – Rehabilitation
Bid No. 08.15341.04-LED
Our Client/Successful Bidder: Flagship Construction Company, LLC

Dear Ms. Rainey:

As you know from previous communications, our office represents Flagship Construction Company ("Flagship") in connection with the above-referenced bid dispute. We appreciate you speaking with Mr. Ferrario and me this afternoon by telephone regarding your letter, dated today, October 27, 2008, wherein the City of Las Vegas (the "City") purports to reject all bids in connection with the subject Project pursuant to Instruction to Bidders ("ITB"), Section 15. This letter is in follow-up thereto.

Your letter of today was confusing to us and our client. We thought that the City's determination to reject all bids and re-bid the project must have been based on the APCO Bid Protest. We were prepared to advise the City this afternoon by letter that such determination was in error. Even if APCO's allegations were true, that would not invalidate Flagship's bid or render it non-responsive or non-responsible. If the City determined that a listed subcontractor is not properly licensed or qualified (as APCO claims), then the City must allow Flagship to make the substitution of any such subcontractor, subject to the City's oversight and approval. We understand now, however, based upon our telephone call today that the City agrees with Flagship's position with respect to APCO's Bid Protest, and that the City's action set forth in your letter of today was not in any way based upon the APCO Bid Protest.

You indicated that the City made its determination to reject all bids and re-bid the Project based upon a finding of irregularities in the Bid Proposal documents. You stated that the City determined that there were irregularities in the Bid Proposal documents because none of the bidding contractors (particularly the lowest three bidders) fully and materially complied with the bid criteria. Accordingly, you made a determination that Flagship, as well as the next lowest two

bidders' bids were non-responsive and non-responsible.

Flagship respectfully demands that you immediately provide the undersigned with any and all reasons, justifications and findings made by the City whereby the City determined that Flagship's bid failed to materially satisfy any established bid criteria set forth in the Bid Proposal and specifications, and identify your authority for such finding. Please provide such information no later than 5:00 PM, Tuesday, October 28, 2008.

We do not believe that there is any basis for rejecting the bids under ITB 15, as set forth in your letter. The City is reminded that this is a public works, competitive bid project and is governed by NRS Chapter 338 and the ITB. Please be reminded that pursuant to NRS 338.1385(5) and ITB 12.01, the City is obliged to award the contract to "the lowest responsive and responsible bidder." Flagship is the lowest responsive and responsible bidder. The City does not have discretion to reject all bids where there was a qualified, responsive, responsible bidder. Flagship maintains that it was the lowest responsive responsible bidder and is entitled to the contract award. Flagship is prepared to pursue such action as may be necessary to protect its interests in this regard.

It should be noted that it is prejudicial to Flagship, who was the lowest bidder, for the City to now cancel all bids and re-bid the Project. All the bids have now been opened and are subject to comparative review. Flagship's list of subcontractors is subject to review by competitors and potential competitors. Flagship would be at a disadvantage in any re-bid process.

Again, please provide the information requested herein above no later 5:00 PM on Tuesday, October 28, 2008. Please do not hesitate to contact Mark Ferrario if you have any questions.

Very truly yours,

KUMMER KAEMPFER BONNER
RENSHAW & FERRARIO

William J. Wray, Esq.

WJW/rh
Enclosure as stated.
cc: Nancy Paolino (via fax)

KUMMER KAEMPFER
ATTORNEYS AT LAW

KUMMER KAEMPFER BONNER
RENSHAW & FERRARIO

LAS VEGAS OFFICE

MARK E. FERRARIO
mferrario@kkbrf.com
702.693.4208

LAS VEGAS OFFICE
3800 Howard Hughes Parkway
Seventh Floor
Las Vegas, NV 89169
Tel: 702.792.7000
Fax: 702.796.7181

RENO OFFICE
5585 Kietzke Lane
Reno, NV 89511
Tel: 775.852.3900
Fax: 775.852.3982

CARSON CITY OFFICE
510 W. Fourth Street
Carson City, NV 89703
Tel: 775.884.8300
Fax: 775.882.0257

November 5, 2008

Via Fax (702) 464-2578 and Regular Mail
Kathleen C. Rainey
Manager of Purchasing and Contracts
City of Las Vegas
400 Stewart Avenue
Las Vegas, Nevada 89101

Re: **Bid Protest of APCO Construction**
Project: Las Vegas Museum Phase 3 – Rehabilitation
Bid No. 08.15341.04-LED
Our Client/Successful Bidder: Flagship Construction Company, LLC

Dear Ms. Rainey,

Flagship is confused by the content of your October 30, 2008 letter. It appears the city is changing the rules mid-game. My clients experience was fully vetted and Flagship was informed by Lloyd Davis that the City was recommending my client for the award of the Las Vegas Museum Project after review of my clients' historical experience.

We request a copy of the meeting minutes from the Mandatory Pre-Bid Meeting held on September 4, 2008 at 3:00 PM. It is our belief that these meeting minutes will show the discussion regarding the requirements of historical experience on this project as articulated by the city representative Mr. Davis. It is my understanding that there was a lengthy discussion regarding how the City would handle a low bidder if the contractor did not have the historical experience. Mr. Davis said that the historical experience requirement in the documents is "subjective" and the City could choose price over experience. He made it clear everyone should bid whether they had the historical experience or not. There was further conversation regarding the requirement for the contractor to have a conservator superintendent experienced in rehabilitation. He felt that this was an important factor.

The statements made at the Mandatory Pre-Bid Meeting did what you now say you want to do. In short all bidders know the rules when the bids were placed and there is no reason to refrain from awarding the contract to Flagship.

We understand the owner's right to reject all bids but the owner has put Flagship in an unfair position by publishing the names of the subcontractors that Flagship included in its proposal. We request that the City re- think its position regarding this matter in light of the comments made during the Pre-bid meeting and that you proceed to award the contract to Flagship to avoid further proceedings.

KUMMER KAEMPFER

So as not to further delay this matter I would request a response by this Friday. Thank you for your anticipated cooperation.

Sincerely,

KUMMER KAEMPFER BONNER RENSHAW & FERRARIO

Mark E. Ferrario

MEF/vll

MERITAS
LAW FIRMS WORLDWIDE

FAX

Kummer Kaempfer Bonner Renshaw & Ferrario
Seventh Floor
3800 Howard Hughes Parkway
Las Vegas, NV 89169
Phone: (702) 792-7000
Fax: (702) 796-7181

Date: 11/5/08

No. of Pages: 3
(Including cover sheet)

TO:	**Fax No:**	**Phone No:**
Kathleen C. Rainey	464-2578	

FROM: Mark E. Ferrario

Client/Matter No: 14439.14

Regarding:

Bid Protest of APCO Construction

Message:

Please see the attached letter.

THE FOLLOWING PAGES ARE A CONFIDENTIAL ATTORNEY-CLIENT COMMUNICATION INTENDED ONLY FOR THE PERSON NAMED ABOVE. IF YOU ARE NOT THE PERSON NAMED ABOVE, OR THE EMPLOYEE OR AGENT RESPONSIBLE FOR DELIVERY OF THE FOLLOWING INFORMATION, YOU ARE HEREBY NOTIFIED THAT ANY DISSEMINATION, DISTRIBUTION OR COPYING OF THIS COMMUNICATION IS STRICTLY PROHIBITED. IF YOU HAVE RECEIVED THIS COMMUNICATION IN ERROR, PLEASE NOTIFY US IMMEDIATELY BY TELEPHONE AND RETURN THE ORIGINAL MESSAGE TO US BY MAIL. WE WILL GLADLY REIMBURSE YOUR POSTAGE EXPENSE. THANK YOU.

* * * COMMUNICATION RESULT REPORT (NOV. 5. 2008 2:52PM) * * *

FAX HEADER:

TRANSMITTED/STORED : NOV. 5. 2008 2:50PM FILE MODE	OPTION	ADDRESS	RESULT	PAGE
419 MEMORY TX		5680#14439#14#4642578	OK	3/3

REASON FOR ERROR
E-1) HANG UP OR LINE FAIL
E-2) BUSY
E-3) NO ANSWER
E-4) NO FACSIMILE CONNECTION

MERITAS
LAW FIRMS WORLDWIDE

FAX

Kummer Kaempfer Bonner Renshaw & Ferrario
Seventh Floor
3800 Howard Hughes Parkway
Las Vegas, NV 89169
Phone: (702) 792-7000
Fax: (702) 796-7181

Date: 11/5/08

No. of Pages: 3
(Including cover sheet)

TO: Kathleen C. Rainey
Fax No: 464-2578
Phone No:

FROM: Mark E. Ferrario
Client/Matter No: 14439.14

Regarding:
Bid Protest of APCO Construction

Message:
Please see the attached letter. ☐

THE FOLLOWING PAGES ARE A CONFIDENTIAL ATTORNEY-CLIENT COMMUNICATION INTENDED ONLY FOR THE PERSON NAMED ABOVE. IF YOU ARE NOT THE PERSON NAMED ABOVE, OR THE EMPLOYEE OR AGENT RESPONSIBLE FOR DELIVERY OF THE FOLLOWING INFORMATION, YOU ARE HEREBY NOTIFIED THAT ANY DISSEMINATION, DISTRIBUTION OR COPYING OF THIS COMMUNICATION IS STRICTLY PROHIBITED. IF YOU HAVE RECEIVED THIS COMMUNICATION IN ERROR, PLEASE NOTIFY US IMMEDIATELY BY TELEPHONE AND RETURN THE ORIGINAL MESSAGE TO US BY MAIL. WE WILL GLADLY REIMBURSE YOUR POSTAGE EXPENSE. THANK YOU.

KUMMER KAEMPFER
ATTORNEYS AT LAW

KUMMER KAEMPFER BONNER
RENSHAW & FERRARIO

LAS VEGAS OFFICE

LESLIE A.S. GODFREY
lgodfrey@kkbrf.com
702.693.4220

LAS VEGAS OFFICE
3800 Howard Hughes Parkway
Seventh Floor
Las Vegas, NV 89169
Tel: 702.792.7000
Fax: 702.796.7181

RENO OFFICE
5585 Kietzke Lane
Reno, NV 89511
Tel: 775.852.3900
Fax: 775.852.3982

CARSON CITY OFFICE
510 W. Fourth Street
Carson City, NV 89703
Tel: 775.884.8300
Fax: 775.882.0257

March 6, 2009

VIA HAND-DELIVERY

Lloyd Davis
City of Las Vegas
Finance & Business Department
Purchasing Division
400 Stewart Avenue
Las Vegas, Nevada 89101

Re: Flagship APCO Bid Protest

Dear Mr. Davis:

Enclosed please find the original bond as required for Flagship's APCO Bid Protest (Bid No. 08.15341.04-LED (revised)).

Should you have any questions, please do not hesitate to contact our office.

Very truly yours,

KUMMER KAEMPFER BONNER RENSHAW & FERRARIO

Leslie A.S. Godfrey

Leslie A.S. Godfrey

LSG:sah
Enclosure

City of Las Vegas, Nevada

BID PROTEST BOND

Bond No. 929455024

Project Name and No. LV Museum Phase 3 Rehab - Bid #08.15341.04-LED (REVISED)

KNOW ALL PERSONS BY THESE PRESENTS:

That Flagship Construction Company, LLC, "Principal" (Protestor), duly organized and existing under the laws of the State of Michigan, and duly authorized to do business in the State Nevada, and having its principal place of business in Nevada at 4052 Dean Martin Drive, Las Vegas, NV 89103, as Principal; and a surety company, organized under the laws of the State of South Dakota, and duly authorized to do business in the State of Nevada, whose principal place of business is, 27555 Executive Drive, Suite 350 Farmington Hills, MI 48331-3543, as "Surety;" are held and firmly bound unto City of Las Vegas, Clark County, Nevada, _____ (Department), as "Public Body" and "Obligee" in the amount of Two Hundred Fifty Thousand and 00/100 Dollars ($250,000.00) for the payment of which sum we bind ourselves, our heirs, personal representatives, successors and assigns, jointly and severally.

THIS BOND is issued under provisions of NRS 338.142 and City of Las Vegas Resolution 8-89-2004, Attachment A, Paragraph D. The above-named Principal has initiated an administrative protest regarding the Public Body's bid solicitation, bid acceptance, bid rejection or contract award for the above-referenced Project, which protest is conditioned upon the posting of a bond. The bond shall be conditioned upon the payment of all costs which may be adjudged against the Principal filing the protest in the administrative proceeding in which the action is brought and any subsequent appellate court proceeding.

NOW, THEREFORE, the condition of this Bond is that if the Principal, after conclusion or termination of the administrative process and/or any appellate court proceedings regarding the protest, shall satisfy all costs and charges allowed by final order and/or judgment, and interest thereon, in the event the Public Body prevails, then the obligation shall be null and void; otherwise to remain in full force and effect.

The Public Body may bring an action in a proper court on this bond for the amount of such liability, including all costs and attorneys' fees.

PRINCIPAL: Flagship Construction Company, LLC

BY: Nancy Nielsen

TITLE: Vice President (CORPORATE SEAL)

ATTEST: Teresa Bisenath

TITLE: Vice President

SURETY: Western Surety Company

BY: Betty Hatthon (CORPORATE SEAL)
Betty Hatthon

TITLE: Attorney-in-Fact

Nevada Licensed Agent: Michele Robertson 3-5-09

Countersigned for Nevada By
Marsh USA, Inc.
Michele Robertson, Resident Agent

ACKNOWLEDGMENT OF SURETY

STATE OF MICHIGAN)
COUNTY OF WAYNE)

On this 4th day of March, 2009, before me personally came Betty Halthon who, being by me duly sworn, did depose and say that she is an Attorney-in-Fact of Western Surety Company and knows the corporate seal thereof; that the seal affixed to said annexed instrument is such corporate seal, and was thereto affixed by authority of the Power of Attorney of said Company, of which a Certified Copy is hereto attached, and that she signed said instrument as an Attorney-in-Fact of said Company by like authority.

Acknowledged and Sworn to before me
on the date above written

My Commission Expires

Latrecia R. Scott
Notary Public, Wayne County, Michigan
My Commission Expires: March 17, 2011

Latrecia R. Scott (*Notary Public*)

Western Surety Company

POWER OF ATTORNEY APPOINTING INDIVIDUAL ATTORNEY-IN-FACT

Know All Men By These Presents, That WESTERN SURETY COMPANY, a South Dakota corporation, is a duly organized and existing corporation having its principal office in the City of Sioux Falls, and State of South Dakota, and that it does by virtue of the signature and seal herein affixed hereby make, constitute and appoint

Betty Halthon, Individually

of Detroit, MI, its true and lawful Attorney(s)-in-Fact with full power and authority hereby conferred to sign, seal and execute for and on its behalf bonds, undertakings and other obligatory instruments of similar nature

- In Unlimited Amounts -

and to bind it thereby as fully and to the same extent as if such instruments were signed by a duly authorized officer of the corporation and all the acts of said Attorney, pursuant to the authority hereby given, are hereby ratified and confirmed.

This Power of Attorney is made and executed pursuant to and by authority of the By-Law printed on the reverse hereof, duly adopted, as indicated, by the shareholders of the corporation.

In Witness Whereof, WESTERN SURETY COMPANY has caused these presents to be signed by its Senior Vice President and its corporate seal to be hereto affixed on this 26th day of October, 2006.

WESTERN SURETY COMPANY

Paul T. Bruflat, Senior Vice President

State of South Dakota
County of Minnehaha } ss

On this 26th day of October, 2006, before me personally came Paul T. Bruflat, to me known, who, being by me duly sworn, did depose and say: that he resides in the City of Sioux Falls, State of South Dakota; that he is the Senior Vice President of WESTERN SURETY COMPANY described in and which executed the above instrument; that he knows the seal of said corporation; that the seal affixed to the said instrument is such corporate seal; that it was so affixed pursuant to authority given by the Board of Directors of said corporation and that he signed his name thereto pursuant to like authority, and acknowledges same to be the act and deed of said corporation.

My commission expires
November 30, 2012

D. KRELL
NOTARY PUBLIC
SOUTH DAKOTA

D. Krell, Notary Public

CERTIFICATE

I, L. Nelson, Assistant Secretary of WESTERN SURETY COMPANY do hereby certify that the Power of Attorney hereinabove set forth is still in force, and further certify that the By-Law of the corporation printed on the reverse hereof is still in force. In testimony whereof I have hereunto subscribed my name and affixed the seal of the said corporation this 4th day of March, 2009.

WESTERN SURETY COMPANY

L. Nelson, Assistant Secretary

Form F4280-09-06

MERITAS
LAW FIRMS WORLDWIDE

FAX

Kummer Kaempfer Bonner Renshaw & Ferrario
Seventh Floor
3800 Howard Hughes Parkway
Las Vegas, NV 89169
Phone: (702) 792-7000
Fax: (702) 796-7181

Date: 3/4/09

No. of Pages: 5
(Including cover sheet)

TO:	Fax No:	Phone No:
City of Las Vegas c/o Charlotte Dicenzo	(702) 464-2666	

FROM:
Leslie Godfrey (702) 693-4220

Client/Matter No:
14439.11

Regarding:
Flagship Bid Protest Bond - Bid No. 08.15341.04-LED (revised)

Message:
Please see attached.

THE FOLLOWING PAGES ARE A CONFIDENTIAL ATTORNEY-CLIENT COMMUNICATION INTENDED ONLY FOR THE PERSON NAMED ABOVE. IF YOU ARE NOT THE PERSON NAMED ABOVE, OR THE EMPLOYEE OR AGENT RESPONSIBLE FOR DELIVERY OF THE FOLLOWING INFORMATION, YOU ARE HEREBY NOTIFIED THAT ANY DISSEMINATION, DISTRIBUTION OR COPYING OF THIS COMMUNICATION IS STRICTLY PROHIBITED. IF YOU HAVE RECEIVED THIS COMMUNICATION IN ERROR, PLEASE NOTIFY US IMMEDIATELY BY TELEPHONE AND RETURN THE ORIGINAL MESSAGE TO US BY MAIL. WE WILL GLADLY REIMBURSE YOUR POSTAGE EXPENSE. THANK YOU.

City of Las Vegas, Nevada
BID PROTEST BOND

Bond No. 929455024

Project Name and No. LV Museum Phase 3 Rehab - Bid #08.15341.04-LED (REVISED)

KNOW ALL PERSONS BY THESE PRESENTS:

That Flagship Construction Company, LLC, "Principal" (Protestor), duly organized and existing under the laws of the State of Michigan, and duly authorized to do business in the State Nevada, and having its principal place of business in Nevada at 4052 Dean Martin Drive, Las Vegas, NV 89103, as Principal; and a surety company, organized under the laws of the State of South Dakota, and duly authorized to do business in the State of Nevada, whose principal place of business is. 27555 Executive Drive, Suite 350 Farmington Hills, MI 48331-3543, as "Surety," are held and firmly bound unto City of Las Vegas, Clark County, Nevada, _____ (Department), as "Public Body" and "Obligee" in the amount of Two Hundred Fifty Thousand and 00/100 Dollars ($250,000.00) for the payment of which sum we bind ourselves, our heirs, personal representatives, successors and assigns, jointly and severally.

THIS BOND is issued under provisions of NRS 338.142 and City of Las Vegas Resolution 8-89-2004, Attachment A, Paragraph D. The above-named Principal has initiated an administrative protest regarding the Public Body's bid solicitation, bid acceptance, bid rejection or contract award for the above-referenced Project, which protest is conditioned upon the posting of a bond. The bond shall be conditioned upon the payment of all costs which may be adjudged against the Principal filing the protest in the administrative proceeding in which the action is brought and any subsequent appellate court proceeding.

NOW, THEREFORE, the condition of this Bond is that if the Principal, after conclusion or termination of the administrative process and/or any appellate court proceedings regarding the protest, shall satisfy all costs and charges allowed by final order and/or judgment, and interest thereon, in the event the Public Body prevails, then the obligation shall be null and void; otherwise to remain in full force and effect.

The Public Body may bring an action in a proper court on this bond for the amount of such liability, including all costs and attorneys' fees.

PRINCIPAL: Flagship Construction Company, LLC

BY: Nancy Pacheco

TITLE: Vice President

ATTEST: Jason Crandall (CORPORATE SEAL)

TITLE: Vice President

SURETY: Western Surety Company

BY: Betty Hatton
Betty Hatton

TITLE: Attorney-in-Fact (CORPORATE SEAL)



Nevada Licensed Agent: _____

ACKNOWLEDGMENT OF SURETY

STATE OF MICHIGAN)
COUNTY OF WAYNE)

On this 4th day of March, 2009, before me personally came Betty Halthon who, being by me duly sworn, did depose and say that she is an Attorney-in-Fact of Western Surety Company and knows the corporate seal thereof; that the seal affixed to said annexed instrument is such corporate seal, and was thereto affixed by authority of the Power of Attorney of said Company, of which a Certified Copy is hereto attached, and that she signed said instrument as an Attorney-in-Fact of said Company by like authority.

Acknowledged and Sworn to before me
on the date above written

My Commission Expires

Latrecia R. Scott
Notary Public, Wayne County, Michigan
My Commission Expires: March 17, 2011

Latrecia R. Scott (*Notary Public*)

Western Surety Company

POWER OF ATTORNEY APPOINTING INDIVIDUAL ATTORNEY-IN-FACT

Know All Men By These Presents, That WESTERN SURETY COMPANY, a South Dakota corporation, is a duly organized and existing corporation having its principal office in the City of Sioux Falls, and State of South Dakota, and that it does by virtue of the signature and seal herein affixed hereby make, constitute and appoint

Betty Halthon, Individualiy

of Detroit, MI, its true and lawful Attorney(s)-in-Fact with full power and authority hereby conferred to sign, seal and execute for and on its behalf bonds, undertakings and other obligatory instruments of similar nature

- In Unlimited Amounts -

and to bind it thereby as fully and to the same extent as if such instruments were signed by a duly authorized officer of the corporation and all the acts of said Attorney, pursuant to the authority hereby given, are hereby ratified and confirmed.

This Power of Attorney is made and executed pursuant to and by authority of the By-Law printed on the reverse hereof, duly adopted, as indicated, by the shareholders of the corporation.

In Witness Whereof, WESTERN SURETY COMPANY has caused these presents to be signed by its Senior Vice President and its corporate seal to be hereto affixed on this 26th day of October, 2006.

WESTERN SURETY COMPANY

Paul T. Bruflat, Senior Vice President

State of South Dakota }
County of Minnehaha } ss

On this 26th day of October, 2006, before me personally came Paul T. Bruflat, to me known, who, being by me duly sworn, did depose and say: that he resides in the City of Sioux Falls, State of South Dakota; that he is the Senior Vice President of WESTERN SURETY COMPANY described in and which executed the above instrument; that he knows the seal of said corporation; that the seal affixed to the said instrument is such corporate seal; that it was so affixed pursuant to authority given by the Board of Directors of said corporation and that he signed his name thereto pursuant to like authority, and acknowledges same to be the act and deed of said corporation.

My commission expires
November 30, 2012

D. KRELL
NOTARY PUBLIC
SOUTH DAKOTA

D. Krell, Notary Public

CERTIFICATE

I, L. Nelson, Assistant Secretary of WESTERN SURETY COMPANY do hereby certify that the Power of Attorney hereinabove set forth is still in force, and further certify that the By-Law of the corporation printed on the reverse hereof is still in force. In testimony whereof I have hereunto subscribed my name and affixed the seal of the said corporation this 4th day of March, 2009.

WESTERN SURETY COMPANY

L. Nelson, Assistant Secretary

Form F4280-09-06

KUMMER KAEMPFER BONNER RENSHAW & FERRARIO

ATTORNEYS AT LAW

LAS VEGAS OFFICE

MARK E. FERRARIO
mferrario@kkbrf.com
702.693.4208

LAS VEGAS OFFICE
3800 Howard Hughes Parkway
Seventh Floor
Las Vegas, NV 89169
Tel: 702.792.7000
Fax: 702.796.7181

RENO OFFICE
5585 Kietzke Lane
Reno, NV 89511
Tel: 775.852.3900
Fax: 775.852.3982

CARSON CITY OFFICE
510 W. Fourth Street
Carson City, NV 89703
Tel: 775 884.8300
Fax: 775.882.0257

February 10, 2009

Via Fax (702) 464-2578 and Regular Mail
Kathleen C. Rainey
Manager of Purchasing and Contracts
City of Las Vegas
400 Stewart Avenue
Las Vegas, Nevada 89101

Re: **Bid Protest of APCO Construction**
Project: Las Vegas Museum Phase 3 – Rehabilitation
Bid No. 08.15341.04-LED
Our Client/Original Successful Bidder: Flagship Construction Company, LLC

Dear Ms. Rainey,

As you know from previous correspondence, this office represents Flagship Construction Company with regard to the bid process for the Las Vegas Museum. It is our understanding that APCO has been named as the lowest bidder on the recent rebid of the Las Vegas Museum Project. Flagship Construction Company hereby requests that the City immediately provide a copy of APCO's bid.

We anticipate protesting APCO's bid in that, among other reasons, APCO listed subcontractors who are not properly qualified and/or publicly advised the bidding contractors that they could not secure the requisite project bonding. APCO knowing listed these subcontractors so that they could later disqualify the subcontractor and "bid shop" the corrsponding scopes of work.

In order for us to timely comply with the bid protest requirements, we need a copy of APCO's bid immediately. Please contact my associate Leslie Godfrey at (702) 693-4220 at your earliest convenience, and we will arrange to pick up the bid this afternoon. Thank you for your anticipated cooperation.

Sincerely,

KUMMER KAEMPFER BONNER RENSHAW & FERRARIO

Leslie A. Godfrey for:

Mark E. Ferrario

MEF/lsg
cc: Nancy Polino and Theresa Bolsendahl

KUMMER KAEMPFER
ATTORNEYS AT LAW
LAS VEGAS OFFICE

LESLIE A.S. GODFREY
lgodfrey@kkbrf.com
702.693.4220

KUMMER KAEMPFER BONNER
RENSHAW & FERRARIO

LAS VEGAS OFFICE
3800 Howard Hughes Parkway
Seventh Floor
Las Vegas, NV 89169
Tel: 702.792.7000
Fax: 702.796.7181

RENO OFFICE
5585 Kietzke Lane
Reno, NV 89511
Tel: 775.852.3900
Fax: 775.852.3982

CARSON CITY OFFICE
510 W. Fourth Street
Carson City, NV 89703
Tel: 775.884.8300
Fax: 775.882.0257

March 6, 2009

VIA HAND-DELIVERY

Lloyd Davis
City of Las Vegas
Finance & Business Department
Purchasing Division
400 Stewart Avenue
Las Vegas, Nevada 89101

Re: Flagship APCO Bid Protest

Dear Mr. Davis:

Enclosed please find the original bond as required for Flagship's APCO Bid Protest (Bid No. 08.15341.04-LED (revised)).

Should you have any questions, please do not hesitate to contact our office.

Very truly yours,

KUMMER KAEMPFER BONNER RENSHAW & FERRARIO

Leslie A.S. Godfrey

Leslie A.S. Godfrey

LSG:sah
Enclosure

City of Las Vegas, Nevada
BID PROTEST BOND

Bond No. 929455024

Project Name and No. LV Museum Phase 3 Rehab - Bid #08.15341.04-LED (REVISED)

KNOW ALL PERSONS BY THESE PRESENTS:

That Flagship Construction Company, LLC, "Principal" (Protestor), duly organized and existing under the laws of the State of Michigan, and duly authorized to do business in the State Nevada, and having its principal place of business in Nevada at 4052 Dean Martin Drive, Las Vegas, NV 89103, as Principal; and a surety company, organized under the laws of the State of South Dakota, and duly authorized to do business in the State of Nevada, whose principal place of business is, 27555 Executive Drive, Suite 350 Farmington Hills, MI 48331-3543, as "Surety;" are held and firmly bound unto City of Las Vegas, Clark County, Nevada, _____ (Department), as "Public Body" and "Obligee" in the amount of Two Hundred Fifty Thousand and 00/100 Dollars ($250,000.00) for the payment of which sum we bind ourselves, our heirs, personal representatives, successors and assigns, jointly and severally.

THIS BOND is issued under provisions of NRS 338.142 and City of Las Vegas Resolution 8-89-2004, Attachment A, Paragraph D. The above-named Principal has initiated an administrative protest regarding the Public Body's bid solicitation, bid acceptance, bid rejection or contract award for the above-referenced Project, which protest is conditioned upon the posting of a bond. The bond shall be conditioned upon the payment of all costs which may be adjudged against the Principal filing the protest in the administrative proceeding in which the action is brought and any subsequent appellate court proceeding.

NOW, THEREFORE, the condition of this Bond is that if the Principal, after conclusion or termination of the administrative process and/or any appellate court proceedings regarding the protest, shall satisfy all costs and charges allowed by final order and/or judgment, and interest thereon, in the event the Public Body prevails, then the obligation shall be null and void; otherwise to remain in full force and effect.

The Public Body may bring an action in a proper court on this bond for the amount of such liability, including all costs and attorneys' fees.

PRINCIPAL: Flagship Construction Company, LLC

BY: Nancy Holmes

TITLE: Vice President (CORPORATE SEAL)

ATTEST: Teresa Bisenath

TITLE: Vice President

SURETY: Western Surety Company

BY: Betty Halthon (CORPORATE SEAL)
Betty Halthon

TITLE: Attorney-in-Fact

Nevada Licensed Agent: Michele Robertson 3-5-09

Countersigned for Nevada By
Marsh USA, Inc.
Michele Robertson, Resident Agent

ACKNOWLEDGMENT OF SURETY

STATE OF MICHIGAN)
COUNTY OF WAYNE)

On this 4th day of March, 2009, before me personally came Betty Halthon who, being by me duly sworn, did depose and say that she is an Attorney-in-Fact of Western Surety Company and knows the corporate seal thereof; that the seal affixed to said annexed instrument is such corporate seal, and was thereto affixed by authority of the Power of Attorney of said Company, of which a Certified Copy is hereto attached, and that she signed said instrument as an Attorney-in-Fact of said Company by like authority.

Acknowledged and Sworn to before me
on the date above written

My Commission Expires

Latrecia R. Scott
Notary Public, Wayne County, Michigan
My Commission Expires: March 17, 2011

Latrecia R. Scott (*Notary Public*)

Western Surety Company

POWER OF ATTORNEY APPOINTING INDIVIDUAL ATTORNEY-IN-FACT

Know All Men By These Presents, That WESTERN SURETY COMPANY, a South Dakota corporation, is a duly organized and existing corporation having its principal office in the City of Sioux Falls, and State of South Dakota, and that it does by virtue of the signature and seal herein affixed hereby make, constitute and appoint

Betty Halthon, Individually

of Detroit, MI, its true and lawful Attorney(s)-in-Fact with full power and authority hereby conferred to sign, seal and execute for and on its behalf bonds, undertakings and other obligatory instruments of similar nature

- In Unlimited Amounts -

and to bind it thereby as fully and to the same extent as if such instruments were signed by a duly authorized officer of the corporation and all the acts of said Attorney, pursuant to the authority hereby given, are hereby ratified and confirmed.

This Power of Attorney is made and executed pursuant to and by authority of the By-Law printed on the reverse hereof, duly adopted, as indicated, by the shareholders of the corporation.

In Witness Whereof, WESTERN SURETY COMPANY has caused these presents to be signed by its Senior Vice President and its corporate seal to be hereto affixed on this 26th day of October, 2006.

WESTERN SURETY COMPANY

Paul T. Bruflat, Senior Vice President

State of South Dakota
County of Minnehaha } ss

On this 26th day of October, 2006, before me personally came Paul T. Bruflat, to me known, who, being by me duly sworn, did depose and say: that he resides in the City of Sioux Falls, State of South Dakota; that he is the Senior Vice President of WESTERN SURETY COMPANY described in and which executed the above instrument; that he knows the seal of said corporation; that the seal affixed to the said instrument is such corporate seal; that it was so affixed pursuant to authority given by the Board of Directors of said corporation and that he signed his name thereto pursuant to like authority, and acknowledges same to be the act and deed of said corporation.

My commission expires
November 30, 2012

D. KRELL
NOTARY PUBLIC
SOUTH DAKOTA

D. Krell, Notary Public

CERTIFICATE

I, L. Nelson, Assistant Secretary of WESTERN SURETY COMPANY do hereby certify that the Power of Attorney hereinabove set forth is still in force, and further certify that the By-Law of the corporation printed on the reverse hereof is still in force. In testimony whereof I have hereunto subscribed my name and affixed the seal of the said corporation this 4th day of March, 2009.

WESTERN SURETY COMPANY

L. Nelson, Assistant Secretary

Form F4280-09-06

PROTEST
CORRESPONDENCE

LAS VEGAS CITY COUNCIL

OSCAR B. GOODMAN
MAYOR

GARY REESE
MAYOR PRO TEM

STEVE WOLFSON
LOIS TARKANIAN
STEVEN D. ROSS
RICKI Y. BARLOW
DAVID W. STEINMAN
(INTERIM)

ELIZABETH N. FRETWELL
CITY MANAGER

CITY OF LAS VEGAS
400 STEWART AVENUE
LAS VEGAS, NEVADA 89101

VOICE 702.229.6011
TTY 702.386.9108
www.lasvegasnevada.gov

Sent Via Fax (702) 739-1724

June 4, 2009

Mr. Mark E. Ferrario
c/o Nancy Paolino and Teresa Bolsendahl
Flagship Construction Co., LLC
4052 Dean Martin Drive
Las Vegas, Nevada 89103

Re: Evaluation Determination for APCO Construction Bid Protest
Project: Las Vegas Museum Phase 3 – Rehabilitation
Bid No. 08.15341.04-LED (Revised)

Dear Mr. Ferrario,

Based on our meeting yesterday afternoon and the discussion of your client's concerns, I am providing the additional information you requested on the experience of Brian Benson, APCO's superintendent. Mr. Benson's superintendent responsibilities on the Los Angeles City Hall included oversight of the elevator restoration, exterior marble and terracotta restoration on the exterior façade and moat walls, in vestibules, entry areas and corridors throughout the building, painting and wall coverings, ornamental metals and lighting fixtures, all of which were refurbished, repaired or replaced in accordance with the Secretary of Interior's restoration guidelines. I have included copies of two affidavits we received. We verified with Greg Groleau from Clark Construction, the general contractor, the affidavits are true and requested the names of the subcontractors that Mr. Benson was responsible to oversee as superintendent on this project. Those subcontractors were Alamillo Steel, Gigge Crane and Rigging, Bragg Crane and Rigging, Carrara Marble, Conco, Diamond Glass, Dover Elevator, Garvin Fire Protection, GSM Sheet Metal, Helix Electric, Iconco Inc, Murray Company, Owen Pacific, Patrinos Painting, Rayes Masonry, Ruthord Company Saddleback Construction, Scott Company, Stuart Dean Company, and Valley Crest.

In addition, I have included a copy of the Cogent Electric bid document dated February 4, 2009 provided to APCO which clearly states that the performance and payment bond is included in the price. I have redacted the bid amount. I've included a subsequent letter from Cogent Electric dated February 23, 2009 confirming their ability to bond the project which was provided to APCO after an inquiry from Lloyd Davis from the City of Las Vegas. It is the City's position that these documents provide the necessary evidence that the appropriate level due diligence was performed to ensure the bonding capability.

Printed with environmentally friendly soy ink.

Lastly, the project experience we verified for Wallternitives (owner Richard Nieto) whose work in Chicago was performed with National Decorating Service was for Old St. Patricks Church in 2001.

If you have any questions regarding this information, please feel free to contact me.

Best regards,

Kathleen C. Rainey, Manager
Purchasing &Contracts

Attachments: Affidavits (2)
Cogent bid
Cogent letter

Cc: Cheri Edelman
John Ridilla
Jorge Cervantes
Mark Vincent

A

AFFIDAVIT OF BRYAN BENSON

STATE OF NEVADA)
) ss.
County of Clark)

I, BRIAN BENSON, being first duly sworn, upon his oath, state:

1. I have personal knowledge of the facts set forth herein. Attached as Attachment A is a copy of my resume, which accurately describes my past work experience. I have been employed by APCO Construction since June, 2008 as a General Superintendent.

2. With regard to the Las Vegas Museum Phase 3-Rehab project, I have significant prior experience with Clark Construction Group in working on a significant restoration project. While employed by Clark Construction, I was a lead field superintendent and responsible for refurbishing and renovating the interior of the Los Angeles City Hall, which was approximately 911,000 square feet building with over 30 stories. Attachment 2 is a summary of this Clark project. The total contract price was $112,000,000. Of that amount, approximately $12,500,000 was dedicated specifically for the restoration and renovation of the building's historical features. Included in that figure was approximately $1,500,000 just for the retrofit and refurbishing of one of the few glass and brass elevators in the world. I oversaw that process. We were required to take the elevator apart piece by piece, log each piece's condition and location, and then rebuild the elevator after each piece had been refurbished. I also was responsible for the restoration and preservation of the exterior marble, interior components, and structural components for the exterior moat walls as well as the setting of the stabilizers. During

the course of that project, I oversaw and was responsible for approximately 20 different subcontractors. All of Clark's restoration work complied with and was governed by the Secretary of the Interior standards that are referenced in the Las Vegas Museum Phase 3 solicitation. It should be noted that our work on the L.A. City Hall received dozens of awards for renovating historically significant buildings. That project was completed in 2001. I was at Clark for eight years.

3. Greg Groleau, Vice President of Clark Construction, was my immediate supervisor. Mr. Groleau can be used as a reference for my work on this restoration project if necessary. His contact information is greg.groleau@clarkconstruction.com Cell # 1-619-666-1295. In addition, Mr. Jim Treadway was the owner's representative. It is my understanding that he is still employed by the City and can be reached as well for a reference.

3. I will be assigned as the General Superintendent overseeing APCO's work on the Las Vegas Museum Rehab project and am more than qualified to do so.

DATED this 23 day of February, 2009.

BRIAN BENSON

The foregoing instrument was acknowledged before me this 23 day of February, 2009, by Brian Benson.

Notary Public

My Commission Expires: 8/16/09

MARY JO ALLEN
Notary Public State of Nevada
No. 01-70568-1
My appt. exp. Aug. 16, 2009

AFFIDAVIT OF BRIAN BENSON

STATE OF NEVADA)
) ss:
County of Clark)

BRIAN BENSON, being first duly sworn, states as follows:

1. This affidavit is being submitted to supplement my prior affidavit dated February 23, 2009 in connection with the City's Museum project.

2. My prior affidavit detailed my responsibilities on Clark Construction Group's Los Angeles City Hall renovation project. In addition to refurbishing the glass and brass elevator, I also oversaw significant restoration of (1) the marble and terracotta on the exterior façade, in vestibules, entry areas, and corridors throughout the building, (2) various painting and wall coverings, and (3) ornamental metals and light fixtures. All of these components were refurbished, repaired, or replaced in accordance with the Secretary of Interior's restoration guidelines.

3. With regard to the approximate 20 subcontractors I supervised on that project, only three related to the elevator, Dover Elevator, Helix Electric, and a Southland Plumbing. The elevator restoration represented approximately 15% of the dollar volume or time commitment of the restoration work that I supervised. It was mentioned earlier do to the historical significance of the elevators building materials utilized in the first construction of the elevator.

4. All of the marble and terracotta restoration on the City Hall project was completed by Carrera Tile & Marble, under my supervision. We refurbished

and or repaired numerous pieces on both the exterior façade and within the building interior. In a few instances we had to do complete removal of certain areas to tie in new construction. To accomplish this we had to set up an intensive tracking system that consisted of first numbering each individual piece, then assigning it coordinates within a grid, taking photos and video to document its exact placement and then finally removing and properly storing for future use in the same area from which it was removed.

5. The miscellaneous metals involved ornamental metals such as, hand rails and light fixtures these items were removed and cataloged in a similar manner as the marble and terracotta. After being refurbished and or replicated we utilized our system to ensure the exact placement prior to construction.. I supervised two different subcontractors for these scopes of work.

6. The remaining subcontractors that I was responsible for supervising their work involved more standard trades such as mechanical, electrical, plumbing, concrete, and fire systems etc.

7. All of the restoration work that I supervised was inspected and accepted in accordance with the Secretary of Interior's restoration standards.

8. The City Hall project was completed with no injuries, on time and within budget. There were no claims against the owner and, as previously mentioned, this project has won numerous awards for the historical renovation.

9. Additionally, I have extensive recent experience dealing with City staff as I was the General Superintendent on the Newport Lofts and Soho Lofts in

downtown Las Vegas. Both projects were completed in a safe and timely manner and in accordance with all applicable codes and requirements.

10. Further affiant sayeth not.

DATED this 15 day of April, 2009.

BRIAN BENSON

The foregoing instrument was acknowledged before me this 15th day of April, 2009, by Brian Benson.

Notary Public

My Commission Expires:

08/16/09

MARY JO ALLEN
Notary Public State of Nevada
No. 01-70568-1
My appt. exp. Aug. 16, 2009

COGENT ELECTRIC

February 4, 2009

APCO Construction
3432 N. 5th Street
North Las Vegas, Nevada 89032

ATTENTION: *Anthony Wallace*

REFERENCE: *Las Vegas Museum*
Proposal for Electrical Work – (via e-mail)
NUMBER OF PAGES INCLUDING THIS COVER: 2

Mr. Wallace;

Having examined the bid documents provided, Cogent Electric proposes a contract in the amount of [redacted] dollars [redacted] Said Bid Price will be represented by a detailed itemization, referred to as Schedule "A".

- *Performance and Payment bond is included in price.*
- *If awarded a Contract, Cogent agrees to man the job with sufficient qualified personnel to complete satisfactorily all work within the time frame and schedule agreed upon.*
- *Cogent reserves the right to rescind this proposal if we cannot arrive at a mutually agreeable contract and/or schedule.*
- *Cogent acknowledges that this is not an OCIP project.*
- *Receipt of addendum 1 is hereby acknowledged.*
- *This proposal is valid for 30 days.*

Give me a call if you have any questions pertaining to this document.

Sincerely,
Cogent Networks

Donna Bradley
Project Manager

TEL: 702/614-0789 *5725 S. Valley View Blvd. Space #10* *FAX: 702/616-2697*
SBA (8a) WBE, MBE LIC#62568

SCHEDULE "A"
BID BREAKDOWNS & CLARIFICATIONS

I. BID BREAKDOWN:

Item	System Description	Total
1	Specification division 26	[redacted] ✓
2	Specification division 27	[redacted] ✓
3	Specification division 28	[redacted]
	Total	[redacted]

ADD ALTERNATE PRICING

1	Temporary Power and Lighting (use of existing gear on site)	$ [redacted] ✓

II. CLARIFICATIONS:

The following work is Included:

A. All work on straight time.
B. Permit and inspection fees.
C. Division-1 General requirements as pertains to Cogent Electric.
D. Division 31200 Excavation as pertains to Cogent Electric and is shown on the bid documents.
E. Division 024119 Demolition as it pertains to Cogent Electric and is shown on the bid documents.
F. Division 024102 selective historic demolition as pertains to Cogent Electric and is shown on the drawings.
G. Division 078413 Fire stopping as pertains to Cogent Electric.
H. Division 083113 Access doors and frames as pertain to Cogent Electric.
I. Division 108113 Purchase and installation of bird control devices as shown on the drawings.
J. Division 114000 Food service equipment final connections as pertain to Cogent Electric and as shown on the drawings.
K. Division 26 from 260100 – 265600 all sections as listed on the bid depository sheet.
L. Division 27 from 270526 – 271619.02 all sections as listed on the bid depository sheet.
M. Division 28 from 280500 – 283100 all sections as listed on the bid depository sheet.
N. All formed concrete for Nevada Power Transformer pad and pole bases for the street lights as shown on the drawings.
O. Provide as-built drawings and O& M manuals.
P. Clean up of electrical debris to local trash receptacles. Trash receptacles provided by others.
Q. Includes all sales and use taxes applicable.
R. Includes one-year warranty.

The following work is Excluded:

A. Temporary Power as it is listed as an alternate price.
B. All power, telephone and cable TV costs, and charges that may be made by the servicing companies for power, telephone or cable TV installation.
C. All permanent asphalt patching except when specifically note all bid form.
D. Formed concrete for all on-site electrical work.
E. Labor and material required to provide power and/or telephone service to this project that is not shown in complete detail on the plans.
F. Shift and/or overtime premium.
G. Trash removal from construction site.

III. DOCUMENTS USED:
Drawings E001 – E641 and T001 – T201, Westlake Reed Leskosky dated 11/10/2008.

COGENT ELECTRIC

February 23, 2009

APCO Construction
3432 N. 5th Street
North Las Vegas, Nevada 89032

ATTENTION: Rey Mursell

REFERENCE: Conversation with Lloyd Davis – (via e-mail)
NUMBER OF PAGES INCLUDING THIS COVER: 2

Mr. Mursell;

Per your request, I had a conversation with Mr. Lloyd Davis of Las Vegas on Wednesday February 18, 2009; he asked me if Cogent could bond. And my response to him was yes.

Please contact me if you have any questions regarding this issue.

Donna Bradley
Cogent Electric

TEL: 702/614-0759

5725 S. Valley View Blvd. Space #10
SBA (8a) WBE, MBE LIC#62666

FAX: 702/616-2697

LAS VEGAS CITY COUNCIL

OSCAR B. GOODMAN
MAYOR

GARY REESE
MAYOR PRO TEM

STEVE WOLFSON
LOIS TARKANIAN
STEVEN D. ROSS
RICKI Y. BARLOW
DAVID W. STEINMAN
(INTERIM)

ELIZABETH N. FRETWELL
CITY MANAGER

CITY OF LAS VEGAS
400 STEWART AVENUE
LAS VEGAS, NEVADA 89101

VOICE 702.229.6011
TTY 702.386.9108
www.lasvegasnevada.gov

Via Fax (702) 796-7181

May 29, 2009

Mark E. Ferrario
Kummer Kaempfer Attorneys at Law
3800 Howard Hughes Parkway
Seventh Floor
Las Vegas, Nevada 89169

Re: Evaluation Determination for APCO Construction Bid Protest
Project: Las Vegas Museum Phase 3 – Rehabilitation
Bid No. 08.15341.04-LED (Revised)

Dear Mr. Ferrario,

The Purchasing and Contracts Division of the City of Las Vegas has completed its evaluation of your protest on above project. Based on our evaluation it has been determined your protest is without merit. Following is an assessment and determination of each of your claims.

Claim #1: APCO fails to demonstrate the requisite experience required to qualify as a responsible bidder.

Your allegation is that APCO Construction failed to prove their ability to meet the criteria as stated in ITB 13.02(c) and 13.02(o) of the bid documents. ITB 13.02(c) states "Whether the Bidder has experience in restoration of historic buildings having successfully completed one (1) project during the last ten (10) years according to the US Secretary of the Interior's Standards for the Treatment of Historic Properties; **or** (clerical omission)[1] the Bidder's designated Superintendent has experience in restoration of historic buildings having successfully performed superintendent responsibilities on one (1) project, completed during the last ten (10) years, according to the US Secretary of the Interior's Standards for the Treatment of Historic Properties."

Determination:

1) APCO Construction's Superintendent, Brian Benson meets the qualification criteria as evidenced by work he completed on the Los Angeles City Hall project; therefore, APCO's listed projects did not have to meet the requirements listed in ITB 13.02(c). City staff received and verified documentation from the Los Angeles City Hall project Owner, James Treadaway, S.E., and the construction firm that the Mr. Benson's responsibilities included the oversight of 20 subcontractors for approximately $12,000,000 in restoration of the building's historical features. Based on our conversations and documents, we have determined that the Superintendent meets the qualification criteria as outlined in ITB 13.02(c).

2) ITB 13.02(o) states "Whether the Bidder or its Specialty Subcontractor(s) have successfully completed at least one (1) project similar in type or scope as the work specified on the Specialty Work Qualification Forms." APCO Construction submitted the required Specialty Work Qualification Forms for each of the specialty subcontractors and City staff has received and verified the documentation for each of the Specialty subcontractors to confirm each meets the requirements for their specialty work on this project and determined each is acceptable.

[1] Attachment 6 and transcript from pre-bid meeting (January 13, 2009) clearly indicate either the bidder "or" its superintendent were required to have experience in restoration of an historic building.

Claim #2: APCO failed to disclose that it was removed from Gemstone Project and sued for related breach of contract.

You further stated that APCO failed to properly answer the questions on Attachment 6 as it relates to this incident. In reviewing the documents provided by APCO Construction and provided as part of your protest, the City determined that APCO had not failed to properly respond to the questions on Attachment 6.

On the Gemstone project (also know as "Manhattan West"), APCO claims that the owner, Gemstone, failed to pay for completed base contract and change order work. APCO exercised their contractual and statutory rights to terminate work on the project due to non-payment, and Gemstone retained another prime contractor. In fact, shortly thereafter, Gemstone itself abandoned the project due to the lack of financing. In addition, APCO is pursuing payment from Gemstone for completed work.

The bid documents focus on non-performance after a trial on the merits, not based on allegations in on-going litigation between two private parties. The City is not considering the on-going APCO / Gemstone litigation until after trial on the merits or other adjudication of this matter.

Claim #3: APCO has submitted a bid from a subcontractor who has represented that it cannot obtain performance bonds for the Project.

The subcontractor in question is Cogent Electric and based on documents submitted by APCO Construction and Cogent Electric, bonding for this project is not an issue. Further investigation by City staff with Cogent's bonding agency resulted in verification that Cogent will be able to obtain the required bonds for this project. A copy of verification from Cogent's bonding agent is attached to this letter.

In accordance with "Resolution No. 89-2004 - Attachment 13", you have three (3) business days after receipt of this decision to provide written notice of your intent to appeal this decision. Also, this letter confirms the meeting we scheduled yesterday to discuss the bid evaluation in more detail on Wednesday, June 3, 2009 at 4 pm. The written notice must be provided to the Purchasing & Contracts Manager who will forward the appeal for determination to the Director of Finance and Business Services. If an appeal is not received within the required timeframe then it will be assumed that the protest is resolved.

Sincerely,

Kathleen C. Rainey
Manager, Purchasing & Contracts

Encs: ITB Attachment 6
Pre-Bid Conference Transcript
Cogent Electric Bonding Verification

Cc: Cheri Edelman
John Ridilla
Jorge Cervantes
Mark Vincent
Nancy Paolino, Flagship Construction

ATTACHMENT 6
LIST OF COMPLETED PROJECTS

Bidder: _____

Bidders must respond to each of the below questions.

1. Does the Bidder or its Superintendent have experience in restoration of historic buildings completed in accordance with the US Secretary of Interior's Standards for the Treatment of Historic Properties?

   ☐YES ☐ NO*

   If the Bidder has the experience, then complete Form B. If the Superintendent has the experience, then complete Form A for the Bidder and Form C for the Superintendent.

   * If neither the Bidder nor its Superintendent has the required experience, then refer to ITB 13.02 concerning Determination of Responsible.

2. Has the bidder failed to perform any contract as a result of causes within the control of the bidder or a subcontractor or supplier of the bidder?

   ☐YES ☐ NO

3. Has the bidder failed to perform any portion of the Work that caused the Owner and/or others, (i.e., the surety company, etc.) to exercise its right to complete the Work in the contract?

   ☐YES ☐ NO

4. Has the bidder been involved in any failure to complete or breach of contract for any reason including, customer-directed suspensions or disbarments/disqualifications?

   ☐YES ☐ NO

5. Has the bidder been disciplined or fined by the State Contractors' Board or another state or federal agency for conduct that relates to the ability of the bidder to perform the Work required by the City for this Project?

   ☐YES ☐ NO

6. Has the bidder been convicted of a violation for discrimination in employment?

   ☐YES ☐ NO

BID PROPOSAL PAGE

PRE-BID CONFERENCE TRANSCRIPT

Lloyd Davis: All right, good morning everybody. I've turned the recorder on, we do record these uh pre-bid sessions that way we get a record of the questions asked and we go back and listen to them. Um I'm going to go ahead and start on some of this stuff while you're all still signing in. Cause we're going to do introductions and that's going to take a few minutes since we've got a couple people in here. My name is Lloyd Davis I'm a Contract Specialist for the City of Las Vegas and we're here for a mandatory pre-bid for bid number 081534104 uh revised, and the reason its revised is that we did bid this out one time and we had to make some revisions to the plans and specifications and some of the uh qualifications and criteria cause there were some misunderstandings on the original ones, so we went and cleaned it up and we had to reissue it. Uh as I stated this is a mandatory pre-bid, and its mandatory for the general contractors. Subcontractors, it's good that you're here that way you get, you get on record here and the general contractors will have your name and phone numbers so they can contact you for pricing but the ah main thing is for the general contractors to make sure you get signed in. I will be closing this uh meeting here in a few minutes where ah any general contractors coming in won't be able to bid on, it but I'll give it a couple more minutes to get, to get over here cause we did move from our old office over to here.

Uh the first thing uh so we can get a kind of a count of who's here ah actually with the number of people here it probably wouldn't be a good idea to do introductions. Uh, we'll just ah, you'll get a copy of the sign in sheet when we get this all over. So it's definitely uh important that you get signed in especially the general contractors. What I'm going go do is go through the bid documents here. I'm not going to go through every page, every paragraph. You all are pretty familiar with our bidding documents. I'm going to highlight a few areas that need to be covered and then I'll answer any questions if I go over a paragraph that you know that you had a question on, you can stop me at that point and I'll cover that one in more detail. If I cover a paragraph uh not in enough detail for you, you can stop me and I'll go into more detail so you can ask questions about it. Once I get done then I'll have our Public Works individuals go through the, ah the special provisions or specifications that they want to cover, and then we'll have a, ah kind of a question and answers. Also at the end of this the building will be available, it is not mandatory for a site visit ah but it is available for individuals to go over and take a take a walk through, with our Public Works people. If you don't do it today then you can call back and make arrangements to go through it at a later time. I know the last time we had contractors that went through it two or three times. You know cause you'll have general contractors bring different subs in that don't attend this meeting.

So this meeting here is mandatory. The sign in sheet will be used at the, at the Bid Opening to verify that the general contractor was at this meeting. And in order to be counted for this meeting you don't, you don't only have to sign in but you have to stay here. All right? You can't sign in and run. If there's two individuals from one company here, at least one of you have to stay here for the main, ah for the full meeting. Uh if you don't mind I'm going to stand right here. Okay this project consists of the rehabilitation of the, ah, the old Post Office. It's, it's being turned into a museum and it's over here on 300, I believe it's 300, ah Stewart. These bifocals don't quite work at the right distance here.

Uh, now this building is on the, on the historical register and the work that's being done in it needs to conform to the uh United States Secretary of the Interior's standards for historical rehabilitation. Uh, it includes some ah remodeling, some, some rehab and infrastructure within the, ah, for improvements for the tenants. Once we get it opened up here there's going to be some tenants in there with different displays. That's not part of this but we're getting it ready for them. It does have Federal funds on it. And one big issue here is, award of this project is contingent upon funding through the sale of redevelopment bonds. The monetary range of this project is 15 million to 21 million dollars. It is a prevailing wage job. There's a PWP number that was assigned by the Labor Commissioner's office for this project. And as I stated this is a mandatory pre-bid for the general contractors. The Bid Opening is scheduled for February 5th at 1:30. It is open to the public and is going to be held in this room here. However, the bids must turned into the City Clerks office which is over at the main tower on the first floor. This is for the general contractors. We do not take the bids from the subs. So please, subcontractors, you need to contact the general sub, uh the general contractors to get your bids to them. All right? I have had some subcontractors turn their bids in and I opened them up here and of course we could tell by the amount of the bid that it was a subcontractor. So please, subcontractors make sure you get a hold of the general contractors. All right?

As I stated, the bids need to be turned in to the City Clerk's office which is on the first floor of City Hall, over in the main tower. They will time stamp them and bring them over here. Any questions after today need to be

faxed in. We're requesting that ah, your questions be turned in by January 20th. Please make sure you get ,m faxed into us by the 20th. That way we can get an addendum out and we won't affect the Bid Opening. We don't want to change the Bid Opening date we want to get it open on the 5th of February so we can get it into Council and get this thing moving. Okay lets see, okay you guys still haven't signed in, right? Have you signed in? Let's see there's a seat over here. All right it's 10 after 10; this meeting is now closed for any other general contractors. Any general contractors that come in now would not be able to sign in or, or ah bid on this project. And once the last, once the last gentleman gets signed in I will take the uh, take the sign in sheet up here. All right.

Okay, as I stated your, your bids must be turned in to the City Clerk's office. Make sure it's in a sealed envelope. Make sure the outside is clearly marked as a bid. You need to put your company name, the bid date and time, and the bid number. The City Clerk has the log that they gotta log in all the bids in. And that's the information they need for that log. If any of that information is missing they're going to open up the bid and retrieve it, and we prefer that the bids come over here unopened. So please make sure that you follow those directions and have it clearly marked on the outside. Okay, any question on any of that? **(7:07)**

Attendee: Does the better buy America act apply to this project because it has Federal funds?

LD: Uh, I'll have to look into the uh...We got the Federal certifications that apply in here. I haven't looked through it for that there.

Attendee: All right.

LD: Are you a general contractor? No? Oh you're a sub? Okay. All right, uh, now we're on the cover is the documents that must be submitted. There's ah, 3 different time frames on submission of documents on to this)ject. One is uh, at the Bid Opening there's certain documents that have to be included. Then you'll have a 2 ,our window for another document, and then you have 1 business day and I'm gonna cover each one of those in detail. Um, at the Bid Opening, you have to submit your bid proposal pages, which we'll go over too, in, in more detail. Your Bid Security, which can be in the form of a bid bond, uh cashier's check, certified check or money order, for 5% of your bid amount. And the other document is your 5% Subcontractor List. All right? Those documents must be at the Bid Opening. When I open the bids up those are the documents I'll be looking for. Now the other documents you'll have different time frames but you can submit everything with your bid and you won't have to worry about those timeframes. The, the just letting you know that there are different time frames. The next one will be your 1% Subcontractor List. You would have 2 hours, the 3 apparent low bidders, will have 2 hours after completion of the Bid Opening to submit that. It cannot be faxed; none of the documents can be faxed. They all have to be hand carried and turned into the City Clerk's office. They time stamp them and bring them over here. All right.

The uh, the like I said the 1% you have 2 hours, and that 2 hours is very important. It is statute, I cannot waive it. We've had to reject a low bidder a few months ago because their 1% List came in at 2 hours and 10 minutes or something like that. If it's past the 2 hour mark, your bid will be rejected. It's a statute requirement and we cannot waive it. The same with your 5% Subcontractor List. That has to be turned in with the Bid. It is a statute requirement I cannot waive that. Now, if, this is a pretty large project, but, if you do not have a subcontractor that meets that criteria, um I would suggest you still turn the form in and mark 'none' on it. And that way there's no question. Wait a minute. General contractors, has everybody signed in?

Attendee: Are you going to be distributing a copy of the list?

LD: Yes, you'll get a copy of it. Are you a general?

'endee: I haven't signed in yet.

LD: Fine, but you were here. Anybody else? Okay, I know the government, some of the government groups haven't signed in but I want I want to make sure the general contractors get signed in.

Okay, the, the next set of documents that you have to submit are informational documents that we use to evaluate your bid. You will have 1 business day to submit those. Again they have to be turned in to the City Clerk's office if you do not submit them with your bid. And this is the 3 apparent low bidders who submit these.

Woman in background: Sir, may I help you?

LD: The first one is ah...can you go ahead and shut that door, please? Uh, the first one here is the Certificate of Eligibility. And that's the 5% preference for ah, Nevada contractors. You know how you go to the, ah State Contractors Board and get that? If you, if you're eligible for it. We have had some here lately that had it come into play and the ah, the apparent low bidder at the Bid Opening did not have one and then the award went to the next bidder because of that preference. Are you a general contractor, sir? **(11:21)**

Attendee: I'm actually a sub.

LD: Okay, okay go ahead and sign in, would you pass? Okay uh, the next document after the, ah Certificate of Eligibility is the, ah, Evidence of Good Faith Effort. That there is used to ah evaluate ah what you did as a general contractor to go out and get minority business enterprises as subcontractors and suppliers to your firm on this project. Uh, we, we evaluate that, and you either fail, get a standard or a excellent rating on it. At the end of the project there's a contractor evaluation done on your performance and that is one of the criteria that we evaluate.
Schedule of Values, you have 1 business day to submit that. Name of your ah, name and resume of your superintendent and your project ah manager. You need to submit those documents, you have 1 business day. List of Completed Projects form, you have 1 business day. And I'm going to go into these individual forms in more detail when we get to them in the back here.
Uh, there's, there's another form here that's, that's made specifically for this project and it's called the uh, the Specialty Work Qualifications form. And I'll get into details on that, but that's basically to cover your historical rehabilitation. If a general contractor's not doing it, you can have a, if you have a, subcontractor doing that work, you have to submit their, their qualifications for that type of work, and we'll go over those type of forms when in a moment here. And then there's some Federal certification forms that have to be submitted. Mainly it's a lobbyist form and a debarment. And you have 1 business day to submit those. The other documents to be submitted will be once we make an award you'll have a, ah, the ah, the Owner-Contractor Agreement and your Bonds and Insurance. You'll have 3 business days to submit those forms, sign the contract and get us your, your bonds and insurance. We used to, we used to give you 5, we moved it to 3 business days. We have not had a problem that, uh, all the general contractors have been able to step up to the plate and get those things into us within that 3 business days. Which we appreciate, that gets us started on the project that much sooner.
Okay, withdrawal of your bids. There's two areas here, there's one prior to Bid Opening and one after Bid Opening. Prior to Bid Opening, all you need to do is go back over to the City Clerk's office, provide them with whatever identification they need and they'll hand you back your, your bid, withdraw it. Now, after ah, after I have received the bids over here, we call, even though I have not maybe, opened your particular bid, once I receive it, then it falls into the ah post Bid Opening, if you want to withdraw. I had a bidder one time setting in here, I got to the bid and they asked to withdraw it. Once I have it, the City Clerk has turned it over to us, it's been logged in, I have to open it, and read it. If you want to withdraw your bid, once it's come over here, you must do so in writing to the Purchasing manager, outlining your reasons for your withdrawal. It explains it in paragraph 902 in here that there's some criteria you have to put in that request, explaining why you're gonna, why you're asking to withdraw your bid. Any question on that?
Okay, licensing. Uh, make sure that you're licensed to ah, perform the work that you're bidding on. We do not verify that you have the proper license, what we verify is if you are licensed. And that license is valid and there's no ah, penalties or assessments, fines or anything like that. We evaluate that. We do not evaluate if you, if you're supposed to have a B license and you've got an A license, or if you have an A license, supposed have a B license. You all know what licenses you're authorized to, what projects you're authorized to bid on, and ah you all kind of self watch that anyway, and you'll let me know or put a protest in if somebody's got the wrong license. So, all we do is we verify that you're license is valid and up to date. Also you must have a

business license, a City business license. We do, we do verify that. If you do not have one as you, it has a phone number in here and procedures for you to ah request one from our Business Licensing on our 3rd floor. Okay, award. Awards going to be made to the lowest responsive, responsible or best bidder, for the total amount. Now, for determination of lowest responsive, responsible bidder, those are covered on pages 8, 9 and 10 of the package. I'm only going to cover a couple of those items, you can read all of the other the ah criteria in here, but the main one here is whether the bidder has experience in restitution of historic buildings, having successfully completed 1 project, during the last 10 years, according to the U.S. Secretary of the Interior's standard for the treatment of historic properties. Also, uh, the bidder's designated superintendent has experience in historical buildings, successfully performed superintendent responsibilities for 1 project in the last 10 years, according to the U.S. Secretary of the Interior's standard for the treatment of historic properties. Any question on that? One project in... **(17:08)**

Attendee: Is that mandatory?

LD: That is the criteria that we're using to determine the responsibility.

Attendee: For the General Contractor?

LD: For the general contractor...

Attendee: Not for the subs, right?

LD: There is some provisions in here for the subcontractors, their specialty work. And there's, there's ah some forms in here we're going to get to them in a minute.

Attendee: Does that alleviate the General Contractor, though?

LD: I'm sorry?

Attendee: The subcontractor's forms of, of responsibility and proper projects, that does not alleviate the super, the general contractor's responsibility for the same?

LD: No, it does, in certain areas. In certain areas, and we'll cover those forms here in a moment, all right. This is one of the changes that we made from the past project.

Attendee: It's not how the bid form reads, but...

LD: Well, and that's what we're here for, if there's, if there's something that needs to be clarified, then we need to bring it up here, and we will get it clarified in an addendum because we want to make sure that everybody understands what we're looking for. **(18:03)**

Attendee: So are, are you saying that if the subcontractors have a superintendent that meets the qualifications...

LD: No, no the General Contractor's superintendent must meet the qualification.

Attendee: And the General Contractor must.

LD: The General Contractor must have completed a project ah, well I guess I can skip over these forms.

Attendee: Excuse me, sir, the value of this work you said is 15-21 million dollars.

LD: Right.

Attendee: Say they do a thousand dollar renovation that meets the standard, the U.S. Secretary standards criteria, and then suddenly you're going to award him a 15-21 million dollar job. Is that applicable? What, what, what value of work does this general contractor have to prove that he has done?

LD: Well, uh...

Attendee: Because, you understand? You, you could renovate a, a, an outhouse, which is under (indistinct) and then you want them to do a, this job...21, 15 to 21 million dollars.

LD: Well, go ahead...

Sam Tolman: Its projects of similar scope.

Attendee: Projects of similar scope. Okay.

LD: Well, if, if we have to clarify that we will...

Attendee: I think so...**(19:25)**

LD: Cause here's a, alright, Attachment 6, which is the list of completed projects, all right, this is the form that they'll be using to verify the contractor's responsibility. Very first one 'does the bidder or its superintendent'. See, if the superintendent has the experience, that will meet for the General Contractor. All right? 'Does the Bidder or its Superintendent have experience in restoration of historic buildings completed in accordance with the U. S. Secretary of the Interior?' You say yes or no. All right? If the Bidder has the experience, then they will complete Form B, of Attachment 6. If the Superintendent has the experience, then they would complete Form A for the Bidder, and Form C for the Superintendent. All right? If neither the Bidder nor the Superintendent has the required experience, then you need to go back to that 1302 concerning the determination of responsibility which basically says 'you gotta have one or the other'. All right? If, if the General Contractor doesn't, has not done a project but he has a Superintendent that has super, has superintendent experience for that size, that type of project, then that will qualify the General Contractor. All right? **(20:45)**
Now, in order to get the work done, there's a special, there's certain jobs that we're requiring specialty work. Specifically. And those are forms uh, those are Attachment 7. All right. And it's masonry rehab. All right. We need the qualifications on your subcontractor, unless, unless you're doing the work yourself, but if you're doing it yourself we still need the same information, showing that you've performed ah, masonry rehab in accordance with spec, ah, the ah, section 040120 which outlines what we're looking for. There's 3 of them in here, there's 1 for masonry rehab, ornamental pay, ah, plaster, and painting, all right? Three forms in here that have to be submitted for your specialty contractor. Or yourself if you're going to perform that work, but you have to still provide these forms. So basically you're going to have a form for either the General Contractor or your Superintendent, and then you're going to have 1 for those 3 specialty works and you'll have 1 business day to get those in. All right, yes? **(22:06)**

Attendee: John Gonzales with Delessio Contracting. I run the painting division there. Um, so as, as a painting subcontractor that we're bidding to the generals, uh you want my experience on historical painting...

LD: Right.

JG: ...all my past experience running a...

LD: No. One project, here's, here's what this says: list at least, at least 1 project successfully completed, similar in type or scope as the work specified, in the past 10 years. And then there's got a place in here for you to put the project name, address, point of contact, description, when it was completed, we will go through and

verify these references. And that's for the 3 specialty contractors and then there's also forms in there for the Superintendent or the General Contractor.

Attendee: But there's no requirement for a specialty contractor for any of the wood trim, doors, windows, ah ticket counters, judges, the judges, all that, just, anyone can do that work?

LD: Right, that's the way we've got it.

Attendee: And, what happens if ultimately 1 of those 3 subcontractors is determined not to be qualified?

LD: Under NRS we can, we, we require you to substitute. Yeah, we won't throw your bid out because NRS, NRS states that if the owner... you're shaking your head no.

Attendee: We're not allowed a substitution

LD: Read 338, 338 allows a substitution of a subcontractor if the Awarding Owner rejects or says that the contractor's not qualified. At no increase in cost.

Attendee: I think NRS says you pay the difference.

LD: Well, you might, well. Okay, I don't want to quote this here on tape but ah, 338, NRS. And that's what we will go by, whatever is in NRS. Now we have had, and you're right, we've had subcon, er general contractors come in and ask for a substitution of subcontractors because they can't get bonding, which, we're kind of jumping around here but, any, any subcontract that you have that has a contracted value of 50,000 dollars or more, will be required to be bonded. That bond will be between the subcontractor and the general contractor. However the City will ask for evidence of that bonding. In that instance you, you would have to get a substitution and there is no increase in that instance. But you're right, if we, if the Owner says that you need to change out your sub then we are required to pay the difference.
Ah, but I think if ah we might go to Legal and get verification on that if its, if its something that, that you know I don't want to get into legal stuff but if we're telling you that they have to meet certain criteria and there's someone that doesn't meet that criteria, you know, there might be an argument there that, for you know not paying, so I don't know. This is being recorded and I don't know, so we would go to legal on that type of situation.
Now, since we're talking about the subcontractors and the bonding, I'm requesting, please, general contractors, when you get your bids for your subcontractors, please verify with them that they can get the required bonds. You know and we and, you don't like it and we don't like it asking for substitutions. The subs don't like it. Make sure their aware of that requirement. Don't blindside them with it. Please make sure it verifies. It makes it easier on everybody. Any questions on any of this stuff I've covered so far? Yes?

Attendee: How much of the monies are Federal funds?

LD: I'm not sure. I'm not sure how much, it's not 100%.

Attendee: And with Federal funds, does that 5% bidders preference still apply?

LD: Yes. On this one it does and so does the ah, and there's no Davis-Bacon on this. It's a straight ah, Prevailing Wages. The particular funds that we have do not stipulate that we have to have the Davis-Bacon or anything about the preference. All right, each grant that we get, Federal grant, has different ah criteria for it and we review those before we put them out and get, get clarification. But it was a good question. Yes?

Attendee: Do you receive any State fundings that require any kind of LIED certification or ah LIED accreditation of this project?

LD: Ah, I think we are going for LIED on this, aren't we?

Sam Tolman: This project will be LIED Silver.

Attendee: Silver?

ST: Yes.

Attendee: Okay

ST: But there's no State requirement. We're requiring it. It's a, ah City requirement.

Attendee: A couple years back the uh State said that anything funded by the State would have to get the (indistinct). I was just questioning...

ST: Yeah, good question.

LD: Yup. All right let me go back here now on page 14 all those documents I was talking about, ah submittal and when they had to be submitted, ah page 14 of the uh bidding document shows each form and when it has to be submitted, like with you bid, or 2 hours later and so forth.
Okay I'm going to jump back up here to Attachment 1, I'm going to go over the different Attachments and Forms and what, what you need to submit and then what needs to go on them.
Okay, the first one here on the bid proposal pages this is just general information about your company, address, phone number, point of contact, business license number, your contractor's license number. And uh, make sure that you put down your most current uh, State Contractors license number. Sometimes companies ill get a new one and they're so used to putting the old one down there they'll throw that old one on there and I'll go on and verify it and it's suspended or wasn't renewed or something and you know then we start making phone calls and find out what's going on. Just take your time, make sure you get the right numbers in there.
Any addendums that are issued, on the next page you would acknowledge those addendums. Make sure you do acknowledge the addendums, if we had an addendum and you don't acknowledge it, it could result in a rejection of your bid. Depending on the nature of the addendum. Now if the addendum, like the Bid Opening right now is February the 5th. If we issue Addendum 1 and change the Bid Opening to February 10th, and you show up on February 10th but you didn't acknowledge the first addendum, I kind of know that you got it because you're there on the 10th rather than on the 5th, you know. So, its kind of, it is subjective as far as on the ah, addendums if it's, if it would cause rejection but the safe bet is. Now we do not, we do not call everybody up on your addendums. We will fax either the addendum to you, or fax a notification that there's an addendum for you to pick up, depending on the nature of the addendum. If the addendum has plans with it you're going to have to come and pick it up. We would take that fax and we get a verification that the fax went through to the fax number that you provided us, and that's it. You're responsible to make sure that you have all the addendums that have been issued.
My advice, couple days before the Bid Opening, call our main number, check our website, we do post on the website that addendums have been issued, but we don't post the actual addendums on the website. Also for some of your subcontractors, do not rely on the Bid Depository or the Notebook or any of that for the plans and specifications. If you can't get them from the General Contractor then you come in here and purchase them from us. We're not liable for anything that they mistakenly post, or print, in error. We're not responsible for anything that they have down there. And it happens, I had a contractor that got rejected not to long ago cause they didn't get one of the addendums, and the Notebook told them 'oh that addendum just changed the Bid Opening date'. But that addendum added some specs and plans and they lost the job. We're not responsible for what the Notebook does so, please, verify everything through our office. And while I'm talking about that, all uestions need to be routed through me. Do not call, you'll, you'll have a list here of our consultants and everything, do not call the consultants; do not call the Project Manager. All inquiries must come through me.
Right now I've got, they're pretty good about referring everybody to me, but ah, please just give me a call. My phone number, I'm the first one that signed in. My phone number, my fax number, my email address is on the

very top line of this sign in sheet, and you'll all get a copy of it. So there's no excuse for not being able to get a hold of me. **(30:46)**

Attendee: Do you want me to pass these out?

LD: Yeah, go ahead you can pass them out. All right, now also on this second page is where you sign it and there's a little checklist of things that should be included with the Bid Proposal at the Bid Opening which is your Bid Schedule, your Bid Bond and your uh, 5% Subcontractor List. Please make sure you sign your bid. Okay the next page on the Bid Proposal page is the Lump Sum Amount. Awards gonna be made for the total, total amount here. Now, if, after you write down your amount, you say 'you know what, I need, I need to give the government a little bit more discount, and I want to change that amount', all right. Don't try writing over the amount, just draw a line through it, rewrite it and initial it. Make sure you do it this way, draw a line through it, don't try writing over it, Okay? Don't take that 8 and try to darken it and make it a 6 for us, all right? Cause I'm gonna read, I have to sit up here and try to decipher it and I don't know if that's a 6 or an 8 or a 9 or what. So, if you make a mistake, or you want to give us another discount, draw a line through it and initial it. All right, and just rewrite it.

Okay Sample Bid Bond. 5% Subcontractor List under NRS statute the only thing you have to give us on this here is type of work and who it is. We're not asking for license numbers, you don't have to go and verify that right now. Just give us description of work and who it is on the 5%. Now when you say who it is, please write that clearly for us. We go into the computer and we type in what you put and try to pull up their license. If you abbreviate their name and that's not the way it appears on their license, we're not going to be able to find them and we're going to have to call you up, and ask you who it is, all right. Also please mark down if their status if they're a minority business enterprise.

Good Faith Effort. You'll have 1 business day to turn this in and all documents that go with it. You can turn it in with your bid but you don't have to you can wait the 1 day to get it turned in but 3 apparent low bidders are required to turn it in. Now, also while I'm on that subject on these submittals, the 3 apparent low bidders. If you are 1 of the 3 apparent low bidders, just because you're number 3 you might feel, well I'm not going to get the job, so I'm not going to turn the form in. Don't take that attitude, please if you're at the Bid Opening, if I announce you as 1 of the 3 low bidders make sure you turn all your documents in, on time. Because you don't know what we're going to do with the first, the first and second one might get thrown out, and you might end up being the low bidder. You don't know. Make sure you turn those forms in. I've had that happen where the, the third one didn't turn their documents in, you know, so.

Okay, schedule of values, you'll have 1 business day. The only thing I want to say about this, is, when you total up this schedule of values, and it says total of line items, make sure that number there matches your lump sum bid. I know it sounds elementary, but I've had it happen where they didn't match and it just gives us a clue that you either left something out of there, or you added something that shouldn't have. They need to match, to the penny.

All right Attachment 6 we kind of already went over these. Ah, this is a list of completed projects here. Form A is the Bidder's experience, Form B is ah, Bidder' experience performing work in accordance with the U.S., now let me explain this a little bit more. Right the first form, if the general contractor is going to use a superintendent as their qualifications' for the Secretary of the Interior's work, then you have to turn in a form on the superintendent, and you'd have to turn in Form A, which shows it's your company has completed a project similar in scope. That doesn't necessarily mean it's a historical, but it's similar in scope, all right, to show that the company's qualified to perform the work. Now, as far as the Secretary of the Interior work, then your superintendent, you're using them as the qualification for that. Is that clear? That way we're, you know, so to answer your question, basically, you know if the general contractor hasn't done a job of this scope, then they might not qualify as the general contractor. All right, and then their superintendent has to do the Secretary of the Interior work. Now, so that would be forms A and C if the contractor's not going to be the qualifying person for the Secretary standard. Form B is for the, is the general contractor, if you're going to, to do it under you as one, for the Secretary of Interior work, then you would do Form B. If, if after all this is done, and you go back to your office and start looking at it and you've got questions then just give me a call, all right. **(35:53)**

All right, Attachment 7 we talked about this, this is the specialty work qualification form for the 3 areas.

Attachment 8 is the 1% Subcontractor List. You will have 2 business, uh, 2 hours to, 2 hours to get this turned after completion of the Bid Opening. Again, that 2 hours is statute, so if it comes in at 2 hours and 10 minutes or 2 hours and 1 minute, your bid will be rejected. Nothing I can do about it. No waiver on that.
All right, Attachment 9 is the Owner Contractor Agreement and then the General Conditions, there's only a couple of items I want to go through in this area, that I want to cover some areas that will affect your cost. The first one here is uh, completion, you will have 475 calendar days to complete this project. If you do not complete it within that 475 calendar days and no time extension has been granted, liquidated damages of 2,000 dollars per calendar day will be assessed.
All right, uh, in the General Conditions there's a few areas here I want to cover cause they, again they fill in areas that will affect your costs when you're filling this out. I want to point them out to you. The first one here is your superintendent, project manager. Your superintendent will be required to be on the job site at any time work is being performed. Even as a general contractor, if you have none of your workforce out there, but you have a subcontractor in there, like the masonry work subcontractor in there doing some work, and none of your workers are there your subcontractor still has to be there, or your, your superintendent, still has to be on the job. So we've got 475 calendar days allotted for this job, so if when you're doing your take-offs and everything, if you have a strong feeling that you're going to have somebody on that jobsite all 475 days, then you need to calculate that your superintendent's going to be there then that whole time, too. All right, I just want to point that out.
Ok, bonding. Of course the standard bonds that we need: performance bond, labor and material bond, guarantee bond, 100% of your contract amount. And as I stated earlier, if you're a subcontractor, any subcontractor that has a subcontract valued at 50,000 dollars or more, will be required to be bonded.
Insurance requirements. We've changed one of our insurance requirements here very recently, and I, and some of you might not have bid on it since we've changed it. Builder's risk, we do not require the general contractor to carry builder's risk any longer. The City will self-insure that the builder's risk, we will get our own coverage on it. However, our builder's risk policy has a 10,000 dollar deductible. The general contractor has r occurrence. The, uh the General Contractor will be responsible for that 10,000 deductible with, if the City has to use their builder's risk insurance. Now, I don't know how all that works, I'm not an insurance person, I'm not an attorney, my suggestion I make at all these pre-bids on that subject is to get a hold of your risk management individuals, show them this clause, show them what you're responsible for, and they will let you know what you need to do to cover that 10,000 dollars. All right, any questions on that?

Attendee: Lloyd, I think that includes theft and vandalism, too. I mean that 10, 000 dollar deductible.

LD: Well, it's just it's whatever's under the builder's risk. It, it's outlined in here. Theft is, theft would probably go under general liability.

Attendee: That wouldn't be builder's...

LD: Builder's risk covers uh, fire testing, well vandalism, mischievous, mischievous, collapse, water damage and so forth. Like I said, my suggestion to you is to get a hold of your risk management, show them this and then they'll let you know what you need to do on that. All right, uh general liability, 5 million per occurrence, 10 million aggregate for this project. Then you have of course, ah, automobile liability and ah workman's comp. We also, we add the one here for this particular project, number E which is pollution and environmental liability insurance. And it's 1 million per occurrence. Again, I would take these, these pages here and get with your risk management and see what you need to do. Because you will be responsible to cover, to have the proper insurance ah coverage.

Attendee: Lloyd?

: Yes?

Attendee: The floater insurance isn't checked so that's not uh, a uh not a requirement on this project?

LD: Yes, right, the floater, yeah. We're not providing any, any material, any equipment that needs to be covered. Yeah, thanks for bringing that up. I, uh, there are some boxes out to the left hand corner of some of the paragraphs. If those boxes are empty, then that paragraph does not apply to this project. We've tried to uh, cut down on having to rewrite and everything so we're, we've put everything that we feel we needed on any type of project and put little boxes out there and we check them if they, it they apply. So you're right, that one does not apply.**(41:45)**

Uh, breach of contract and remedies, Section 10, uh I'm not going to go through those. You're all pretty familiar with that. You know the City has a right to terminate a contract for, for non-performance and uh we also have, ah, termination rights for convenience of the government, and suspension of work for the convenience of the government. I haven't seen those enacted but they, there's always that possibility.

Certified payrolls, uh prevailing wages, as I stated earlier this is a prevailing wage job, and you need to make sure that your subcontractors are aware of this.

We usually don't get any complaints until after the project is completed. I've got 2 on my desk right now that I'm going through. There are penalties and fines associated with erroneous ah reports as far as trying to pay everybody as a laborer when they should be an electrician or an operator, engineer depending on what work they were doing. Uh, overtime. Also, there's penalties and fines if you do not submit your payrolls on time. They're, they're due by the 15th of the month. I can't, normally we don't get anything until after the project's complete or at least until that subcontractor's work is done and then they start coming in. I'll get into it in real big detail at the pre-construction meeting with the, the awarded contractor but ah, you need to keep good daily records of what's going on. And we do assess penalties and fines, I, I just collected ah, a couple thousand dollars just last week on, from a contractor for some penalties. Any question on any of that?

Ok, if you'll notice, ah, you don't need to turn to it, but on page 57 it shows what I was talking about with those boxes. You know there's two paragraphs there, one with the box empty and one with it ex'd in. The ex'd in is a special requirement under, because this has Federal funds there are 2 forms that need to be turned in, and you'll have 1 business day to turn those in, and that's your debarment and your lobbyist. Please make sure you get those turned in.

All right, I'm just about out of wind here. The rest of these attachments are, are samples of bond forms, protest, there's a, Attachment 13 has the, has the resolution in here that was passed by City Council on, on submission of protest. Uh, it's also in statute now. There's criteria you have to follow, there's so many business days you have to submit your protest within after the Bid Opening. There's a protest security required which is 25% of your bid, up to a maximum of 250,000 dollars. That can be in the form of a cashier's check, certified check, money order or protest ah, bond. They now have protest bonds that you can get from your sureties. If there is a protest, ah, filed on a project award will not be made until that protest is resolved. **(45:04)**

Attachment 14 is ah, I believe that's an OSHA requirement there. We put this form in just for your information, it's your responsibility as a general contractor to check to see if it's applicable. I'll get letters every once in a while from OSHA and I forward them on to the general contractor if you have to fill that out. There's the criteria for it, we don't make the determination but we make, we put the form in here for your, kind of to alert you that there's a possibility it might be required. Any questions on any of the front-end parts of it? Yes?

Attendee: Um, permits and QAA. Responsibility of the owner or contractor?

LD: Uh, they'll get into that with the specification here in a moment. Anything on the front end?

Attendee: Yeah, uh real early on you mentioned that the project is contingent on sale or resale of development bonds.

LD: Right.

Attendee: What's the feeling uh of the success of that and time line?

LD: I believe it's going to be, uh, we're, we're, we've got good vibes that it's going to happen. How's that? Ah, we're hoping…

Unknown: We're hoping at the end of January, start of February.

LD: That's why we're having the Bid Opening February 5th, we're hoping that it will be done before that time frame. Now once we open the bids, and we get the funding then of course the project will have to go to Council for, for award of the project, uh, hopefully sometime in February. But, ah...

Attendee: So for bidding purposes, it's not really an issue?

LD: Right.

Attendee: Okay, thanks.

LD: Yes. If we find, if we find an issue before Bid Opening where we're not going to do it, there, then there's a good possibility they just would cancel the Bid so you don't go through everything. That's why we set it in February, we're hoping to know something by the end of January. But we didn't' want to delay the bidding process until we found out because that delays the start of it and some of those funds, a lot of times when we get some of the funding, we do have some funding, and some of it has time frames where we have to get certain work done by certain time frames or we have to ask for extensions. So by us bidding now, in anticipation of selling the remaining bonds that we need to fund the project, we're that much closer, closer to getting started and fulfilling our obligations under the grants to spend the money by a certain time frame. So, that's why we're doing it without total funding right now. As far as getting, getting everything started. Did that answer your question? Anything else, on that area? All right, Sam?

ST: Okay, I'm Sam Tolman, Tolman. You can sit down. I'm the Project Manager for the City, working through uh, Pat Dues, who is the Project Manager, I'm just an assistant.

Unknown: Architectural Project Manager.

ST: Architectural Project Manager, Okay, that just came from an engineer, so uh, let me give you a few things. There is something on the plans that's going, we're going to have an addendum to cover that. But because of the way we had to provide these plans in a hurry. But there is a project, the Stewart Street project that's going to cover all off site work. Your plans do show on and off site. Off site will not be your responsibility. That will be covered by addendum.
The power is provided by the owner, it's already out there. And on that note, and this is all in the, in the specs but I wanted to point these things out, um, we have on site and you can see it when you go over there, we have, we are tied into the existing meter. And we have a, ah power throughout the building with ah, with temporary lights, transformers on each floor. That particular equipment you're welcome to use, but that will be turned over to the owner at the end of the job.
Um, after this meeting, we're, you're welcome to come over to the building and tour it if you'd like. Some of you have already been but you're welcome to come back again. You can park at the building after you leave here so you don't have to pay the meter maid out here. Meter maid's are really quick at giving tickets, too, and I have no power over that.
Um, but we'll be there today right after the meeting. The Post Office is just here on Stewart, come in the west driveway and you can park behind the building. Otherwise, for other times, you can view by appointment with myself or Erik Singman. Where'd he go?

Attendee: He just left.

ST: Okay. Uh, on, on the sheet you've got our names and numbers, our email.

LD: Now, let me, let me inject here. Uh, for site visits and stuff you don't have to call me, Okay. I said that all questions have got to come to me but you don't need to call me every time you want to make a site visit. Go ahead and call them direct, make, they can set it up get you out there.

Attendee: What's the names again for?

ST: Sam Tolman, and Erik Singman.

Attendee: Hey Sam, verify the power, the power onsite now... (indistinct)

ST: Okay, you'll see Nevada Power is bringing new power to the building. Right now it's the power that existed in the original building and, you can use it as your temporary power but there will be a switch over for utilities.

Attendee: Sam, are you going to require us to sub meter that?

ST: No.

Attendee: So it's free of charge for the temporary power?

ST: We're, we're paying for the temporary power off the existing meter, and um...

Attendee: And water, is that correct, Sam?

ST: And anything with the water. Now at some point, uh, you'll be bringing new, a new water meter, a new detector check, and ah, bring new water into the site. So you need to coordinate that with the utilities but the present meter, uh, you're not going to have to sub meter that. You're welcome to use it. Um, is there anything else on the utilities?

Attendee: Yeah, Sam, if they're having to bring in new services for the DDCA and stuff will they need to coordinate that either with the Stewart rehab or they do the permanent patches themselves? On the off site?

ST: They will do nothing off site. The Stewart Street project will bring the stuffs for sewer. By the way the Stewart Street project is replacing the sewer and all the way from Main Street clear down to Maryland Parkway. And the second phase, the first phase is in process, the second phase is in front of us. And uh...

Attendee: So they're going to do all the stuff? They don't have to do anything, in front of the curb?

ST: No

Attendee: Everything back of the curb?

ST: Everything's back of the, back of the property line. **(52:16)**

Attendee: So sewer and water'll be tied into that Stewart Street project? So, whenever the project is done and, no offense on how the City works, but that Stewart Street project from Maryland isn't complete, our tie-ins, don't have to worry about ours...

ST: Right now...

Attendee: You know bringing permanent sewer connections and water connections...

ST: Right now, right now the Stewart Street project looks like it will probably be out in, in March.

Attendee: Phase 1 is an in progress, Phase 2 is going to be out in March, done by October. Since this is a 450 day project, we're probably starting in March or April, uh they're going to beat you.

ST: Yep.

Attendee: Otherwise we're just going to be...

ST: Yep, you'd have a longer time frame for that so I think we'll be fine. Okay. This is important. You have the plans we have submitted. If you have any old plans from the last bid, chuck them. There were the existing plans, for the new plans that we have provided you for bid sets, they've gone back through the Building Department, uh, and they are actual, actually the building permit's set. So when you go pull your permit, which is ready, your set from the Building Department will be exactly like your bid set. The City has a policy now that on building projects, we do not put them on the street until we have a building permit ready. Then we Xerox the building permit plans, and by the way note there are some, some stamps on the back of the drawings cause the Building plan checkers always do that, I don't know why, but they're in your set. So that's why you will see a sheet without a number and it's the back of a sheet. Um, the differences you're probably wondering, between the previous bid sets and these bid sets. These bid sets include all the addenda items that were submitted before. The only item I'm aware of right now that wasn't in the plans is the off site, the situation with the off sites being (indistinct).

Attendee: Do those plans include any of the prior RFIs from the prior bid?

ST: Yes.

Attendee: If they were answered by addendum?

ST: Well, some things that came in too late, that weren't answered by addendum we've got in there, too. We tried to cover everything. We try to think of what we can. Um, the architect's here, he can address that, you know, he, he's pretty expert he doesn't make many mistakes, so he probably has covered everything.

Attendee: Thanks a lot. Setting me up for failure.

ST: Okay so that's basically where we're at, uh, we have historical materials, that have come out of that building in the last, uh, the last construction project, and even prior to that. They include things such as um, some historical materials that will be brought back into the building. And they also include like the courtroom furniture they include, uh, uh inventory of materials that will be used probably in the next phase which will be the uh, ah tenant improvement phase for the exhibits and all that. On site there are 4 mobile-minis, we have keys to them, and there is stored the materials that didn't have to be conditioned. We have another facility, City facility, that has conditioned type of material, such as you know would trim and things like that. And then there's another facility, well there's a couple of facilities, they're all within about 10 miles, and uh, some of that information and material will be coming back into the building during your phase of the work, as well as future phases. Anything else you want to say on that? **(56:27)**

Attendee: Is it spelled out in the plans?

ST: There really is substantial inventory. What's that?

Attendee: Is it spelled out in the plans or specifications? Is that information given to us in the plan specifications as to what we're going to be required to bring back.

ST: That's called out.

Attendee: Okay, how about the location of where it's at?

ST: I don't know if it calls out, it's on site its on ah, the other location, maybe we should, it's all within 10 miles...

rchitect: Yeah, all of that, all of the climatized materials are at the West Service Yard, up off of Cheyenne and Summerlin.

ST: Some of, some of the uh materials are on ah, it's actually on Ronemus and, it's Ronemus and Cheyenne, just west of, or east of Buffalo, in our West Service Center. There are some in storage over towards Henderson, uh, and some at Pulitz.

Attendee: Towards Henderson?

ST: Okay Global Storage. Pulitz has, Pulitz Storage has some, too. That's going to be more of a logistics thing. Okay, now, I mentioned the permits are available and if you looked at the specs the Owner pays for and it's already been paid for, the basic building permits, ah when I say permits is when they first issue the permits ah sometimes it's a building permit, sometimes it may be you know, trash enclosure, etc. Whatever was issued by them the owner pays for. Anything beyond that, any sub permits or anything else you need uh, will be your responsibility. And it will be pretty easy to see what it is because you've already got a list of what's there. Ah, the building is, the building has gone through quite a bit of ah work and it is in a partial stage of completion. We've had a lot of grants that we received and we've had to pay those grants out in a certain time frame, for the certain amount of money we've had, like four or five construction projects that have gone over there including demolition, including rehabilitation of the ah, exterior windows, etc. So when you go over there if you haven't been there, ah nothing is really complete but a lot of stuff's been done. There's still hazmat materials that have to be taken care of, uh there's still more demolition, uh and the building really is in a situation where it's, it's, it's handy for you to really see, cause you can get into the walls and everything else.

Architect(?) : So everything like all the duct work's been taken out. Any exposed plumbing. Anything of surface one, all the ah ceilings and things that were put in at a earlier or later date. Ah, they demoed ah walls that are going to get the, ah demoed the plaster on the walls that are going to get shear walls, the perimeter of the building, ah so we can see how it's built, we can see what's ah, what's there. All the historic finishes have been protected with plywood, um so you won't be able to see everything because of that. The stairway and things like that have all been protected with plywood and we expect that you'll maintain that protection as long as you need it until you get to work out there in that particular area. The floors have been protected, the terrazzo floors, that sort of thing.

Attendee: We can't hear that.

Attendee: Has all the abatement been completed, or is it still...

Unknown: No, that's what I was pointing out...

ST: There's, there's still a lot of the, a good share of the, of the, ah asbestos abatement has been completed but you will be getting into some of it still, such as the mastic under the hardwood floor. Ah, the lead paint on the existing plaster, uh you'll be getting into that a little bit, so you'll have some of this going on. Ninyo and Moore, ah is a local ah, I guess you'd call them environmental engineer, and they will continue the, ah, monitoring of, of areas that you have to get into. So, ah...

Attendee: The third party testing is the City's paying for it.

ST: The City is paying for the third party testing for our portion, but look at the specs real careful because there's, there's some stuff you have to take care of. You have to monitor the air, etc. And I'm not going to try to get into it in detail but look at that real closely. I don't want to make a blanket statement that's incorrect. Anything else on that?
Ah, this is LIED Silver we're shooting for, so you need to make sure that, you take care of your ah demolition materials and ah everything else required for LIED Silver. Ah that comes from, no the State started going LIED

Then they pulled back, but the City Council has a resolution that all City buildings and remodelings will be LIED Silver.

Unknown: We have all the documentation from the um, second, the big demo phase that we did, of all the certificates for the recycled materials, where it went and all that stuff that's required. And then ah, inventories of all the materials um, that were done and it's in a box in my office this big and you, you have copies.

Unknown: I do have copies, yeah.

Attendee: You're, you're actually going to ah pursue certification, you're not...

ST: Pardon me?

Attendee: Most, most public entities that, that have done LIED projects build to a, a particular LIED standard, but don't necessarily go through the certification process.

ST: We will be going through the full LIED Silver certification. And by the way, ah this is Bob Mailer, he's the, the project director for WRL, ah...

Unknown: Westlake.

ST: Westlake, Reed, Leskosky, the architect. And this is Robert Chattell, he's our historical architect, and he's not old but he's still our historical architectural consultant. He doesn't like me to do that.

Attendee: And who, who's going to pay the certification fee, is that something the City will bear or is that to be included?

Unknown: We've already uh, uh done the first initial (indistinct)

ST: And we are, we are paying for the commissioning, which is part of all that. We have contracts for that.

Unknown: We are, we are processing the paperwork, um so, you'll be providing us the information.

Attendee: This will be like LIED NC?

Unknown: Yes.

ST: And I'll get you in just a second. This is probably a vital time to, to introduce ah Justin Peterson and our field reps. He's one of, he's the manager. This is Justin Peterson, this is Rusty Coleman and this is Carson West, and they, during the process are going to be watching to make sure that the contractor, try to (indistinct) the contractor and keeps up all his LIED requirements because documentation and tracking, and it's very important. Yes.

Unknown: The checklist is in place for LIED, correct.

ST: It's in the spec.

Unknown: It is in the process, yes.

Attendee: Now we're not expected to design for that is, we're, for the LIED requirements, correct?

ST: No that's what that checklist is already in there. And, and we're shooting to try to get it certified as we go through. As you know that goes long beyond the construction by the time you get it all certified. Yes?

ttendee: The security fencing that's around the building at the present time...

ST: Okay the security fencing around the building, the City has a P.O. for that, when you start work, you're going to be taking that over from Tiberti's fence and paying for it from there on in and that's all in the spec. There is a, you'll notice when you get over there, there used to be a park on this side, um and it's no longer there, and that area is going to be used for staging. Some of the staging will be Stewart Street project when it gets down this way, and ah it's something you can use for staging, too. You may or may not have to. I'm done, thank you.

LD: Okay, any of you got any other questions?

Attendee: Is the info on the FTP site, there's something on the cover sheet about a folder, I didn't see it, looking on the FTP yesterday, though, as builts...

LD: Oh.

ST: The information that was on the FTP site last, last time, our dear IT guys deleted it, so we'll set up a new FTP site and let you know where to get some of that information. Or you know what, you can get it from our office. Hmm?

Attendee: They must know our IT guys.

Unknown: Yeah, I tell you, computer guys.

D: Anything else? Yes?

Attendee: Yeah, the three assessments from Griswold Associates about the conservatory assessment, the historic paint inventory and the uh, the conservation report, they said to request those. Anybody? I need those.

ST: Uh, I'm not sure what that, the uh, I haven't been through every piece of the spec, but uh, we will put everything we can on the, FTP site.

Attendee: Okay

ST: Which will be existing photographs, like we did before, probably the Griswold's report, uh.

Attendee: Yeah, there's three reports it says to ask for, I mean, it kind of gives you a, obviously as a finish contractor and obviously a painting contractor then, I definitely have to have that. Okay.

LD: Okay, anything else? All right, thank you all very much. Good luck. **(01:06:46)**

- End of recording -

WELLS FARGO

MAC 53737-020
1707 Village Center Circle
Suite 200
Las Vegas, NV 89134
702.386.6797 Main / 702.386.5729 Fax
800.328.6797

Wells Fargo
Insurance Services
of Nevada, Inc.

May 29, 2009

Ms. Kathrin Rainey
Purchasing Manager
City of Las Vegas
Purchasing & Contracts
400 Stewart Avenue
Las Vegas, NV 89101

Re: Cogent Electric, Las Vegas Museum, Phase III Rehabilitation

Dear Ms. Rainey:

This letter will serve to confirm that Cogent Electric will be able to secure the bonds required for the above captioned project for the full amount as required in their subcontract with APCO Construction.

Sincerely,

M. Scott Polley
Attorney-In-Fact
Safeco Insurance Company of America

Kathy Rainey

From: Dan Muirhead [MuirheadD@cityofnorthlasvegas.com]
Sent: Thursday, June 04, 2009 5:24 PM
To: Jorge Cervantes
Cc: Qiong Liu; Kathy Rainey
Subject: RE: Aliante Library

The City of North Las Vegas initially assessed APCO for liquidated damages at $2,000 per day from March 11, 2006 through July 15, 2006. The liquidated damages totaled 126 days at $2,000/day for a total of $252,000.

At the advice of our attorneys we were told to compile actual damages the City incurred. These included the following:

Forfeitures/Fines (Late certified payrolls, Labor Commission Claims) - $5,650 CNLV Overtime - $12,050 Extension of CM Contract w/Consultant - $7,872 CNLV Wages/Salaries (past scheduled completion date) - $19,428

In total the City withheld $45,000 from the contractor's retention to cover the City's direct costs for managing the project past it's scheduled completion date and to pay State imposed fines.

If you need additional information please let me know by e-mail or contact me by phone at 633-2750. Thanks and have a great day!

>>> "Jorge Cervantes" <JCervantes@LasVegasNevada.GOV> 6/4/2009 3:59 PM
>>> >>>
Thanks Qiong.

Dan, can you advise specifically the amount assessed, and if in fact they were liquidate lamages or something else.

thanks,

From: Qiong Liu [mailto:LiuQ@cityofnorthlasvegas.com]
Sent: Thursday, June 04, 2009 3:51 PM
To: Dan Muirhead; Jorge Cervantes
Subject: Re: Aliante Library

Jorge, As discussed, Dan will provide you with the specifics of this case. Thanks, Dan!

>>> "Jorge Cervantes" <JCervantes@LasVegasNevada.GOV> 6/4/2009 10:49 AM
>>>

Good morning Qiong,

I'm following up on the performance of a contractor for a bid evaluation on one of our projects. The contractor is APCO and they are the low bidder on our Museum project. They had previously worked on your Aliante Library project and I wanted to see if you could advise if there were any liquidated damages assessed to this contractor for their performance on the library project. I have the meeting minutes from a North Las Vegas Library District Board of Trustees March 28, 2006 meeting where there was an agenda item to discuss the progress of the Aliante Library construction. In the minutes, it indicates that liquidated damages of $2,000 per day effective March 11, 2006 were going to be assessed being that the contractor was over his allotted contract time. Can you confirm whether liquidate damages were eventually charged at the end of the

contract, or was there a resolution where no liquidated damages were assessed.

Thanks,

APCO CONSTRUCTION
3432 N. 5th Street • North Las Vegas, NV 89032
Phone: (702) 734-0198 • Fax: (702)734-0396
E-mail: apcoconstruction.com • NCL: 14563

June 10, 2009

VIA FASCIMILE ONLY: 384-9964

Mr. Lloyd E. Davis
Contract Specialist
Purchasing & Contracts Division
400 E. Stewart Ave.
Las Vegas, Nevada 89101

RE: LAS VEGAS MUSEUM – PHASE III

Dear Mr. Davis:

Thank you for your inquiry regarding the Aliante Library Project. As I indicated to you per our telephone conversation Friday, June 5, 2009, APCO Construction did not pay the City of North Las Vegas liquidated damages on the Library Project. To my knowledge, APCO Construction has not paid liquidated damages since its inception in 1977.

You indicated that Flagship Construction presented a page from a meeting minutes log with a mention of time and liquidated damages. APCO has not been provided that document but whatever it is they are referring to is irrelevant because there was no liquidated damage assessment. That project was closed out amicably with a resolution of all pending issues that was fair and agreeable to both parties. In trying to get an email or letter from the Public Works Director Jim Bell to verify the close-out of the project, we learned that Mr. Bell moved to California a few years ago.

APCO's project close-out meeting with Mr. Bell took place on February 12, 2007. Given all of the pending issues, APCO did agree to pay the City of North Las Vegas for certain expenses that the City paid on APCO's behalf during the project. It must be noted that the City of North Las Vegas opened the Library in May of 2006 and the final pay application was presented in March, 2007 after various issues were presented and resolved by both parties.

One of the primary issues related to APCO's electrical subcontractor, Southwest Electric, which went out of business prior to completing its work. There also were some quality issues with Southwest Electric's work. This resulted in two issues that APCO reimbursed the City for. First the certified payrolls by Southwest Electric were late and the City received a fine from the labor commissioner that APCO agreed to pay. That reimbursement was $5,650.00.

The second issue related to APCO's retention of Wheeler's Electric to complete Southwest Electric's work. This process extended the post-opening punchlist and warranty process from May, 2006 until October, 2006. The City Inspectors made several trips to the project during that period as well as the Architect and Electrical Engineer. And during the process the City actually directed design changes to the original plans for the electrical scope. APCO and the City agreed to split the Architect's and City inspector charges given the increased warranty demands to address Southwest Electric's work and the City's design changes. The split time for the Architect and City personnel that APCO agreed to amounted to $27,300.00. But for the most part these issues arose after acceptance and the City's beneficial use and occupancy.

In addition, in the final close-out APCO paid the City for one half of all Friday inspections as the City Inspector only worked (4) days a week. APCO requested that the City Inspectors work Friday's during the project to help the schedule and the parties split those charges. Our share was $12,050.00 for that increased inspection. The total amount APCO agreed to reimburse the City was $45,000.00 with Mr. Bell on February 12, 2007. This is shown on the last pay application. I have enclosed a copy of that for your review. So it is clear that Flagship Construction has no support for its allegation that we paid liquidated damages. That is simply not the case and our answers on the Museum bid forms were complete and accurate.

We hope this answers any questions regarding the close-out of the Aliante Library Project. If you need any further information, please feel free to contract me at any time.

Sincerely,

Joe Pelan
Senior Project Manager
APCO CONSTRUCTION

JP:LL

APPLICATION AND CERTIFICATE FOR PAYMENT

TO OWNER: City of North Las Vegas

PROJECT: Aliante Library

APPLICATION NO: 12
PERIOD: 2/28/2007
PROJECT NOS.: 154

Distribution to:
☐ OWNER
☐ ARCHITECT
☐ CONTRACTOR
☐

FROM CONTRACTOR: APCO Construction
3432 North 5th Street
N. Las Vegas, NV 89032

VIA ARCHITECT:

CONTRACT DATE: 02/01/03

CONTRACT FOR: Aliante Library

CONTRACTOR'S APPLICATION FOR PAYMENT

Application is made for payment, as shown below, in connection with the Contract.
Continuation sheet is attached.

1. ORIGINAL CONTRACT SUM	$	4,868,988.00
2. NET CHANGE BY CHANGE ORDERS	$	(227,691.18)
3. CONTRACT SUM TO DATE (Line 1 +\- 2)	$	4,641,296.82
4. TOTAL COMPLETED & STORED TO DATE (Column G on schedule of values)	$	4,641,296.82
5. RETAINAGE		
a. 10 % of completed work (Columns D + E on G703)	$	-
b. 0 % of Stored Material (Columns F on G703)	$	
Total Retainage (line 5a 5b or total in column I on G703)	$	-
6. TOTAL EARNED LESS RETAINAGE (Line 4 less Line 5 Total)	$	4,641,296.82
7. LESS PREVIOUS CERTIFICATES FOR PAYMENT (Line 6 form prior Certificate)	$	4,600,804.27
8. CURRENT PAYMENT DUE	$	40,492.55
9. BALANCE TO FINISH, INCLUDING RETAINAGE (Line 3 less Line 6)	$	-

CHANGE ORDER SUMMARY	ADDITIONS	DEDUCTIONS
TOTAL CHARGES APPROVED IN PREVIOUS MONTHS BY OWNER	0	0
Total approved this Month		227691.18
TOTALS	0	227691.18
NET CHANGES by change order		(227,691.18)

The undersigned contractor certifies that to the best of the Contractor's knowledge, information and belief the Work covered by this Application for Payment has been completed in accordance with the Contract Documents, that all amounts have been paid by the Contractor for Work for which previous Certificates for Payments were issued and payments received from the Owner, and that current payment shown herein is now due.

CONTRACTOR

By: _____ Date: _____

State of: Nevada
County of: Clark
Subscribed and sworn to before me this
_____ day of _____ 2006

Notary Public: _____

My Commision Expires: August 16, 2009

ARCHITECT'S CERTIFICATE FOR PAYMENT

In accordance with the Contract Documents, based on on-site observation and data comprising this application, the Architect certifies to the Owner that to the best of the quantity of the work is in accordance with the Contract Documents, and the Contractor is entitled to payment of the AMOUNT CERTIFIED.

AMOUNT CERTIFIED..... $ _____

(Attach explanation if amount certified differs from the amount applied for. Initial all figures on this application and on the Continuation sheet that are changed to conform to the amount certified)

ARCHITECT:

By _____ Date: _____

This Certificate is not negotiable. The amount certified is payable to the contractor named herein. Issuance, payment and acceptance of payment are without prejudice to any rights of the Owner or Contractor under this Contract.

Jun. 10. 2009 10:52AM APCO CONSTRUCTION No. 9993 P. 4

CONTINUATION SHEET

APPLICATION AND CERTIFICATE FOR PAYMENT, containing Contractor's signed certification, is attached.

Project: Alante Library
Billing Number: 12
Period: 2/28/2007

A	B	C	D	E	F	G	H	I		J	K
					WORK COMPLETED		MATERIALS PRESENTLY	TOTAL COMPLETED			
ITEM NO.	DESCRIPTION OF WORK	QUANTITY	UNIT	TOTAL CONTRACT	FROM PREVIOUS APPLICATIONS (D + E)	THIS PERIOD	STORED (NOT IN D OR E)	AND STORED TO DATE (D+E+F)	% (G/C)	BALANCE TO FINISH (C-G)	RETAINAGE
1	Construction Conflicts	1	$ 168,204.82	$ 168,204.82		168,204.82	-	168,204.82	100%	$ -	
1	Construction Conflicts Final Close	1	$ (168,204.82)	$ (168,204.82)		(168,204.82)	-	(168,204.82)	100%	$ -	
1A	CCA-1 (Extra Footings @ Patio)	1	$ 1,465.90	$ 1,465.90	1,465.90		-	1,465.90	100%	$ -	
1B	CCA-2 (Cut Blocks)	1	$ 5,885.00	$ 5,885.00	5,885.00		-	5,885.00	100%	$ -	
1C	CCA-3 (Not Approved)	1									
1D	CCA-4 (Additional 2 Days for Rain)	1									
1E	CCA-5 (Additional 1 Day for Weather Delay)	1									
1F	CCA-6 (Additional 31 Days Block Delay)	1									
1G	CCA-7 (2" Bearing on Deck)	1	$ 4,194.18	$ 4,194.18	4,194.18			4,194.18	100%	$ -	
1H	CCA-8 (Additional 1 Day for Weather Delay)	1									
1I	CCA-9 (Additional 1 Day for Weather Delay)	1									
1J	CCA-10 (1/2" Densdeck)	1	$ 20,003.55	$ 20,003.55	20,003.55		-	20,003.55	100%	$ -	
1K	CCA-11 (Tactile Warning Tile)	1	$ 3,866.31	$ 3,866.31	3,866.31			3,866.31	100%	$ -	
1L	CCA-12 (Raise Mechanical Screen Block 7'4")	1	$ 1,181.25	$ 1,181.25	1,181.25			1,181.25	100%	$ -	
1M	CCA-13 (Add Plumbing to Mechanical Rm)	1	$ 6,406.05	$ 6,406.05	6,406.05			6,406.05	100%	$ -	
1N	CCA-14 (Added Door Materials)	1	$ 2,088.66	$ 2,088.66	2,088.66			2,088.66	100%	$ -	
1O	CCA-15 (Direct-Burial Pre-Insulated Pipe)	1	$ 9,561.96	$ 9,561.96	9,561.96			9,561.96	100%	$ -	
1P	CCA-16 (Condensing Unit)	1	$ (7,828.40)	$ (7,828.40)	(7,828.40)			(7,828.40)	100%	$ -	
1Q	CCA-17 (13 Additional Days)	1									
1R	CCA-18 (Additional 1/2" for Onsite A/C)	1	$ 4,119.89	$ 4,119.89	4,119.89			4,119.89	100%	$ -	
1S	CCA-19 (Roof Access Ladder)	1	$ 3,553.20	$ 3,553.20	3,553.20			3,553.20	100%	$ -	
1T	CCA-20 (Replpe & Remove Circulating Pump)	1	$ 2,116.91	$ 2,116.91	2,116.91			2,116.91	100%	$ -	
1U	CCA-21 (Add Open for Air Vents)	1	$ 732.59	$ 732.59	732.59			732.59	100%	$ -	
1V	CCA-22 (Misc. Items)	1	$ 3,222.50	$ 3,222.50	3,222.50			3,222.50	100%	$ -	
1W	CCA-23 (Add Door)	1	$ 1,181.69	$ 1,181.69	1,181.69			1,181.69	100%	$ -	
1X	CCA-24	1	$ 14,551.39	$ 14,551.39	14,551.39			14,551.39	100%	$ -	
1Y	CCA-25	1	$ 5,492.55	$ 5,492.55		5,492.55		5,492.55	100%	$ -	
	Deduction for SW Electric Labor Payments	1	$ (14,486.36)	$ (14,486.36)	(14,486.36)			(14,486.36)	100%	$ -	
	Deduction for Settlement Agreement	1	$ (45,000.00)	$ (45,000.00)		(45,000.00)		(45,000.00)	100%	$ -	
2	Mobilization/Demobilization										
2A	Temporary Office Trailers	1	$ 10,000.00	$ 10,000.00	10,000.00		-	10,000.00	100%	$ -	
2B	Temporary Fencing	1	$ 3,000.00	$ 3,000.00	3,000.00		-	3,000.00	100%	$ -	
2C	Personnel/ Equipment Mobilization	1	$ 12,000.00	$ 12,000.00	12,000.00		-	12,000.00	100%	$ -	
2D	Personnel/Equipment Demobilization	1	$ 4,000.00	$ 4,000.00	4,000.00		-	4,000.00	100%	$ -	

Jun. 10. 2009 10:52AM APCO CONSTRUCTION No. 9993 P. 5

CONTINUATION SHEET

APPLICATION AND CERTIFICATE FOR PAYMENT, containing Contractor's signed certification, is attached.

Project: Alante Library
Billing Number: 12
Period: 2/28/2007

A	B	C	D	E	F	G	H	I		J	K
					WORK COMPLETED		MATERIALS	TOTAL			
							PRESENTLY	COMPLETED		BALANCE	RETAINAGE
ITEM NO.	DESCRIPTION OF WORK	QUANTITY	UNIT	TOTAL CONTRACT	FROM PREVIOUS APPLICATIONS (D + E)	THIS PERIOD	STORED (NOT IN D OR E)	AND STORED TO DATE (D+E+F)	% (G/C)	TO FINISH (C-G)	
2E	Project Sign	1	$ 1,000.00	$ 1,000.00	1,000.00		-	1,000.00	100%	$ -	
3	Construction Atlante Library Building										
3A	General Conditions	1	$ 303,687.00	$ 303,687.00	303,687.00		-	303,687.00	100%	$ -	
3B	Concrete (Excluding Sitework)	1	$ 313,978.00	$ 313,978.00	313,978.00		-	313,978.00	100%	$ -	
3C	Masonry	1	$ 294,491.00	$ 294,491.00	294,491.00		-	294,491.00	100%	$ -	
3D	Metals	1	$ 361,956.00	$ 361,956.00	361,956.00		-	361,956.00	100%	$ -	
3E	Carpentry	1	$ 83,526.00	$ 83,526.00	83,526.00		-	83,526.00	100%	$ -	
3F	Thermal & Moisture Protection	1	$ 180,336.00	$ 180,336.00	180,336.00		-	180,336.00	100%	$ -	
3G	Doors, Windows & Glass	1	$ 232,487.00	$ 232,487.00	232,487.00		-	232,487.00	100%	$ -	
3H	Finishes	1	$ 775,315.00	$ 775,315.00	775,315.00		-	775,315.00	100%	$ -	
3I	Specialties	1	$ 25,808.00	$ 25,808.00	25,808.00		-	25,808.00	100%	$ -	
3J	Equipment	1	$ 28,378.00	$ 28,378.00	28,378.00		-	28,378.00	100%	$ -	
3K	Furnishings	1	$ 36,016.00	$ 36,016.00	36,016.00		-	36,016.00	100%	$ -	
3L	Special Construction	1	$ 67,465.00	$ 67,465.00	67,465.00		-	67,465.00	100%	$ -	
3M	Mechanical	1	$ 913,245.00	$ 913,245.00	913,245.00		-	913,245.00	100%	$ -	
3N	Electrical	1	$ 364,744.00	$ 364,744.00	364,744.00		-	364,744.00	100%	$ -	
4	Sitework										
4A	Earthwork	1	$ 67,465.00	$ 67,465.00	67,465.00		-	67,465.00	100%	$ -	
4B	Asphalt Paving	1	$ 51,402.00	$ 51,402.00	51,402.00		-	51,402.00	100%	$ -	
4C	Concrete Paving	1	$ 69,607.00	$ 69,607.00	69,607.00		-	69,607.00	100%	$ -	
4D	Parking Striping/Signs/Bumpers	1	$ 2,463.00	$ 2,463.00	2,463.00		-	2,463.00	100%	$ -	
4E	Concrete Curb, Gutter, Channel	1	$ 21,418.00	$ 21,418.00	21,418.00		-	21,418.00	100%	$ -	
4F	Site Utilities	1	$ 101,733.00	$ 101,733.00	101,733.00		-	101,733.00	100%	$ -	
4G	Site Electrical	1	$ 65,079.00	$ 65,079.00	65,079.00		-	65,079.00	100%	$ -	
4H	Site Lighting	1	$ 8,920.00	$ 8,920.00	8,920.00		-	8,920.00	100%	$ -	
4I	Landscaping/Irrigation	1	$ 203,467.00	$ 203,467.00	203,467.00		-	203,467.00	100%	$ -	
4J	Dust Control	1	$ 4,000.00	$ 4,000.00	4,000.00		-	4,000.00	100%	$ -	
5	Over-Excavation	1	$ 10,000.00	$ 10,000.00	10,000.00		-	10,000.00	100%	$ -	
				$ 4,641,296.82	4,680,804.27	(39,507.45)	-	4,641,296.82	100%	$ -	$ -

Jun. 10. 2009 10:53AM APCO CONSTRUCTION No. 9993 P. 6

APCO CONSTRUCTION
3432 N. 5th Street • North Las Vegas, NV 89032
Phone: (702) 734-0198 • Fax: (702)734-0396
E-mail: apcoconstruction.com • NCL: 14563

TRANSMITTAL

To:	*City of Las Vegas*	**From:**	Joe Pelan
Attn:	Lloyd Davis	**6 PAGES**	
Fax:	384-9964	**Date:**	6/10/09
Job:	LAS VEGAS MUSEUM – PHASE III		

☒ Urgent	☒ Your Review	☐ Your Signature	☒ Your Records

LLOYD:

Please see the attached LTR from APCO w/ Attachments dated 6/10/09.

If you have any questions or need any further information, please feel free to contact me at any time on my cell phone at 353-4460.

Thanks, Joe Pelan

APCO CONSTRUCTION
3432 N. 5th Street • North Las Vegas, NV 89032
Phone: (702) 734-0198 • Fax: (702)734-0396
E-mail: apcoconstruction.com • NCL: 14563

February 23, 2009

VIA TELEFAX

Mr. Lloyd E. Davis
Purchasing & Contracts Division
City Hall
400 E. Stewart Ave.
Las Vegas, Nevada 89101

RE: LAS VEGAS MUSEUM – PHASE III
08.15341.04-LED (REVISED)
FLAGSHIP BID PROTEST

Dear Mr. Davis:

At your request, we are responding to Flagship's protest of APCO Construction's bid on The Las Vegas Museum Phase 3 – Rehabilitation project. As you can see from the enclosed information and our bid documentation, there is absolutely no basis for Flagship's protest. The City should proceed with the final award to APCO with all due haste, which will save the taxpayers $1,152,629.00.

APCO and its Construction Team are Qualified.

Section 13.02 of Invitation to Bidders states that "the Owner may take into consideration" the 15 responsibility criteria listed in this section. Contrary to Flagship's allegations, there is no specific requirement that APCO must show prior experience with Secretary of the Interior Rehabilitation Standards on prior projects as a prime contractor. As you will recall, all bidders expressed concerns over such a restrictive view of those requirements in the first solicitation in September 2008. In fact, Attachment 6 to the September 2008 solicitation focused solely on the prime contractor's experience on projects involving U.S. Secretary of Interior Standards for Rehabilitation. I have attached a copy of that form as Exhibit 1. That form was justifiably revised by the City to now focus on "the Bidder or its Superintendent." The City is rightfully focusing on the experience of the project team members, including the superintendent and subcontractors. APCO has truthfully answered the revised Attachment 6 in that our superintendent does have extensive experience with this type of work.

As is set forth in the attached affidavit, Mr. Brian Benson will be APCO's General Superintendent for the Project. Mr. Benson has been a lead superintendent in the restoration of the Los Angeles City Hall. That was a $112 million project that was compliant with the Secretary of Interior's Restoration Standards and won numerous

awards. Contrary to Flagship's protest, that project was completed in 2001. The enclosed affidavit also includes references for Mr. Benson. See Exhibit 2. We can provide you with any additional information you may require regarding Mr. Benson's experience.

Incredibly, Flagship cites Section 13.02(o), which actually supports APCO's qualifications. That section states: "Whether the bidder or its specialty contractor(s) have successfully completed at least (1) project similar in type or scope as the work specified on the Specialty Work Qualification forms". APCO's bid listed three specialty subcontractors that have significant experience in different aspects of this restoration work. These subcontractors were listed in our Attachment 7. APCO has included additional information from two of the three subcontractors to confirm their restoration experience. See Exhibit 3. As you can see, their individual and collective experience is significant and confirms APCO's competence and responsibility.

As far as APCO's other project experience, this bid was $11,512,000.00. In addition to the projects listed in its bid, APCO has completed much larger projects for the City and other owners. Those additional projects include the Cannery Casino ($42,000,000), Cannery Parking Garage ($16,000,000), Washington Buffalo Park ($35,000,000), Centennial Hills Park ($12,000,000) and Southern Nevada Woman's Correctional Center ($35,000,000 currently at 85% complete).

Flagship continues its unprofessional comments by inappropriately contending that APCO was removed from The Manhattan West Condominium Project. APCO can provide as much detail on this lawsuit as you would like, but suffice to say, APCO was not getting paid timely or appropriately by the owner and eventually had to file a lien. The owner was not financially capable of completing the project in this market, which is not a reflection on APCO. That project was shut down by the lender when the owner could not meet its obligations. In fact, it was APCO that filed litigation and the owner has counterclaimed on baseless grounds. There has been no discovery and no trial and APCO is confident in its position. On this issue, the ITB states that evidence of a failure to perform will be based upon "the existence of an arbitration award or a decision by a court of law against the Bidder." That has not occurred in the Manhattan litigation and it would be wrongful to base a procurement decision on Manhattan's mere allegations. The fact that APCO's surety is willing to bond the Museum project speaks volumes. And unlike Flagship, APCO does not have any judgments entered against it. It is malicious for Flagship to interject this type of argument in its bid protest especially when it is not aware of the facts of that case. APCO can provide as much detail on that project or litigation as you deem necessary.

Lastly, Flagship speculates as to why it did not receive a bid from Cogent Networks. Whatever explanation Cogent gave to Flagship at bid time is irrelevant. We have attached Cogent Electric's bid and e-mail cover sheet as Exhibit 4, which confirm that the required bonds are included in its bid to APCO. I also have attached a letter from Cogent confirming the information provided to you verbally that Cogent can and will bond as necessary.

In closing, Flagship's counsel has misstated the facts and improperly filed this protest. All evidence confirms that APCO and its construction team are more than qualified for this job and have completed similar and more complex projects for the City and others. APCO worked diligently for months to provide the best bid to the City and those efforts have saved the City and taxpayers $1,152,629.00 on this project. All disciplines are accounted for in our bid and APCO is prepared to start this project as soon as the City provides direction. We thank you for the opportunity to respond to Flagships protest. If you need further information or we have failed to address an issue, please do not hesitate to contact me.

Sincerely,

Joe Pelan
Senior Project Manager
APCO CONSTRUCTION

ll:JP

cc: Kathy Rainey – City of Las Vegas

LAS VEGAS CITY COUNCIL

OSCAR B. GOODMAN
MAYOR

GARY REESE
MAYOR PRO TEM

LARRY BROWN
STEVE WOLFSON
LOIS TARKANIAN
STEVEN D. ROSS
RICKI Y. BARLOW

DOUGLAS A. SELBY
CITY MANAGER

October 27, 2008

Flagship Construction Co., LLC
Ms. Nancy Paolino
4052 Dean Martin Drive
Las Vegas, NV 89103

Re: Bid No. 08.15341.04-LED, Las Vegas Museum Phase 3 Rehabilitation

Dear Ms. Paolino:

The City of Las Vegas has made a determination after the evaluation of all bids received for the subject project that it is necessary to revise the invitation to bid and the technical specifications. Therefore, pursuant to ITB 15 "Bid Irregularities" it is in the best interest of the City to reject all bids. The City will advertise for a new bid proposal in the near future.

Sincerely,

Lloyd E. Davis
Contracts Specialist

cc: Sam Tolman
File

\tm

CITY OF LAS VEGAS
400 STEWART AVENUE
LAS VEGAS, NEVADA 89101

VOICE 702.229.6011
TTY 702.386.9108
www.lasvegasnevada.gov

KUMMER KAEMPFER
ATTORNEYS AT LAW

KUMMER KAEMPFER BONNER
RENSHAW & FERRARIO

LAS VEGAS OFFICE

MARK E. FERRARIO
mferrario@kkbrf.com
702.693.4208

LAS VEGAS OFFICE
3800 Howard Hughes Parkway
Seventh Floor
Las Vegas, NV 89169
Tel: 702.792.7000
Fax: 702.796.7181

RENO OFFICE
5585 Kietzke Lane
Reno, NV 89511
Tel: 775.852.3900
Fax: 775.852.3982

CARSON CITY OFFICE
510 W. Fourth Street
Carson City, NV 89703
Tel: 775.884.8300
Fax: 775.882.0257

November 7, 2008

Via Fax (702) 464-2578 and Regular Mail
Kathleen C. Rainey
Manager of Purchasing and Contracts
City of Las Vegas
400 Stewart Avenue
Las Vegas, Nevada 89101

Re: **Bid Protest of APCO Construction**
Project: Las Vegas Museum Phase 3 – Rehabilitation
Bid No. 08.15341.04-LED
Our Client/Successful Bidder: Flagship Construction Company, LLC

Dear Ms. Rainey,

Flagship is confused by the content of your October 30, 2008 letter. It appears the city is changing the rules mid-game. My clients experience was fully vetted and Flagship was informed by Lloyd Davis that the City was recommending my client for the award of the Las Vegas Museum Project after review of my clients' historical experience.

We request a copy of the meeting minutes from the Mandatory Pre-Bid Meeting held on September 4, 2008 at 3:00 PM. It is our belief that these meeting minutes will show the discussion regarding the requirements of historical experience on this project as articulated by the city representative Mr. Davis. It is my understanding that there was a lengthy discussion regarding how the City would handle a low bidder if the contractor did not have the historical experience. Mr. Davis said that the historical experience requirement in the documents is "subjective" and the City could choose price over experience. He made it clear everyone should bid whether they had the historical experience or not. There was further conversation regarding the requirement for an experienced superintendent. Those present were told a general contractor did not have to have a superintendent experienced in historical projects (which Flagship does) but could rely on the experience of the conservator in meeting this requirement. This was said to encourage more bidders.

The statements made at the Mandatory Pre-Bid Meeting did what you now say you want to do-relax the bid requirements. In short all bidders know the rules when the bids were placed and there is no reason to refrain from awarding the contract to Flagship.

We understand the owner's right to reject all bids but the owner has put Flagship in an unfair position by publishing the names of the subcontractors that Flagship included in its proposal. We request that

the City re- think its position regarding this matter in light of the comments made during the Pre-bid meeting and that you proceed to award the contract to Flagship to avoid further proceedings.

So as not to further delay this matter I would request a response by this Friday. Thank you for your anticipated cooperation.

Sincerely,

KUMMER KAEMPFER BONNER RENSHAW & FERRARIO

Mark E. Ferrario

MEF/vll

Lloyd Davis: Oh, I'm sorry, you hit play. Good afternoon everybody. I just turned the recorder on We do record these pre-bid meetings that way any questions asked I have a record of them we can go back and listen to them to make ah to get the addendums correct. My name is Lloyd Davis I'm a contract specialist for the City of Las Vegas, we're here for the Mandatory Pre Bid on Bid Number 081534104 which is the Las Vegas Museum Phase Three Rehabilitation.

Now this is a mandatory Pre-Bid *and* Site Visit. Now it's mandatory for the General Contractors, Subs you're more than welcome, you know, if you want to leave in the middle of the of the ah meeting you can do that and it won't hurt, it won't hurt ya as far as being able to bid because you're the sub contactor. General Contractors you must be here from the start to the finish if there's two representatives here at least one has to be here for the entire meeting. When we get over to the site visit I will take a roll call because to ensure that you've attended both meetings.

Now, I will officially close the meeting in a few minutes, I give time for people to get parked and get over here and then when I officially close it then I will take up the sign-in sheet and make sure that no one signs after me. There's two, two seats over here gentlemen. But the ah I'm going to get, get rid of some of the administrative stuff here while we're waiting to close it and that would be introductions so...

Dianne Collins: Oh ah, Dianne Collins City of Las Vegas Purchasing and Contracts.

Sam Tolman: Sam Tolman Architectural Project Manager for the project, for the City.

LD: Sir...

Attendee: Oh, Matt with ah Martin and Harris

Attendee: Seth Maurer, Core

Attendee: Ed Howard, Cobblestone

Attendee: Anthony Wallace, APCO Construction

Attendee: (indistinct)....APCO Construction

Attendee: Steve Brook, Jaynes Corporation

Attendee: Jeff Rensomon, Jaynes Corporation

Attendee: Martin Makinson, Jaynes Corporation

Attendee: Sherman Isensee with Complex Builders

Attendee: Nancy Briseno, Whiting Turner

Attendee: Michael Keller, O'Conner Construction Management

Attendee: Bart Spjute, J & S Mechanical

Attendee: I'm Erin Umberger. I'm with Westlake Reed Leskosky, I'm the Project Architect.

Attendee: I'm Robert Chattel. I'm with Chattel Architecture Planning and Preservation. I'm the consulting historic preservation architect.

Tressa Fernandez: Tressa Fernandez, City of Las Vegas Purchasing and Contracts

Attendee: Ken Shoemaker, John Jory

Attendee: Fred Kuhn, John Jory

Attendee: Doug Burchfield, John Jory

Attendee: Steve Torres, APCO Construction

Attendee: Chris Nelson, Penta

Attendee: Aaron Forde, Penta

Attendee: Pierre Uedel, Flagship

Attendee: Justin Zeh, Whiting-Turner

Attendee: Mark Sauer from Mark Sauer Construction

Attendee: Ryan Snyder with Whiting Turner

Attendee: Bob Jeffries, Rafael Construction

Attendee: Laura Jeffries, Rafael Construction

Attendee: Jim (indistinct), Morgen & Oswood

Attendee: Thad Lawrence(?), Burke & Associates

Attendee: Brandon Smith, Burke & Associates

Attendee: Chris Lane, Richardson Construction

Attendee: Wade Lewis, Project Development

Attendee: Donald Mackay, Walker Specialty Construction

Attendee: Matthew Weinberger, Kitchell Construction

Attendee: Bill with Walker Specialty Construction

Attendee: Dave McKlurg, with C.I. Contractors

Attendee: Eric Singman, City of Las Vegas

LD: All right let see there's one seat there...for the gentleman there. Let me get, lets see if I can get a couple more chairs.

Sam: While you're standing John, introduce yourself.

John O'Connell: John O'Connell City of Las Vegas

LD: Ok... Now we've got the sign-in sheet here. All right ah, I'm going to be going through ah through this package here. I'm not ah gonna, gonna be reading every word, I'm not going to cover every page or paragraph...there's a chair coming in for you right now...ah, I'm just going to highlight a few areas. If I skip over a paragraph that you looked at and you wanted to have questions on just ah stop me and we'll discuss that paragraph. Ah if I'm going a little too fast or if I don't speak up if you don't understand me you can stop me and ask me again what I said and ah once I go through my section then we'll we'll ah turn it over to ah our public works department and they'll go over the specifications and then we'll open it up for questions and answers. And again ah we'll we'll after we get done with the stuff in here we'll go across the street to the ah, there is a, you opened it up for parking over there?

ST: Yeah, they can drive over there and park on the west side.

LD: Ok and we'll discuss that right before we leave. Ah, lets see...and we're starting to run out of chairs (background talk)...Oh there's one right here... just gotta make sure we get the sign in sheet over there too, yeah, cause the sign in sheets coming around, it's already been around the table.

All right, this project consists of the rehabilitation of a, of a 1933 historical building. Ah you all know it's the post office, the old post office over here. It's going to be done in compliance with the United States Secretary of Interior's standard for ah historical ah rehabilitation. The work includes but not, not limited to some demolition and removal of hazardous materials, some ah remodeling and some historical rehab and infrastructure, ah, for interactive museum ah tenant improvements. Ah, the existing building is cast in place concrete ah basement

walls, there's some columns ah floor, columns ah columns from floor to roof. Ah lets see here ah there's some and I had a misspelling here didn't I, ah Sam...

ST: Ok, let me read the way that's supposed to read.

Lloyd: Ah yeah, cause I misspelled something...

ST: The building is cast in place concrete basement walls, columns, floors and roof. While the above grade floors ah above grade, ah above the grade floor the walls are multi-white brick with terra cotta and sandstone veneers.

LD: Yeah that 'with' is the wrong word. It's 'white'.

ST: White... I said with, it's supposed to be white.

LD: Yeah all right ah and ah the existing interior walls are hollow ah clay tile and plaster. The rehab also includes some interior plaster, some finishes to, ah include installing, reinstalling existing materials salvaged during prior demolitions that we that we have ah on, in the, ah store. Ah, the project is partially funded by federal funds and is subject to federal provisions contained in this document. It's not prevailing, it's not Davis Bacon though. All right, it's straight Nevada ah prevailing wages. Ok there's no, there's no Davis Bacon in it, however there are some federal provisions which are very minor. There's a ah lobbyist ah certification you have to have to fill out and a debarment certification you have to fill out. All right (cough) excuse me, ah there's a PWP number assigned because of the prevailing wage provision. The estimated value of this project is 15 million to 21 million. The Bid Opening at the present time is scheduled for September 25th. Ok, the Bid Opening will be held in this room here at 1:30. It's open to the public you're more than welcome to come and hear the bids received. We do not make any determinations at that Bid Opening. All we do is read the bids. I acknowledge, I do not review, I acknowledge the forms that were submitted. All right, I don't make any determinations, so don't expect me to right away jump up and say that so and so's got the job, you know, all right. Ah, after we get done and we go back and ah review them. Now uh, we need some more chairs... Here, ok, I was gonna say I'll give up one chair here (background "Oh that's all right, I'm good") No I don't mind standing. Ah, where was I? Oh. Ok the Bid Opening. It's held in this room here, however your bids are turned into the City Clerk's Office which is next door in the ah main tower on the on the first floor. Now this is only for the General Contractors. Sub contractors you need to contact the General Contractors and talk to them about your bids, ok? Cause I'm saying that because I have had sub contractors turn in bids by mistake to us, all right. We only take it from the General Contractors. All right General Contractors you need to turn it into the City Clerk's Office they time-stamp them. If it's time-stamped at 1:31, it will not be considered. So don't come running in here with them, make sure you get it over to them. All right, any questions after today need to be sent in writing, all right. My fax number's on the, on the cover sheet here and we want your questions in by September 12th. We're on a very tight, ah, timeline here. We do not anticipate extending the Bid Opening, so get that, get that out of your head right now about calling me up and asking me to extend it, all right? We do not anticipate extending the Bid Opening at all costs, all right? Because, we are on a tight, ah, funding issues. We've gotta get this thing awarded; we gotta get the work started. All right? So, *please*, review the specs, the plans and get your questions in as soon as possible so we can get an addendum out, all right? All right it is now 3:10; I'm closing this meeting to any further General Contractors so, the General Contractors in here are the ones who will be bidding on this project. Any other General Contractors coming in would not be allowed to bid on this project; they can come in and listen, this is open, this is an open meeting so I cannot refuse anybody entrance into this meeting but they would not be able to (indistinct). The sign in sheet. Please make sure it gets around. I need to keep an eye on it, do not separate those pages I need to make sure that all 5 pages are kept together so I can get 'em back up here. All right, is she bringing in another chair? No? All right, all right.

Attendee: He's with me.

LD: He's with you? Ok.

Attendee: He's with me.

Attendee: He just got disqualified.

Unknown: Yeah, right.

LD: And now, again, I want to repeat though that the, that the General Contractors, you know if you have more than one representative here, at least one of you have to stay here, here and go to the site visit. All right, and I will take a roll call at the site visit before we continue on when we get there. All right. I have had that happen where some, someone here didn't go to the roll call, I crossed their name off, you know? I gotta lot of witnesses here.

ST: Those who came in when we got started make sure you get your name on that list.

LD: Oh yeah, I'll, I'll double check that before we, ah, before I (indistinct). Ok. Ok, bid documents are available from our front counter out here for a non-refundable fee of $250.00. If you don't want to take it with you to this, there's 3 books and 2 plans, if you don't want to carry it with you we're gonna charge you $20.00 for mailing, all right? I just want to throw that in there. Most people take it with them but just in case. All right, the ah, on page one at the very top is my phone number and fax number and the date for the ah questions to be turned in, all right. *Do not call* our consultants, do not call the Public Works people, do not call our the engineers, the architects, anybody, and ask questions. *All questions must come through me.* Period. And this is for the consultants and the architects, if you get a phone call, *please*, refer them back to me. Reason: I want to know everything that's coming in so I can make sure that everybody out there gets the same information. I don't want Company A having the information that Company B doesn't have. All right? I don't work that way. Please make sure it all gets into us, all right...Uh...

Attendee: She's also with me...

LD: Ok

(Background chatter)

DC: Small army there.

LD: Do you want a chair?

Attendee: No, I'm fine.

LD: Ok it's going to be a few minutes. Ok, all right. The next couple of pages, definitions, I'm not going to go through those definitions, you all can take the time and read through them. Ah we already talked, ah, we did ah, if an Addendum is issued we'll ah, there's a place on the Proposal page for you to acknowledge that, I'll get into that in a moment. What I want to cover is the Bid Opening, like I said the Bid Opening will be held in here on September 25th, it's gotta be turned into the City Clerk's Office. Make sure it's in a sealed envelope. The outside is clearly marked as a bid, put your company name, bid date and time, and the bid number. The City Clerk is the official ah timekeepers and record keepers. They have to make a log of those bids. If any of the information is missing on the outside, they are going to open your bid and pull it out and retrieve that information. I don't want them to open your bid, I wanna open it. I'm a selfish person. All right? Make sure the outside is clearly marked. All right. Ok, the next thing I want to talk about here is the submittal requirements. We've reduced some of your submittal requirements at the bid time, to give you more time to concentrate on filling out your bid. All right? We've got it back in line with what NRS requires at the Bid Opening. Now all that you can submit every document that we ask for at the Bid Opening but there's time frames where you can wait

if you want to. All right? *But*, the items that we'll, that I will be looking for will be your bid proposal pages which I'll go into detail in a moment on. All right, Bid Security. Bid Security will be a form of a cashiers check, certified check, money order or bid bond. Now, for the three apparent Low Bidders, we will hold those bid bonds until, that bid security, until we make an award, we get a signed contract. So if you use a money order, cashiers check or certified check the City will hold that in our safe until we have a signed contract. Even though you might not be the Low Bidder, if you're one of the three we will hold your security until we get a signed contact. So just keep that in mind if you use those other forms, that your money's goinna be tied up for you know 30-60 days. I've had that happen, I've had someone call in and crying for their check and I said that I've gotta hold it. Any question on that?

Ok the other submittal is your 5% Subcontractor List. That is required with your bid, that's in the NRS statute. And I'll cover that in more detail in a moment, all right. The next submittal is your 1% Subcontractor List. You will have two hours at the completion of the Bid Opening to submit that. Unless you put it in with your bid. Excuse me, if you, if you wait, the three apparent Low Bidders will have will have will have two hours after the Bid Opening, It has to be turned in at the City Clerk's Office. All submittals, even the daily ones, the next ones I'll be talking about, everything has to be turned in to the City Clerk's Office. They cannot be *faxed*. It has to be handed to them, they time stamp 'em and then they bring them over to us. Now I just want to make that clear, they cannot be *faxed*, all right? Ok, uh, that's the last submittal as far as on on the Bid Opening day is the 1% and you'll have two hours after the Bid Opening. That two hours is, is statute, we cannot waive that. We rejected a bid not too long ago, it's getting longer now it's been about 6 months; the Low Bidder lost the bid because their subcontractor 1% list came in at 2 hours and 10 minutes. And they were Low Bidder. We *cannot waive that.* All right? Now, the rest of these submittals are informational documents, they not required by NRS, but they are required by the City of Las Vegas. All right? You will have one business day to submit these documents. Again, you can submit 'em with your bid if you want to. They have to be turned into the City Clerk's Office they can't be faxed in. And they are the Certificate of Eligibility, Evidence of Good Faith Effort, Schedule of Values, Superintendents proj, ah, Resume, List of Completed Projects, and the Federal Certifications, which 's that lobbyist and the ah debarment certs. All right? You'll have one business day to submit those; again you can submit them with your bid.

Now, to the left on the left margin of some of the paragraphs, there's a box, like on the Supplier List here, there's a box out to the left of the margin. It's empty, that means that that does not apply, we're not asking for a Supplier List. And you'll see it in some other areas. If there's an X in the box, which you will see also, throughout this document, that proj, er uh, paragraph *does* apply to this project, i.e. the Federal Certification requirements has a box and it's X'd, all right. Any question on any of that information?

Ok the other two ah submittals here will be after Bid Opening and ah when we're getting ready to award which will be the Owner-Contractor Agreement and your Bonds and the Insurance. The only thing I want to point out here is it changed a little while ago but if you haven't bid with us in the last 6 months you might not have noticed. The ah requirement is now three business days to get your bonds and insurance into the City, and your signed contract, used to be 5 business days. We changed it to 3 business days and guess what? We've been getting them in 3 business days, so 5 business days was too long. All right. Now there has been a change which is going to help you all, it's going to lower your cost also, I was going to cover it later but I might as well cover it here. There's been a ruling by the Nevada courts, there's a provision in ah, I don't know which provision it is, 624 or something, NRS, where the City was ah, where the State was requiring bonds to be countersigned by an agent of ah Nevada resident. If you had, like if your bonding company was in Arizona then they had to send it to a Nevada ah resident license and get it and then they charged you another fee for that. That's been taken out. The Bonds do not have to be countersigned. That's a cost-savings to you which the City will recognize in their bids. Now, so, so it does not have to be countersigned by a Nevada resident. They have to be licensed, you know, whatever the law requires they have to be licensed if you know, to be able to sell you a bond for Nevada, but they don't have to be a Nevada resident, ah agent. So, you all figure that out. Your bonding companies know what I'm talking about, and I, you all probably do, too. All right. Ok, any question on any of that?

All right, ah withdrawal of bid, there's two ah two areas here I wanted to talk about real quick because I've had an instance where it's happened, so. Prior to Bid Opening, if the City Clerk still has your bid you can just walk over there and ask to withdraw your bid and they'll hand it back to you. Now in here our document says post Bid Opening which means after bid opening, you have to submit a written request to the to the Purchasing manager, a request to withdraw your bid and there's a whole bunch of stuff here, you gotta say why you want it withdrawn and all that. Now, let me exp, let give a definition of in here about post Bid Opening. Once the City Clerk has brought it over to me and give it, put it in my hands, and if you're sitting right here, I can't give you back your bid, you can't withdraw it here. Once I get it I need to open it as the public opening, and read it. So I can't, I had to have it, I had a bidder come in and they're sitting here and they said oh I want to withdraw my bid. It's after the Bid Opening time, the Bid Opening time is 1:30, I get it about 1:35, so I have to open it so if you want to withdraw your bid you need to do it before the Clerks office, while the Clerk has it. All right any questions on that? I'm just saying that cause I have had that happen, I've had it happen.
Licensing just make sure you're properly licensed to do the work ah that you're bidding on, make sure and check your subcontractors and make sure they're properly licensed. We do pull a copy of your license and that's both ah your contractors license and your City license, the City business license, make sure it's up to date. We verify all that. We verify it on the low, the Low Bidder and your subs. We, we don't verify the City license on your subs, just you're, just the contractors license, but give us time they might change that too. Any questions on any of that?

Ok, ah Award Criteria. Award's gonna be made to the lowest responsive, responsible or best bidder for the total amount of the base bid. There's no alternative, ah alternate additives on this.

Attendee: I think there is, Lloyd.

ST: No, there aren't.

LD: Nope, no.

Attendee(s): "Yes", "There is", "There's three of them showing in the bid documents", "Wait a minute"

LD: There's an addendum coming out, there's nothing on the Bid Schedule.

ST: That's great, you guys looked at the plans.

LD: I love that! I'm impressed.

Attendee: Thank you, Sam.

ST: Most people come here before they pick 'em up.

LD: Yeah, most people come and pick 'em up here, or afterwards. But ah, yeah I guess we're aware of that and we're doing an addendum to make the corrections, so it's either going to be taken out of the plans or will be added to the Bid Schedule, I don't know, they haven't told me. So, wait for the addendum, but thank you.

OK the next couple of pages talks about the lowest responsive and responsible bidder criteria, what we look at. There's a lot of sub paragraphs here, A through N on one of them, A through Q on the other. I'm not going to ah, go over all of those you can read through them, I do want to highlight the one here on C which is your experience.

Ok, this is very important. Whether the Bidder has experience in Historic Rehabilitation having successfully completed *one project* during the past ten years, that has conformed to the U.S. Secretary of the Interior Standards of Rehabilitation. All right, so the General Contractor, that's the criteria we're going to be looking at.

Attendee: How are you determining that, 'cause there's nothing in the submission of the bid for that?

LD: Yes, there is, right back here, under your Attachment 6, List of Completed Projects. You'll tell us what that is and we'll verify it.

Attendee: But what if the low responsive bidder doesn't have one, are you gonna throw 'em out?

LD: Well, we evaluate it.

Attendee: So, then, its subjective criteria.

LD: All I'm saying is uh, these are items that it says right here, the Owner *may* take in consideration, including but not limited to the criteria listed below, Ok.

Attendee(s): "OK" (indistinct)

LD: Ah, there's another area on here that was added which is called whether the Bidder is listed on the Federal Debarment List. We do, we do pull, that one's not waiverable, if you're on the Debarment List you ain't getting the award, ok? The Federal or the State one.

Attendee: Now going, going back to the historic part of it, can a GC qualify if a major subcontractor is executing the, ah, the restoration portion of the work?

LD: That's ah, ah that's a consideration, that's part of our evaluation.

Attendee: All right.

LD: And if we need to we can clarify in an Addendum on that. We can, I have seen now again anything said here does not change the Bid Specs unless it's on the Addendum, ok. I'm just trying to give you a reference of other projects I've had where we've had something like that, not the historical, but a particular criteria that a bidder had to meet. We have changed it to say that the firm performing the work, you know, we've separated out certain work, ah like ah, what is it, CIPP, we've separated it out. Go ahead, John.

John O'Conner: Common sense would dictate that if you're doing electrical-mechanical, ah, you'd ah, put in modern equipment. Anything that has to do with the restoration of the building related to historical preservation that's what we're looking for. It's a common sense approach to it.

LD: But, but no it's a good question though, and like I said we've had some where ah someone's putting in a bridge but the General Contractors never put a bridge in, but that's the majority of the work that their subcontractor had done that and we, we look at that. You know, so. Yes?

Attendee: I believe in the Summary of Work there was a description of two ah prequalified historical renovation contractors, subcontractors one of which is not licensed in Nevada.

LD: I don't know about that.

Attendee: One is and one is not.

LD: Do you have, do you have a reference on that?

Attendee: Maybe you would be able to ah, to ah adend (sic) the Bid Form to have the contractor state what renovation contractor we're using?

LD: Well we're ah, they have to list them if it's over 5, 1% which is 50,000 dollars and this is a ah 21 million dollar project (interrupted) so, ah

Unknown: The restoration work is... (indistinct)

Unknown: They need to be licensed, so we... (indistinct).

LD: Yeah, well ah, they have to be licensed...What?

ST?: I'd just like to mention, um, if you've seen something in the specs that's a problem you email it, or fax it in writing to Lloyd and it'll be addressed by an Addendum to all parties. I don't want everybody sitting here thinking we're gonna be ah...

LD: Well ah but we, but we do take the questions now too, ah you know we gotta record of them, so...

ST: But if you can give us a reference now we can get working on it.

LD: Yeah...

Attendee: It's in the summary of work, it was, there were two subcontractors that were the renovation contractors that were listed, I believe one was called Greenville out of ah, ah New York, and they have a Nevada license, and the other one was a contractor from California...

Unknown: Griswold?

Attendee: Griswold... who, I could not find a license on them.

ST?: Those are conservators...renovators. Renovator contractors their specified scope of work that they were to do, in the summary of work, so...

Unknown: Ok, thank you.

Attendee: Yes sir.

LD: But, yeah if somebody's listed and their not, and their not licensed, they can't do the work, so. We'll definitely want to correct that, if that's, if we specified that they will be doing the work, it's ah I've never seen this specified actually who you have to subcontract with. So, that would be a, that would be a first but, ah, I've seen a lot of firsts here at the City. Ah, any other questions on that? Ok. Ah anyway take a look at the responsive, responsible those are the items we look at when we look at your bid. Again when we, when I open the bids I'm not gonna set here, even if you know, if someone left out their 5%, I'm not gonna reject em right here at the Bid Opening, ok? I'm gonna go back and look, I might have missed it in the all the forms, you know, I've had General contractors jump on the table and say they didn't have that, you going to throw em out? We don't make any decisions at the Bid Opening. All right, I got it.

Unknown: Thank you.

LD: Ok uh, substitution of subcontractors, the only thing I want to say about that is uh, NRS specifies what you can, what's allowable is for you to ah come in with a substitution of your subcontractors once we make an award, and we'll cover those issues on a case by case basis in accordance with the NRS. Bid protest, if anybody wants to protest the City's recommended award you must do so in writing, the res, it's in the statutes, and the time frames and we also have a copy attached here in the resolutions it tells you the time frames and what you have to do and what you have to submit, there's a protest security required in the amount of 25% of

your bid to a maximum of $250,000 to ah accompany that protest. And if you don't follow the, the the time frame there that the City doesn't have to hear your protest.

Page 14 goes back over the submittal requirements and when those documents are required and the time frames required again. If you don't want to worry about it you can take and put everything in the package at the same time and submit it and I will acknowledge that I have those forms. Ok the Bid Proposal pages, the first ones just general information about your company, point of contact, phone numbers, addresses, license both your City and your contractor's license. Take your time there, please; we pull a copy of your license. I've had some that you know there's changes in businesses and you might get a new license but you've been using the same license number for 20 years, and you automatically put it down and I pull it up and it says suspended or withdrawn by, or you know, or cancelled by owner or whatever, voluntarily surrendered and I'm like 'whoa' you know, and I gotta call you and find out what you're new license number is, just take your time. That's why we reduced the amount of paperwork you have to submit with your bids so you can take your time in filling these documents out. Make sure and acknowledge any addendums, now this is important, if an addendum is not acknowledged I had one just the other day that didn't acknowledge an addendum. If it's a cost item, a material change or something that's going to affect your cost, and you don't acknowledge it, I have no way of knowing that you've got that cost in your bid. And we're going to, going to possibly reject your bid. Now if I issued an addendum which we have done, if I issued an addendum changing the bid opening date and that's the only thing on that addendum, and you don't acknowledge that addendum but on the new bid opening day you turn your bid in, its kind of obvious you got the addendum. Ya know, cause you came in and submitted your bid. But the best thing, make sure you acknowledge all the addendums. It's your responsibility to ensure that you have all the addendums. We always send out a fax to you that there's an addendum available for you to pick up. We're not going to call you and babysit, we're gonna send you a fax and we get an acknowledgement that that fax went through. Now if it got misrouted in your office we don't have any control over that, but we have acknowledgement that it went through and to your office. That hey, there's, addendum number three is available for you to pick up. If you acknowledge one and two and you say you never got 3 we got, (indistinct) it's gonna be hard to argue if we got notification that we sent you the notice that it was there.

Best thing, give us a call, check the, check our website, you know, make sure that you know... Bid opens at 1:30, 11 o'clock, check the website, see if there's any addendums that you got all the addendums, or call us, "is there any addendum on that", "nope, ok". Make sure you sign the bid. There's an informational document down at the bottom here, and it says for informational purposes only. We're trying to gather information on our data base. We're updating our database so please take your time if you would and fill this out, it's talking about the Minority Business Enterprise. Again, we're trying to ate our database in the computers to get a listing of our minority businesses so this would help us update that listing. OK, bid schedule, lump sum, all right. We're not asking you to write it out in words any longer, just the figures. Now, take your time. If you make an error, all right, *please, please*, do not try overwriting that number. Like if you put a six on there and you meant for it to be an eight, don't try to darken that six into an eight, or if it was an eight and you meant it to be a six or vice versa. I'm going to sit up here and I'm going to read the number I see, all right. If you make an error, draw a line through it, put your initials on it and re-write it. That's all you gotta do, please.

Attendee: Indistinct question

LD: Huh, I'm almost done. Next is a sample of our bid bond. 5% Subcontractor List, this is due with your bid. Description of work, name of subcontractor. That's the only two docs, items you gotta put on there. Who it is and what they're doing. NRS does not, does not require you to give us their license number on the 5%, ok. Who it is and what they're doing. Again, please take your time writing in your subcontractor's name. We go in and pull a contractor's license. If you put abbreviation on there and that's not the way it applies on their license, we're not going to find them, we're gonna have to call you up, you know.

Good Faith Effort. This documentation here, this is showing us what you did to get a minority business enterprise as a subcontractor or supplier on this project to work with you, all right. Now, please fill it out, submit the documentation, you have one business day.

Schedule of Values. Make sure you fill this out completely. My only comment here is when you get done writing in the schedule of values and you total it up, you got it down here, total line items, you need to go back and

check just to make sure that it matches the lump sum that you wrote down there. It's a good cross check for you, all right. I've had 'em different. You got one business day to turn that in.
List of Completed Projects. There's only one sheet in here because we're asking for one project, all right. One project that conforms to the U.S. Secretary of Interior Standards of for Habilitation similar to the work required by the City, you know. And I, we've made note of your question concerning if, if you're gonna use a subcontractor to do that portion of the work. We'll take that and maybe we'll add some wording to the addendum item, I don't know, we'll talk about it, internally. If you don't see anything on the addendum, this is the form, all right.
Ok, uh, the Supplier List here should say 'not required' across it because we're not asking for a supplier list, so, that was my error. We'll issue a new one, so there's no confusion with the addendum saying 'not required', ok. It's an oops.
One Percent Subcontractor List. The only difference between the 1% and the 5%, on the 1%, by statute, you have to tell us their license number. This one here, you'll have two hours to complete and turn it into the City Clerk's office or you can turn it in with your bid, it's up to you. Again, that two hours in non-waiverable, make sure you get it in there. I hate to see you lose it just because of a piece of paper. It's happened, all right.
All right, theres only a few more things I need to cover here. The Owner-Contractor Agreement. The only thing I want to cover here, this is what will be signed by the parties on the contract, the City and the contractor. But there's two pieces of information on here that' very vital to your filling out your bid. And I've had phone calls on this so I want to bring it out that this is where the information's at. Completion. You will have four hundred and seventy five calendar days to complete this project once we issue a notice to proceed. Oh good, no one's jumping up, OK. Four hundred and seventy five calendar days after we issue notice to proceed. If you do not complete it in that four hundred seventy five calendar days and we have not authorized any time extensions, Liquidated Damages, five thousand dollars per day. There's also some liquidated damages in uh, 017000 of the technical specs concerning other issues during the, during the project. I'm not going to get into those, they're minor, 500 dollars, I think, isn't Sam? Something. Yeah, take a look at that, it's in it's in the technical specs.
OK, now we'll get into the General, uh General Conditions. Again, there's only a couple of things here I want to cover. The items I want to cover in here relate to your costs. I just want to point them out because I know it's going to affect your cost. One of them is your superintendent. Your superintendent, the general contractor, must be on the jobsite at all time that work is being performed. If none of your workforce is there, and you have your subcontractors out there working, you as a general contractor must be represented by a superintendent. Our contract is with the general contractor, not the sub. We don't' go to the sub, we go to the general. So, I'm telling you that cause that's a cost factor. If you're gonna have to work out there, if you're gonna be out there for four hundred and seventy five calendar days, if you think it's gonna take every one of those days, someone's gonna be on the job site, your superintendent's gonna be out there for four hundred and seventy five calendar days. That's a cost you. Just want to let you know. Yeah?

ST: Uh, did I miss the fact that we uh, gonna require the superintendent have experience. Is that in here somewhere?

Attendee: No, it wasn't in there.

ST: Your superintendent will be required to have experience in the Secretary of Interior standards of rehabilitation.

LD: Let me, you know, you're right Sam, I think it is in there. Uh let me backtrack, thank you Sam. Uh, yeah, ITB seven-oh-five, superintendent project resume. The superintendant has to have experience in historical rehabilitation projects conforming to the U.S. Secretary of Interior standards for historic rehabilitation. This gets back to something you were talking about because and. and I think we talked about this and we're gonna talk about tit some more because of what you brought up. If you have a subcontractor that is performing the historical rehabilitation portion, his superintendant has to have the experience, is that what we were talking about or we were talking about the superintendant?

ST: The general contractor superintendant.

LD: OK, OK. That will cover him supervising, being a superintendant over your subcontractor doing the work, cause the superintendant has to have the experience too, all right. So your general, as a general contractor, the superintendant has to have experience in uh, projects that have conformed to the Secretary of Interiors standards for historic rehabilitation. Any question on that? Yeah?

Attendee: When is that due?

LD: When is that due?

Attendee: That superintendant resume or whatever you have to have.

LD: One business day, you have one business day to turn that in.

Attendee: After the bid opening?

LD: Yeah. And that uh, we did that, you know, so we can assure that we have somebody out there over the job that has the experience to know what's going on out there, all right. OK, thank you Sam.
All right now, back to uh, the other item that's gonna constantly, you're gonna need to figure in some cost on. Required Bonds, Performance Bond, Labor and Material Bonds and Guarantee Bond. 100% of the contract amount, *and* your superintendant or your subcontractors. You have a subcontractor, one percent or fifty thousand dollars. They must have bonds also between you, the sub and the general, not to the City. We require your subcontractor that have a contract with you over fifty thousand dollars to get bonds. Now *please*, I ask this every time and it doesn't work, please general contractors, when you get your bids from your subcontractors, please verify that they can get bonds for that subcontract. I've got one on my desk right now where two contracts for the general contractors coming to me asking for a substitution of their subcontractor because they can't get bonds. Now that is authorized by NRS, that's one of the areas that you can request a substitution of subcontractor. We don't like it, you don't like it, your subs don't like it. Asking for substitutions. So please, when I read those subcontractor's lists that at the bid opening, we like that to be the ones that we're gonna see out there on the job.

Attendee: Subs are required to have a guaranty bond as well, correct?

LD: Uh, no, yes, yeah, labor material, performance and guaranty bond for their portion of the work. Now, for your subcontractors in here, the project is four hundred and seventy five calendar days for the general contractor. We're requiring the subcontractors to be bonded for the time that they're going to be on the jobsite. If they're not gonna be on the jobsite until the last hundred days of the job, that's when they need to go out there and get their bonds. We're not requiring the subcontractors to tie up their bonding for four hundred and seventy five days for a hundred thousand dollar subcontract. That might hurt them in getting other jobs. We're not, we're not, we're not wanting to hurt the subcontractors in that manner, so your, your bond has to be in effect when you set foot on that job, ok and then of course, it's done when you're done but uh. So if you don't have, if you're not gonna work until halfway through the job than that's when your bond will go into effect. Any question on that? And again, uh, our bond forms here, on the left side has that countersignature block. That does not have to be filled out any longer, all right.
OK, insurance requirements, general liability, auto liability, one million per occurrence, two million aggregate. Excuse me, and I notice we've got some hazardous, is there hazardous, there's hazardous material in this right? All right, I omitted to check the box here and this is gonna be something that costs you. Is there asbestos in this?

ST: Yes.

LD: OK, you're gonna be required to have asbestos liability insurance. That will be on the addendum. I know, it's, it's not checked. The box isn't checked on here. That will be required. Asbestos liability insurance. See what happens, Sam when you make me rush this thing out? That's two errors I made. I've already made all the errors I can make this year.

ST: OK, I take responsibility for it.

LD: Thank you, thank you, tell my boss would you? All right. Ok, uh, prevailing wages, again, ah, even though this has federal requirements, there's no Davis-Bacon, its straight, uh, Nevada statute, uh, Nevada rev, uh, wage rates. I just want to bring that up and just make sure, you know, the generals, make sure you pass that on to your subs that there is, it is a prevailing wage job and we get into it real deep at the pre-construction meeting cause the general contractor's responsible for, to make sure that the payroll's are all correct and everybody's classified properly, everybody's not a laborer out there. There are other classifications besides laborer. Uh, and we usually don't here about it until after the job's done and then there's penalties and fines and everything else for erroneous ah reports and I've got one on my desk that I just finished up. The contractor owes some money to the workers and he owes the City some penalties so. Again, we'll get into it real heavy with the general contractor.
Uh, special requirements, the special requirements are the uh, federal conditions that apply to this project. They're listed in here as Attachment 16. Make sure you read through 'em. There are some certifications but there's also some other requirements in there, 'er clauses and things that are, that you need to abide by. Ok, uh, sample bond forms are in here, the resolution for protest is in here.
Attachment 14, it's your responsibility to determine if it's applicable or not. It's a uh, regulatory construction project notification form and I think it's uh, any project over X amount of dollars and so many stories and I don't know if it's new construction, you gotta read the regulations on it but the forms are right in here. It's not our responsibility; it's your responsibility to submit it to, to the recording officials. I can't, let's see uh, industrial relations, OSHA.
Attachment 16 is the federal conditions, read through those. The last couple pages has the, uh, certifications that gotta be filled out. There's actually only one, one signature required because this form covers both the lobbyist and your debarment. You just check-mark up and sign it and submit it. You have one business day to get it in.
And that brings us to the technical specs and is there any questions on my part? I know it's getting a little warm in here, you know, I've tried to rush through it.

Attendee: The uh, award date.

LD: Award date, uh, I can give you an estimate, you know.

Attendee: Yes, that works.

LD: We're opening bids on September 25th. We're looking at October 15th Council, I believe is what we talked about, Sam isn't it? October 15th Council. So that would be the award date, October 15th, with you starting within uh...

Attendee: Ten days?

LD: Yeah, a few days after that, hopefully the 1st of November, you know and we're gonna ask you to well, hit the ground running. We wanna pay you some money right away so we want you to do a lot of work, right away, so we can get you some money, so, so we use up that grant money, that federal money you know, burnin' a hole in our pocket.

Attendee: I'm sure the PM knows how to front load it.

LD: What's that?

Attendee: I'm sure the PMs know how to front load it, so you'll be all right on that.

LD: Well, I ain't, I ain't, I ain't getting into that I'm just saying we're gonna ask you to hit the, hit the ground running. We wanna spend, we wanna spend some...

Attendee: Are we still recording?

Laughter

LD: We're still recording, I know, I've made some comments on these recorders I wish I hadn't too, oh any way, Sam I don't know if you want to cover, cover the spec stuff here and then do the walkthrough cause, because...

ST: Yeah, we'll just take a minute, we don't want to spend a lot of time. The drawings are pretty well self explanatory.

LD: Oh, I'm sorry, I'm sorry. Sign-in sheet.

Attendee: Right behind you.

LD: OK. You didn't sign-in yet?

ST: While he's pulling that out there, uh, a couple things...

LD: Any, any other general contractors that haven't signed in? Last chance cause I'm gonna take it, I'm gonna close it, I'm gonna copy it, seal it.

DC: I'll copy it for you.

LD: Put it in a safe you know and all that stuff. I'm sorry, go ahead. It's late in the day, I'm getting slap happy.

ST: Uh, there's a couple of issues. We have some reference documents and we'll be telling you where they're at. They're available at the FTP site. One of them, if you notice, there's a set of existing drawings going around. We were very fortunate when we got this building from the uh, Federal Parks Department, we found a full set of blueprints, real old blueprints, in the basement in a flat file with a lot of correspondence.

LD: Are we making, are we gonna issue them as an addendum?

ST: Uh, they are, they will be available on our FTP site and we'll give you that information on how you obtain those drawings on the FTP site. And there's also some other reference material on that site.

Attendee: Yeah, there's a series of drawings that are available that show the relative historical sepricates of each of the spaces in the building.

LD: And those are available, we're gonna tell them how to...

LD: And those are available, we're gonna, gonna tell them how to...

ST: Yeah, yeah.

LD: That's, that's gonna be on the addendum?

ST: Yes.

Attendee: Is that gonna be a PDF that we can download?

ST: Yeah, they're all PDFs, you can download whatever you want.

Attendee: I think it's TIFs, TIFs.

ST: Or TIFs, one of the two, they're openable, they're graphic files so you can open them. Um, something is, is going to be shown is when we get over there, just east of the building, there's a park area that is fenced. That park is going away and that's gonna be your staging area. Um, there are some storage trailers behind the post office. They have the historical materials that are gonna move from the old building and a lot of those materials, uh, you will be putting back in the building and those are the materials that don't have to be tempered. We also have tempered storage where a lot of the uh, the wood material, the paneling, etcetera that is gonna come back in the building is stored, which is within ten miles from here. Uh...

Attendee: Did you mention the inventory?

ST: Yes, uh we have, we're also gonna provide you with, um, inventory. But we're gonna allow you to come into architectural services and look at the inventory catalogs of all that material. Its several volumes. It's all been cataloged by a, uh, conservator so it's very well organized. Uh, we've got the staging area. Um, there's another issue. The previous contractor that was doing work here, um, because we're allowing you to use *our* meter that's in existence for power. He's tied into that and there's a lot of equipment over there and distribution equipment and lights that are in place. You're gonna be allowed to use those, uh, so don't charge us for them. When you're done, they're yours. But uh, there's, you'll see. It's pretty good equipment and will be very useful during the construction stage.
That's all I had right to begin with. If there's, does anyone have any questions on the documents, as far as what's real important if anybody's looked at them.

Attendee: Between the civils and architectural site and electricals, the architectural site has all the off-siting by others but the civils and electrical don't.

ST: Yeah but that's already in the addendum. You haven't seen it yet. There was a reason for that called the Las Vegas Valley Water District. We had to do it that way to get credit but we won't get into that. You never had any problems with that. We went to their competitor but they wouldn't provide us water. Uh, Robert you or Erin have anything you'd like to say here. I, I'd just as soon get over there to the building.

LD: It's open?

ST: You can park on the Westside of the building.

LD: All right, uh, uh, all right, OK, now we're going in the front door?

ST: You'll come in on the dock. There are two driveways on the west of the building, you can park there, come around to the back, and there's a door open, you can come in and...

LT: OK, cause I wanna, I wanna meet in one area and I'll, I'll stress it again but when we get over there, let's uh, think back to when you was in school on a, on a field trip, please. Let's stay together. I don't want people running all over the place because if a question is asked, for clarification over there, there's a possibility, you know, it might be something that we're not gonna issue an addendum on but you can hear, I want everybody to hear everything. I want everybody to stay together please. All right and, uh, I'll have the sign in sheets and you all get a copy of the sign in sheet when we get over there and I'll have it with me so I can, I'll do a little roll call and uh, you'll see when I get into the bid opening that I will be checking that sheet with the bids I get.

KUMMER KAEMPFER
ATTORNEYS AT LAW

KUMMER KAEMPFER BONNER
RENSHAW & FERRARIO

LAS VEGAS OFFICE

MARK E. FERRARIO
mferrario@kkbrf.com
702.693.4208

LAS VEGAS OFFICE
3800 Howard Hughes Parkway
Seventh Floor
Las Vegas, NV 89169
Tel: 702.792.7000
Fax: 702.796.7181

RENO OFFICE
5585 Kietzke Lane
Reno, NV 89511
Tel: 775.852.3900
Fax: 775.852.3982

CARSON CITY OFFICE
510 W. Fourth Street
Carson City, NV 89703
Tel: 775.884.8300
Fax: 775.882.0257

November 5, 2008

Via Fax (702) 464-2578 and Regular Mail
Kathleen C. Rainey
Manager of Purchasing and Contracts
City of Las Vegas
400 Stewart Avenue
Las Vegas, Nevada 89101

Re: **Bid Protest of APCO Construction**
Project: Las Vegas Museum Phase 3 – Rehabilitation
Bid No. 08.15341.04-LED
Our Client/Successful Bidder: Flagship Construction Company, LLC

Dear Ms. Rainey,

Flagship is confused by the content of your October 30, 2008 letter. It appears the city is changing the rules mid-game. My clients experience was fully vetted and Flagship was informed by Lloyd Davis that the City was recommending my client for the award of the Las Vegas Museum Project after review of my clients' historical experience.

We request a copy of the meeting minutes from the Mandatory Pre-Bid Meeting held on September 4, 2008 at 3:00 PM. It is our belief that these meeting minutes will show the discussion regarding the requirements of historical experience on this project as articulated by the city representative Mr. Davis. It is my understanding that there was a lengthy discussion regarding how the City would handle a low bidder if the contractor did not have the historical experience. Mr. Davis said that the historical experience requirement in the documents is "subjective" and the City could choose price over experience. He made it clear everyone should bid whether they had the historical experience or not. There was further conversation regarding the requirement for the contractor to have a conservator superintendent experienced in rehabilitation. He felt that this was an important factor.

The statements made at the Mandatory Pre-Bid Meeting did what you now say you want to do. In short all bidders know the rules when the bids were placed and there is no reason to refrain from awarding the contract to Flagship.

We understand the owner's right to reject all bids but the owner has put Flagship in an unfair position by publishing the names of the subcontractors that Flagship included in its proposal. We request that the City re- think its position regarding this matter in light of the comments made during the Pre-bid meeting and that you proceed to award the contract to Flagship to avoid further proceedings.

So as not to further delay this matter I would request a response by this Friday. Thank you for your anticipated cooperation.

Sincerely,

KUMMER KAEMPFER BONNER RENSHAW & FERRARIO

Mark E. Ferrario

MEF/vll

LAS VEGAS CITY COUNCIL

OSCAR B. GOODMAN
MAYOR

GARY REESE
MAYOR PRO TEM

LARRY BROWN
STEVE WOLFSON
LOIS TARKANIAN
STEVEN D. ROSS
RICKI Y. BARLOW

DOUGLAS A. SELBY
CITY MANAGER

CITY OF LAS VEGAS
400 STEWART AVENUE
/EGAS, NEVADA 89101

VOICE 702.229.6011
TTY 702.386.9108
www.lasvegasnevada.gov

VIA FACSIMILE

October 30, 2008

Mr. William J. Wray, Esq.
Kummer Kaempfer Bonner Renshaw & Ferrario
3800 Howard Hughes Parkway, 7th Floor
Las Vegas, NV 89169

RE: Las Vegas Museum Phase 3 – Rehabilitation
Bid No. 08.15341.04-LED

Dear Mr. Wray:

This letter is in response to your request for the reasons, justifications and findings made by the City in the determination that Flagship's bid failed to materially satisfy established bid criteria set forth in the Bid Proposal and specifications for the subject project.

Based on the following findings, Flagship was determined by the City as a non-responsible bidder. This determination was made by the Manager of Purchasing & Contracts who is the City Council's Authorized Representative for such matters after consultation from the City Attorney's Office.

ITB 13.02(c) sets forth the bidder's experience requirement in historical rehabilitation. The requirement states the bidder shall have successfully completed one (1) project during the ten (10) years immediately preceding the date of submission of the Bid Proposal conforming with the US Secretary of the Interior Standards for Rehabilitation similar to the Work required by the Owner.

Flagship declared its La Concha project as evidence of meeting the experience requirement. The City had determined the Secretary of the Interior Standards for Rehabilitation were not applicable to this project and also determined the scope of the La Concha project is not comparable to the scope of the LV Museum project.

ITB 13.03(i) states that failure to provide the name of the Superintendent and submit Superintendent Project Resume as required by ITB 7.05 is subject for consideration in determining if a bidder is non-responsive and responsible. ITB 7.05 sets forth the requirement stating the Superintendent must have experience in historic rehabilitation projects conforming to the US Secretary of the Interior Standards for Historic Rehabilitation. Such person must be acceptable to the Owner.

Flagship was responsive in the timely submittal of a superintendent resume; however, the submission of Ray Butler as the Superintendent was non-responsible to the requirements to ITB 7.05 due to his project experience not including projects conforming to the Secretary of the Interior Standards for Rehabilitation.

Technical Specifications, Section 1.6 Conservator, Paragraph A sets forth the requirement that a qualified Conservator specializing in the preservation and rehabilitation of historic landmark structures shall perform 1) Masonry rehabilitation, 2) Plaster rehabilitation and restoration, and 3) Ornamental painting. Please note that Section 1.6, Paragraph B was deleted by Addendum #2.

Flagship submitted Evergreene Painting Studios, Inc. as the Conservator to perform plaster and painting. Kitson Specialty Contracting, Inc. was submitted as the contractor for masonry rehabilitation. The technical specifications state a requirement for the Conservator to perform specific trades, which include masonry, plastering, and painting, and the Conservator named by Flagship was not licensed to perform masonry or plastering. Therefore, the submission of Evergreene as the Conservator was deemed non-responsible to the requirements of the Bid.

The City has every right to reject all bidders, pursuant to ITB 15. That provision states "The Owner reserves the right to waive any formality or irregularity in any submitted Bid Proposal, or to reject any or all of the submitted Bid Proposals. That provision further states "In the case of the rejection of all of the Bid Proposals, the Owner reserves the right to advertise for new Bid Proposals, proceed to do the Work itself or take no further action, whichever is in the best interest of the Owner.

It has been deemed in the best interest of the City to reject all bids and proceed with the issuance of a new Bid Proposal. The City is considering revisions to the ITB and Technical Specifications which are less restrictive and may enable Flagship's experience to qualify for this project.

Very truly yours,

Kathleen C. Rainey, Manager
Purchasing & Contracts

cc: Jorge Cervantes
Lloyd Davis
John Ridilla
Bob Sylvain

KUMMER KAEMPFER
ATTORNEYS AT LAW
LAS VEGAS OFFICE

WILLIAM J. WRAY
wwray@kkbrf.com
702.693.4254

KUMMER KAEMPFER BONNER
RENSHAW & FERRARIO

LAS VEGAS OFFICE
3800 Howard Hughes Parkway
Seventh Floor
Las Vegas, NV 89169
Tel: 702.792.7000
Fax: 702.796.7181

RENO OFFICE
5585 Kietzke Lane
Reno, NV 89511
Tel: 775.852.3900
Fax: 775.852.3982

CARSON CITY OFFICE
510 W. Fourth Street
Carson City, NV 89703
Tel: 775.884.8300
Fax: 775.882.0257

October 27, 2008

Via Fax (702) 464-2578 and Regular Mail
Ms. Kathleen C. Rainey
Manager of Purchasing and Contracts
City of Las Vegas
400 Stewart Avenue
Las Vegas, Nevada 89101

Re: DEMAND FOR CITY OF LAS VEGAS TO ACT IN ACCORDANCE WITH LAW
Bid Protest of APCO Construction
Project: Las Vegas Museum Phase 3 – Rehabilitation
Bid No. 08.15341.04-LED
Our Client/Successful Bidder: Flagship Construction Company, LLC

Dear Ms. Rainey:

As you know from previous communications, our office represents Flagship Construction Company ("Flagship") in connection with the above-referenced bid dispute. We appreciate you speaking with Mr. Ferrario and me this afternoon by telephone regarding your letter, dated today, October 27, 2008, wherein the City of Las Vegas (the "City") purports to reject all bids in connection with the subject Project pursuant to Instruction to Bidders ("ITB"), Section 15. This letter is in follow-up thereto.

Your letter of today was confusing to us and our client. We thought that the City's determination to reject all bids and re-bid the project must have been based on the APCO Bid Protest. We were prepared to advise the City this afternoon by letter that such determination was in error. Even if APCO's allegations were true, that would not invalidate Flagship's bid or render it non-responsive or non-responsible. If the City determined that a listed subcontractor is not properly licensed or qualified (as APCO claims), then the City must allow Flagship to make the substitution of any such subcontractor, subject to the City's oversight and approval. We understand now, however, based upon our telephone call today that the City agrees with Flagship's position with respect to APCO's Bid Protest, and that the City's action set forth in your letter of today was not in any way based upon the APCO Bid Protest.

You indicated that the City made its determination to reject all bids and re-bid the Project based upon a finding of irregularities in the Bid Proposal documents. You stated that the City determined that there were irregularities in the Bid Proposal documents because none of the bidding contractors (particularly the lowest three bidders) fully and materially complied with the bid criteria. Accordingly, you made a determination that Flagship, as well as the next lowest two

bidders' bids were non-responsive and non-responsible.

Flagship respectfully demands that you immediately provide the undersigned with any and all reasons, justifications and findings made by the City whereby the City determined that Flagship's bid failed to materially satisfy any established bid criteria set forth in the Bid Proposal and specifications, and identify your authority for such finding. Please provide such information no later than 5:00 PM, Tuesday, October 28, 2008.

We do not believe that there is any basis for rejecting the bids under ITB 15, as set forth in your letter. The City is reminded that this is a public works, competitive bid project and is governed by NRS Chapter 338 and the ITB. Please be reminded that pursuant to NRS 338.1385(5) and ITB 12.01, the City is obliged to award the contract to "the lowest responsive and responsible bidder." Flagship is the lowest responsive and responsible bidder. The City does not have discretion to reject all bids where there was a qualified, responsive, responsible bidder. Flagship maintains that it was the lowest responsive responsible bidder and is entitled to the contract award. Flagship is prepared to pursue such action as may be necessary to protect its interests in this regard.

It should be noted that it is prejudicial to Flagship, who was the lowest bidder, for the City to now cancel all bids and re-bid the Project. All the bids have now been opened and are subject to comparative review. Flagship's list of subcontractors is subject to review by competitors and potential competitors. Flagship would be at a disadvantage in any re-bid process.

Again, please provide the information requested herein above no later 5:00 PM on Tuesday, October 28, 2008. Please do not hesitate to contact Mark Ferrario if you have any questions.

Very truly yours,

KUMMER KAEMPFER BONNER
RENSHAW & FERRARIO

William J. Wray, Esq.

WJW/rh
Enclosure as stated.
cc: Nancy Paolino (via fax)

LAS VEGAS CITY COUNCIL

OSCAR B. GOODMAN
MAYOR

GARY REESE
MAYOR PRO TEM

LARRY BROWN
STEVE WOLFSON
LOIS TARKANIAN
STEVEN D. ROSS
RICKI Y. BARLOW

DOUGLAS A. SELBY
CITY MANAGER

VIA FACSIMILE ONLY

October 13, 2008

APCO Construction
Randy Nickerl
3432 North 5th Street
North Las Vegas, NV 89032

Re: Bid No.08.15341.04-LED, Las Vegas Museum Phase 3 - Rehabilitation

Dear Mr. Nickerl;

This letter is to acknowledge receipt of APCO's protest of the potential contract award to the apparent low bidder for the Las Vegas Museum project, Bid No. 08.15341.04-LED. Your protest was received on October 2, 2008. The City's protest procedure provides for the Purchasing & Contracts Manager to review the protest and render a written determination within ten calendar days. As you are aware, however, the City has requested bid clarifications from the three apparent low bidders as part of its bid evaluation process. Those clarification letters were issued on October 8, 2008 and responses were requested by October 9, 2008. APCO requested and was granted an extension of the deadline, which revised the due date to 5 p.m. October 10, 2008.

Based on the complexities associated with the bid evaluation for this project and the need to carefully evaluate the bid clarification submittals from the three apparent low bidders, the City is unable to meet the ten-day protest determination period ending Monday, October 13, 2008. In my conversation with Joe Pelan, I made him aware that it was my intent to expedite a determination, though it was likely I would need an extension of the 10-day protest determination period, especially given the revised APCO deadline for submittal of it bid clarification information. Joe concurred and this letter is intended to reiterate that I am expediting the completion of the bid evaluation so I can respond to the protest. I expect to have a determination no later than Friday October 17.

Sincerely,

Kathleen C. Rainey
Manager, Purchasing & Contracts

Cc: Christopher H. Byrd

CITY OF LAS VEGAS
[illegible] STEWART AVENUE
LAS VEGAS, NEVADA 89101

VOICE 702.229.6011
TDD 702.386.9108
www.lasvegasnevada.gov

KUMMER KAEMPFER
ATTORNEYS AT LAW
LAS VEGAS OFFICE

KUMMER KAEMPFER BONNER
RENSHAW & FERRARIO

WILLIAM J. WRAY
wwray@kkbrf.com
702.693.4254

LAS VEGAS OFFICE
3800 Howard Hughes Parkway
Seventh Floor
Las Vegas, NV 89169
Tel: 702.792.7000
Fax: 702.796.7181

RENO OFFICE
5585 Kietzke Lane
Reno, NV 89511
Tel: 775.852.3900
Fax: 775.852.3982

CARSON CITY OFFICE
510 W. Fourth Street
Carson City, NV 89703
Tel: 775.884.8300
Fax: 775.882.0257

October 9, 2008

Via Fax (702) 464-2578 and Regular Mail
Ms. Kathleen C. Rainey
Manager of Purchasing and Contracts
City of Las Vegas
400 Stewart Avenue
Las Vegas, Nevada 89101

Re: Response to Bid Protest of APCO Construction
Project: Las Vegas Museum Phase 3 – Rehabilitation
Bid No. 08.15341.04-LED
Our Client/Successful Bidder: Flagship Construction Company, LLC
Flagship's Construction Company, LLC's Supporting Bid Documents

Dear Ms. Rainey:

As you know from prior correspondence, our office represents Flagship Construction Company, LLC ("Flagship"), in connection with the Bid Protest filed by APCO Construction Company.

This letter is in follow-up to my letter sent to you yesterday, setting forth Flagship's analysis and response to the Bid Protest. This letter encloses copies of additional documents utilized or generated by Flagship in preparation of its bid as it relates to the trade contractor work in question as requested in your letter of October 7, 2008. The enclosed documents include bid documents and correspondence submitted by various prospective subcontractors for the trade work in question, and Flagship's sample spreadsheets and bid analysis utilized in analyzing scopes of work, general project requirements and determining which subcontractors to use and list in connection with the subject scopes of trade work. If you cannot read the faxed copies of the spreadsheets, I can e-mail PDF copies which may be easier to read. Also, it should be noted that other general drywall bidders (other than the one listed by Flagship) excluded the ornamental plaster scope of work from their bids.

The enclosed documents contain confidential, trade secret and proprietary information. The documents are being provided for review and consideration by the City of Las Vegas and its personnel only, in connection with the subject Bid Protest. The documents are not to be shared, published, distributed or otherwise disclosed to others, particularly competitors, subcontractors or potential subcontractors of Flagship, inasmuch as the same would be a breach of trade secret information and would give others an unfair competitive advantage.

LAW FIRMS WORLDWIDE MERITAS

Please contact the undersigned if you have any questions or comments, or if you require any additional information or documents.

Very truly yours,

KUMMER KAEMPFER BONNER
RENSHAW & FERRARIO

William J. Wray, Esq.

WJW/rh
Enclosure as stated.

cc: Nancy Paolino (via fax)

KUMMER KAEMPFER
ATTORNEYS AT LAW
LAS VEGAS OFFICE

KUMMER KAEMPFER BONNER
RENSHAW & FERRARIO

WILLIAM J. WRAY
wwray@kkbrf.com
702.693.4254

LAS VEGAS OFFICE
3800 Howard Hughes Parkway
Seventh Floor
Las Vegas, NV 89169
Tel: 702.792.7000
Fax: 702.796.7181

RENO OFFICE
5585 Kietzke Lane
Reno, NV 89511
Tel: 775.852.3900
Fax: 775.852.3982

CARSON CITY OFFICE
510 W. Fourth Street
Carson City, NV 89703
Tel: 775.884.8300
Fax: 775.882.0257

October 9, 2008

Via Fax (702) 464-2578 and Regular Mail
Ms. Kathleen C. Rainey
Manager of Purchasing and Contracts
City of Las Vegas
400 Stewart Avenue
Las Vegas, Nevada 89101

Re: Response to Bid Protest of APCO Construction
Project: Las Vegas Museum Phase 3 – Rehabilitation
Bid No. 08.15341.04-LED
Our Client/Successful Bidder: Flagship Construction Company, LLC

Dear Ms. Rainey:

Our firm represents Flagship Construction Company, LLC (Flagship) in connection with the above-referenced Las Vegas Museum Phase 3 Rehabilitation Project and Bid, and the Bid Protest of APCO Construction (APCO). This letter is in response to your letter of October 7, 2008 and your corresponding request for information from Flagship in order to respond to the Bid Protest.

APCO's Bid Protest is baseless and in bad faith. If they have not done so already, APCO must be compelled to post Security in the amount of $250,000 as required by statute[1] to secure against the costs incurred by the Protest. Unless and until APCO has posted the security, the City should not act on or respond to the Protest.

Summary of Arguments

As set forth in more detail below, APCO's Bid Protest and the arguments in support thereof are flawed. The stated basis for the Protest – that Flagship has listed subcontractors on its 1% and 5% lists who are not properly licensed and qualified to complete the scopes of work for which they are listed and that Flagship cannot abandon those listed subcontractors and bid shop those scopes of work – is simply false.

First, the listed subcontractors are qualified to complete the scopes of work for which they are listed.

[1] Both NRS 338.142(3) and City of Las Vegas Resolution 8-89-2004, Attachment A, Paragraph D, requires that a Bid Protester post security in the amount of the lesser of: 25% of the total bid submitted by the Protester; 25% of the City's contract estimate for the Project; or $250,000.

LAW FIRMS WORLDWIDE MERITAS

Second, pursuant to the same body of statutes and law cited by APCO, Flagship cannot shop those subcontractor bids and is bound to the listed subcontractor unless the City determines that there is a statutory basis for a substitution and then approves the substitution. In the event that any listed subcontractor is truly not properly qualified as determined by the City, and so long as Flagship exercised reasonable due diligence, Flagship's Bid is not rendered void or non-responsive. In that event a substitution can be made, and such substitution is safeguarded against bid shopping by the oversight and approval of the City.

Finally, it should be noted that restoration and rehabilitation of historical structures is itself a unique and highly specialized area of construction, but for which Nevada has no specialty contractor's license under NAC 624. Both Kitson and Evergreene (the listed subcontractors questioned by APCO addressed herein below) possess the highest levels of training and specialization in this area, as demonstrated by the Qualification Questionnaires submitted.

Kitson is Qualified to Complete its Listed Scope of Work

Flagship listed Kitson Specialty Contracting, Inc. (Kitson), based upon a good faith understanding and belief that Kitson was and is qualified and properly licensed to completely perform the masonry rehabilitation scope of work for which it was listed. APCO correctly notes that Kitson holds a C-15(d) Waterproofing specialty contractors license in Nevada. However, contrary to the position in APCO's Protest, that license does qualify Kitson to complete the work for which it is listed.

By way of a letter dated October 8, 2008, Kitson has sought clarification and confirmation from the Nevada State Contractors Board that its license status qualifies it to do the work for which it is listed. A copy of that letter is attached hereto as **Exhibit A**. It should be noted that Flagship and Kitson continue to proceed based upon a good faith understanding that Kitson is, in fact, properly, fully and uniquely qualified to complete the rehabilitation for which it was listed in Flagship's Bid. However, as set forth further herein, even if Kitson is determined to not be properly qualified, that does not invalidate or negate Flagship's bid, or render it non-responsive or non-responsible.

The masonry rehabilitation work contemplated at the Project and outlined in the Bid Documents does not primarily entail masonry contraction work. Rather, the work primarily entails remediation of moisture-damaged elements of existing construction, including masonry and waterproofing, so as to forestall additional deterioration. The focus of the masonry rehabilitation work is restoration, and the re-pointing of brick and terra cotta to prevent water infiltration. This is within the scope of the license and specialization that Kitson possesses.

The Bid Specifications support Flagship's position in this regard. The Summary of the Masonry Rehabilitation work as set forth in the Masonry Rehabilitation Specifications, Section 1.2(A)(1)-(2) calls for: 1) Maintenance of unit masonry consisting of brick and terra cotta clay masonry rehabilitation; and, 2) Replacing extant marble radiator covers (emphasis added). Nothing in the

Specification indicates a requirement for a C-18, specialty masonry contractor; which according to NAC 624.350 qualifies a licensee to "select, cut and lay brick." The C-18 trade credentials is NOT what is required by the subject scope of work, and, at best, is simply incidental and supplemental to the subject work for which Kitson was listed. Further, Section 3.1(A) of the Masonry Rehabilitation Specifications calls "Restoration Specialist Firms: Subject to compliance with requirements, provide masonry restoration and cleaning by a preapproved restoration specialist." (emphasis added). These are the unique qualifications that Kitson (and Evergreene) possess, as evidenced in the Qualification Questionnaires. From what can be told to date, APCO's proposed listed subcontractor DOES NOT have these qualifications.

Additionally, the Bid Specifications expressly call for the use of certain specific manufacturers' products and materials for the masonry and terra cotta repair (including, for example, "Cathedral Stone" masonry patching products). *See e.g.,* Masonry Rehabilitation Specifications, Section 2.4(A)(1). These specific manufacture and product specifications, in turn, require specialized training and certification for installation.[2] As set forth in Kitson's attached letter (Exhibit A), Kitson possesses the proper manufacturers' training and certification, while, as far as can be currently determined, APCO's proposed subcontractor does not.

The fact that the word "masonry," as used in the work description, does not (as APCO would argue) directly lead to the conclusion that a C-18 specialty masonry license is required. The nature of the masonry rehabilitation work called for in the Project Bid Documents is not that of an original construction masonry contractor, but more focused on historical restoration and rehabilitation. The focus of the work for which Kitson was listed is waterproofing and the installation of specified manufacturers' systems for which Kitson is both licensed by Nevada and qualified by the specific manufacturers. Any actual masonry construction work that may be required would be incidental and supplemental to the historical restoration and waterproofing work and the installation of the called-for manufacturers' systems. Nevada law clearly provides that Kitson can perform such supplemental work with the corresponding specialty license. NRS 664.220(4): *"... nothing contained in this section prohibits a specialty contractor from taking and executing a contract involving the use of two or more crafts or trades, if the performance of the work in the crafts or trades, other than in which he is licensed, is incidental and supplemental to the performance of work in the craft for which the specialty contractor is licensed."*

Finally, it should be noted that Flagship and Kitson completed and submitted the Qualifications Questionnaire for Kitson, a copy of which is attached hereto as **Exhibit B**.

Based upon the foregoing, it is Flagship's position that Kitson was properly considered and listed by Flagship and that Kitson is properly licensed and qualified to complete the work for which it was listed.

---

[2] With the Cathedral products, for example, you cannot even purchase the materials unless you have the requisite Cathedral installation training and certification.

Evergreene is Qualified to Complete its Listed Scope of Work

Flagship listed Evergreene Painting Studios, Inc. (Evergreene), based upon both: the understanding that Evergreene was specifically prequalified by the City to fully perform the Conservator scope of work; and, the further good faith understanding and belief that Evergreene was and is qualified and properly licensed to completely perform the work for which it was listed in Flagship's bid.

Evergreene was and is a prequalified conservator specializing in the preservation and rehabilitation of historic landmark structures for scopes of work including masonry and plaster restoration and ornamental painting. Pursuant to Conservator Rehabilitation Specifications, Section 1.6(B)(1) Evergreene was expressly prequalified. Furthermore, and inasmuch as Addendum 1 clarified the Conservator qualifications and requested the completion and submission of a Conservator Qualifications Questionnaire, Evergreene and Flagship completed that questionnaire and submitted the requested Questionnaire, a copy of which is attached hereto as **Exhibit C**. Evergreene properly documented the appropriate experience and was, accordingly, properly listed by Flagship.

Finally, it should be noted that, just like with Kitson, Evergreene, as a licensed specialty contactor in Nevada, is allowed to perform work which is outside its respective specialty classification, which is incidental or supplemental to the work for which Evergreene is licensed. NRS 664.220(4).

Upon the foregoing, it is Flagship's position that Evergreene was properly considered and listed by Flagship and that Evergreene is properly licensed and qualified to complete the work for which it was listed.

There Is No Real Threat of Bid Shopping

There is no real or legitimate concern that Flagship can now shop the bids for the masonry rehabilitation and conservator scopes of work. APCO is clearly trying to add false emphasis and urgency to its Bid Protest by its repeated, unsupported, inflammatory and hyperbolic allegations of potential bid shopping.

As pointed out herein above, the subject listed subcontractors are properly qualified and licensed for the respective scopes of work for which they are listed. There is no real threat of bid shopping because Flagship is bound to those listed subcontractors to complete the work subject to the provisions of NRS 338.141.

If a listed subcontractor is determined to be disqualified by the public body (the City) under one of the enumerated conditions of NRS 338.141(5)(b), which would include not having the proper licensing to complete the listed scope of work, then Flagship can substitute an alternate

subcontractor, and then only subject to the public body oversight and approval. Protections against bid shopping are built into the system.

No authority cited by APCO, even given the false facts as presented by APCO, justifies the discarding of Flagship's lowest responsive and responsible bid, and the awarding of the contract to APCO at a higher price. This notion completely skirts the public policy behind competitive bidding and getting the best price for the public body. Instead, if any of the listed subcontractors are truly not qualified, the recourse is to substitute those subcontractors in accordance with the protections set out in NRS 338.141. However, such analysis in this case is purely academic inasmuch as Flagship understands and believes that Kitson and Evergreene are properly qualified for the work for which they are listed, and Flagship further expects to proceed with the project and contract using those subcontractors as listed.

Conclusion

Flagship is the lowest responsive responsible bidder and should be awarded the subject contract. Fair notions of competitive bidding and the public interest further support the award to Flagship as the best bargain for the public.

The challenges put forth by APCO have been dispelled. However, to the extent there is any legitimate concern based upon the allegations set forth by APCO, then the City's proper recourse is not to give APCO the contract, but is to follow the processes set forth in NRS 338.141 and corollary law to deal with potentially disqualified subcontractors.

Upon the foregoing, Flagship respectfully requests that you deny APCO's Bid Protest and proceed with the award and contract to Flagship.

Please feel free to contact either the undersigned or our client directly if you have any questions or need any additional information or documents.

Very truly yours,

KUMMER KAEMPFER BONNER
RENSHAW & FERRARIO

WJW for MEF

Mark E. Ferrario, Esq.

cc: Nancy Paolino

LAS VEGAS CITY COUNCIL

OSCAR B. GOODMAN
MAYOR

GARY REESE
MAYOR PRO TEM

LARRY BROWN
STEVE WOLFSON
LOIS TARKANIAN
STEVEN D. ROSS
RICKI Y. BARLOW

DOUGLAS A. SELBY
CITY MANAGER

October 7, 2008

APCO Construction
Randy Nickerl
3432 North 5th Street
North Las Vegas, NV 89032

Re: Bid No.08.15341.04-LED, Las Vegas Museum Phase 3 - Rehabilitation

Dear Mr. Nickerl;

The City is in the process of evaluating your bid submitted in response to the above referenced project. To enable us to complete the bid evaluation we are requesting the following information:

1) Request verification that the work experience listed the Project Manager and the Superintendent were in compliance with the US Secretary of Interior Standards for Rehabilitation; and

2) Request that you submit the Conservator Qualification Questionnaire in accordance with addendum # 1, which was required one (1) business day after bid opening.

Request that you provide the above documents this office no later than October 9th in order for the City to complete it's evaluation of your bid. If you have any questions please contact Lloyd E. Davis at 702/229-2487.

Sincerely,

Kathleen C. Rainey
Manager, Purchasing & Contracts

CITY OF LAS VEGAS
400 STEWART AVENUE
LAS VEGAS, NEVADA 89101

VOICE 702.229.6011
TTY 702.386.9108
www.lasvegasnevada.gov

APCO
CONSTRUCTION
3432 N. 5th Street • North Las Vegas, NV 89032
Phone: (702) 734-0198 • Fax: (702)734-0396
E-mail: apcoconstruction.com • NCL: 14563

October 8, 2008

VIA FACSIMILE ONLY: (702)384-9964

Mrs. Kathleen C. Rainey
Manager of
Purchasing & Contracts Division
400 E. Stewart Ave.
Las Vegas, Nevada 89101

RE: LAS VEGAS MUSEUM – PHASE III BID

Dear Mrs. Rainey:

Thank you for your letter of October 7, 2008 requesting additional information on the Las Vegas Museum – Phase III.

Please find attached the completed "Conservator Qualification Questionnaire" and applicable back-up for EverGreene Painting Studios. Additionally we would have previously submitted this item but the attached Addendum #1 item 1.11 indicated that only the apparent low bidder is to provide this questionnaire. We hope you find this information satisfactory and should you need additional information please feel free to contact us at 734-0198.

Regarding the first item in your letter that asks for additional verification for our staff members, we would like to request (1) additional day as we are contacting prior employers to assist us in providing the information requested. We should have the items that we have requested tomorrow and forward to you as soon as we receive them.

We thank you for your continued interest in our staff and look forward to working with the City of Las Vegas on this project.

Sincerely,

Randy Nickerl
Division Manager
APCO CONSTRUCTION

LAS VEGAS CITY COUNCIL

OSCAR B. GOODMAN
MAYOR

GARY REESE
MAYOR PRO TEM

LARRY BROWN
STEVE WOLFSON
LOIS TARKANIAN
STEVEN D. ROSS
RICKI Y. BARLOW

DOUGLAS A. SELBY
CITY MANAGER

October 7, 2008

Flagship Construction Co., LLC
Nancy Paolino
4052 Dean Martin Drive
Las Vegas, NV 89103

Re: Bid No.08.15341.04-LED, Las Vegas Museum Phase 3 - Rehabilitation

Dear Ms Paolino;

The City has received a formal protest on the recommendation of award to your firm on the basis that your subcontractor's Kitson Specialty Contracting, Inc. and Evergreene Painting Studios, Inc. are not properly licensed to perform the work listed. In order for the City to perform its evaluation of the protest we require the submission of your documents generated in the preparation of your bid as it relates to the two subcontractors. This request is being made in accordance with NRS 338.140 1. (d) (4).

Kitson Specialty Contracting, Inc. is listed on your 5% Subcontractor List to perform "masonry rehabilitation" however their license classification is a "C-15D – waterproofing".

Evergreene Painting Studios, Inc. is listed on your 5% Subcontractor List to perform "conservator, plaster & painting" however their license classification is a "C-4A – painting & C-4B – wallcovering".

Request that you provide this office no later than October 9th the requested documents relating to the above areas of concern. . If you have any questions please contact Lloyd E. Davis at 702/229-2487.

Sincerely,

Kathleen C. Rainey
Manager, Purchasing & Contracts

CITY OF LAS VEGAS
STEWART AVENUE
LAS VEGAS, NEVADA 89101

VOICE 702.229.6011
TDD 702.386.9108
www.lasvegasnevada.gov

LAS VEGAS CITY COUNCIL

OSCAR B. GOODMAN
MAYOR

GARY REESE
MAYOR PRO TEM

LARRY BROWN
STEVE WOLFSON
LOIS TARKANIAN
STEVEN D. ROSS
RICKI Y. BARLOW

DOUGLAS A. SELBY
CITY MANAGER

October 7, 2008

Rafael Construction, Inc.
Tim Burns
7120 Rafael Ridge Way
Las Vegas, NV 89119

Re: Bid No.08.15341.04-LED, Las Vegas Museum Phase 3 - Rehabilitation

Dear Mr. Burns;

The City is in the process of evaluating your bid submitted in response to the above referenced project. To enable us to complete the bid evaluation we are requesting the following information:

1) Request verification that the work experience listed was in compliance with the US Secretary of Interior Standards for Rehabilitation;

2) Request that you submit the Certificate Regarding Lobbying and the Certificate Regarding Debarment, Suspension and Other Responsibility Matters as required by ITB 7.08, which was required one (1) business day after bid opening; and

3) Request clarification on the work to be performed by Western Plaster and verification this work conforms to their license. Western Plaster, license # 68639A, is listed on your 1% Subcontractor List for performing "Plastering" however their license is a "C17E – Coatings of Stucco & Cement".

Request that you provide the above documents this office no later than October 9th in order for the City to complete it's evaluation of your bid. If you have any questions please contact Lloyd E. Davis at 702/229-2487.

Sincerely,

Kathleen C. Rainey
Manager, Purchasing & Contracts

CITY OF LAS VEGAS
400 STEWART AVENUE
LAS VEGAS, NEVADA 89101

VOICE 702.229.6011
TDD 702.386.9108
www.lasvegasnevada.gov

RAFAEL
CONSTRUCTION INC.
7120 Rafael Ridge Way, Las Vegas, Nevada 89119
(702) 451-5511 Main Fax (702) 451-6111 Estimating Fax (702) 451-6555
License #0031955 / 0051491

October 9, 2008

Ms. Kathleen C. Rainey
Manager, Purchasing & Contracts
City of Las Vegas
City Hall 1st Floor
400 Stewart Ave.
Las Vegas, Nevada 89101
(702) 229-6231 Via Fax (702) 384-9964

Re: Las Vegas Museum Phase 3-Rehabilitation
300 Stewart Ave.
Las Vegas, NV. 89101
Bid No. 08.15341.04-LED

Dear Ms. Rainey:

In response to your letter dated October 7, 2008 we offer the following:

1.) Pursuant to Attachment 6 List of Completed Projects, Rafael Construction, Inc. has completed within the last ten years the U. S. Federal Tax Court Renovation project located on the second floor of the former U. S. Post Office and Federal Courthouse Building at 300 Stewart Ave., Las Vegas, Nevada 89102. This project was located in the same building where the Las Vegas Museum Phase 3 – Rehabilitation Project is also located. The Owner was the U. S. General Services Administration and was completed in 1998 in compliance with the U. S. Secretary of Interior Standards for Rehabilitation. Rafael Medina, Jr. President of Rafael Construction who was Superintendent on the above referenced completed project and given his immense invaluable knowledge will also serve in the capacity of General Superintendent on this very exciting and high profile project.

In addition, upon contact award of the Las Vegas Museum Phase 3 – Rehabilitation Project Rafael Construction will utilize the vast experience of our listed Historical Renovator subcontractor Mark Sauer Construction who has completed many additional projects listed by the National Historic Register (see attached).

2.) Per your request please find our attached Certificate Regarding Lobbying and the Certificate Regarding Debarment, Suspension and Other Responsibility Matters.

3.) Rafael Construction had listed Western Plastering to perform the balance of the Plastering scope of work not specified to be performed by the Historical Renovator, i.e., Mark Sauer Construction. However, Rafael Construction will request a substitution of subcontractors, at no additional cost to the City of Las Vegas for the plastering scope of work due to the fact that Western Plastering has a C17E sub classification of Lathing and Plastering for Coatings of Stucco and Cement. Rafael Construction being a 50% Partner in Western Plastering would propose to self perform the Plastering scope of work under our "B" license meeting all relevant specifications and Nevada State Contractor's license law.

Regarding my telephone conversation with Mr. Lloyd Davis, Contract Specialist on September 29, 2008 the following issues, in general, were discussed.

Section 011000-3 Summary states, "1.6 Conservator, A. The following scopes of work shall be performed by a qualified Conservator, specializing in the preservation and rehabilitation of historic landmark structures:

1. Masonry rehabilitation.
2. Plaster rehabilitation and restoration.
3. Ornamental painting."

Revised per Addendum No. 1, states, "1.6 B. Conservator must have a minimum of 5 years experience on rehabilitation work complying with the Secretary of the Interior's Standards for Rehabilitation."

Section 040120-3 Masonry Rehabilitation 1.5 Quality Assurance states, "A. Restoration Specialists Qualifications: Engage an experienced, preapproved masonry restoration and cleaning firm to perform work of this section. Firm shall have completed work similar in material, design, and extent to that indicated for this Project with a record of successful in-service performance. Experience installing standard unit masonry is not sufficient experience for masonry restoration work."

Flagship Construction had listed Kitson Specialty Contracting for the Masonry Rehab scope of work on their 5% subcontractor list. Kitson's bid proposal for the masonry rehabilitation scope of work was in the amount of $805,000. However, Kitson Specialty Contracting only possess a C-15D Waterproofing Nevada State Contractors License Number 40097, not the C18 Masonry Specialty license required for this scope of work.

APCO Construction had listed Henderson Masonry for the CMU and Masonry Restoration scope of work on their 5% subcontractor list. Henderson Masonry's bid proposal for the masonry rehabilitation scope of work was in the amount of $1,082,662. Henderson Masonry possess a C18 Masonry Nevada Contractors License Number 52532A with an origin date of June 8, 2007 and clearly does not meet the specifications regarding the Conservator's qualifications either.

In conclusion, based on Flagship and APCO's disregard for the Project's specifications regarding the Conservator's qualifications resulting in an unfair advantage to both the City of Las Vegas should deem both Flagship and APCO's bids to be non-responsive and award the Las Vegas Museum-Phase 3 project to Rafael Construction, Inc. the low, responsive Bidder on this project.

Thank you for your consideration. Please contact me with any questions you may have.

Sincerely,

Rafael Construction, Inc.

Rob Jeffreys
Chief Estimator

FENNEMORE CRAIG, P.C.

Suite 1400 Bank of America Plaza
300 South Fourth Street
Las Vegas, Nevada 89101
(702) 692-8000

John Randall Jefferies
Direct Phone: (602) 916-5313
Direct Fax: (602) 916-5513
rjefferi@fclaw.com

Law Offices
Phoenix (602) 916-5000
Tucson (520) 879-6800
Nogales (520) 281-3480
Las Vegas (702) 692-8000
Denver (303) 291-3200

October 2, 2008

BY HAND DELIVERY

Ms. Kathleen C. Rainey
Manager, Purchasing & Contracts
City of Las Vegas
City Hall, 1st Floor
400 Stewart Avenue
Las Vegas, NV 89101-2986

Re: City of Las Vegas Museum Phase 3 – Rehabilitation
Bid No. 08.15341.04-LED
Bid Protest of APCO Construction

Dear Ms. Rainey:

This law firm represents APCO Construction ("APCO") and has been authorized to submit this formal protest to the proposed award of the above-referenced contract to Flagship Construction, LLC ("Flagship"). Flagship's bid listed two inadequately and improperly licensed subcontractors on its 5% and 1% subcontractor lists, creating an opportunity for Flagship to illegally shop the bids for those particular scopes of work. That provides Flagship with an unwarranted and damaging competitive advantage over APCO and other bidders. As a result of this deficiency, Flagship's bid must be deemed non-responsive to the solicitation requirements, and the City should therefore award this contract to APCO as the lowest responsive and responsible bidder. To do otherwise would set a dangerous precedent that will have long term impacts upon the integrity of the City's' procurement program.

The primary defects in Flagship's bid arise out of its failure to comply with both the anti-bid shopping policies underlying N.R.S. §338.141[1] and the Instructions to Bidders ("ITB") by listing two inadequately licensed subcontractors. With regard to this statute, the Nevada legislature commented:

> [The legislature] finds and declares that it is the policy of this state to ensure that the public receives the full benefits for fair competition among contractors and subcontractors in public works and has therefore

[1] N.R.S. § 338.141 requires, *inter alia*, bidders to provide the 5% and 1% subcontractor lists.

> enacted [N.R.S. 338.141] to limit the practice of shopping for bids for the construction, alteration and repair of public improvements.[2]

Moreover, the Federal District Court of Nevada confirmed that N.R.S. §338.141 was enacted to prevent "the evil of bid shopping" and to "limit the practice of shopping for bids."[3] And an Associated General Contractors of America representative testified before the Nevada legislature "that bid shopping is not a practice the state wants as part of public works projects. ... [T]he construction industry believes bid shopping gives an unfair advantage to those involved [i.e. general contractors who shop bids and subcontractors who peddle bids], is unethical, and is adamantly opposed to the practice."[4] "The purpose of bidding is to secure competition, save public funds, and to guard against favoritism, improvidence and corruption."[5] As Gulf Oil Corp. v. Clark County points out, the structure of the bidding process exists to prevent even the appearance of such impropriety.[6]

Similarly, the ITB for this project contains specific instructions aimed, in part, at preventing bid shopping by requiring prime contractors to do the proper due diligence to confirm the proper licensure and capabilities of the listed subcontractors. For example, section 13.03(f) requires compliance with these respective subcontractor lists as a prerequisite to a finding of responsiveness and proscribes "circumventing the Subcontractor list Requirements by disingenuous issuance of contractors or purchase orders that avoid such listing, whether these acts and omissions are intentional or otherwise."[7] The ITB further mandates compliance by the bidder and subcontractors with the licensing requirements of Nevada Revised Statutes "during the bidding phase and ... through the completion of the project."[8]

Evaluating Flagship's bid in conjunction with these anti-bid shopping prohibitions confirms that Flagship's bid was non-responsive and should be rejected. To do otherwise would allow bidders to pick and choose ITB requirements to achieve an unwarranted competitive advantage. For example,

---

[2] Act of July 12, 1993, ch 514, Section 1, 1993 Nev. Stat. 2130 (codified in part at Nev. Rev. Stat. Ann. Section 338.141 (Michie 1994)).

[3] Clark Pacific v. Krump Constr. Inc., 942 F.Supp. 1324, 1341, 1339 (D.Nev. 1996)("Because it was the apparent purpose of the Nevada legislature in enacting S.B. 474 to prevent bid-shopping in public works contracts, the court must read [N.R.S. 338.141] to give effect to that purpose").

[4] Id. (citing Hearings on S.B. 474 before the Comm. On Gov't Affairs, 67th Nevada Legis. Sess. (1993)).

[5] Gulf Oil Corp. v. Clark County, 94 Nev. 116, 118, 575 P.2d 1332, 1333 (1978).

[6] Id.

[7] ITB § 13.03(f) reads: "As a pre-requisite to the award of the Contract, and in addition to the determination that the Bidder is responsible, the lowest Bidder or Best Bidder, as the case may be, must be a responsive Bidder as determined by the Owner. In determining whether the Bidder is responsive, any one or more of the following may be considered: ... Failure to complete and submit the Subcontractor Listings as required by ITB 5.04 and ITB 6.01, or circumventing the Subcontractor List requirements by disingenuous issuance of contracts or purchase orders that avoid such listing, whether these acts and omission are intentional or otherwise."

[8] ITB 10.

on Attachment 3, Flagship lists Kitson Specialty Contracting, LLC ("Kitson") for bid specification 040120 – Masonry Rehabilitation.[9] The specifications for this scope require "maintenance of unit masonry consisting of brick and terra cotta clay masonry rehabilitation" and "replicating extant marble radiator covers."[10] Kitson's license number is 0040097, as noted on the 1% subcontractor list,[11] and is classified as a C-15D.[12] Under its license, Kitson is only permitted to perform "waterproofing" including "the application of solutions of rubber, latex, asphalt, pitch, tar and other materials to surfaces to prevent water in any form from penetrating surfaces."[13] Given the nature of work at issue on this project for this scope of work, the applicable subcontractor must possess a C-18 Masonry license.[14] Because Kitson is inadequately licensed, it cannot perform the work designated by Flagship on Attachments 3 and 8. Incidentally, APCO received a price quotation from Kitson to perform the masonry rehabilitation work. Upon learning that Kitson was improperly licensed, however, APCO removed them from its bid because of the licensing limitations[15] and listed instead a properly licensed subcontractor – Henderson Masonry and its C-18 masonry license – for this scope of work.[16]

Similarly, Flagship's 5% subcontractor list includes Evergreene Painting Studios, Inc. ("Evergreene") for bid section 011000 – Conservator.[17] On the 1% subcontractor list, Flagship lists Evergreene with license number 0054721 to perform "conservator, plaster & painting" work.[18] Per the specifications, that work requires three separate license classifications to perform the following work: (1) masonry restoration,[19] (2) plastering, and (3) restoration painting. Evergreene only has C4A and C4B licenses.[20] Under its licenses, Evergreene could only properly perform the third of the three required scopes of work, yet Flagship listed Evergreene for all three. Flagship further failed to list any properly licensed subcontractors for the other necessary scopes of work, even though it was required to

---

[9] A copy of Flagship's Bid's Attachment 3 is attached as Exhibit 1.
[10] Specifications Section 040120 – Masonry Rehabilitation, Part 1.2(A).
[11] A copy of Flagship's Bid's Attachment 8 is attached as Exhibit 2.
[12] A printout of Kitson's license classification is attached as Exhibit 3.
[13] N.R.S. 624.320(2)(d).
[14] The description under a C-18 license: "The Board will grant to qualified applicants a license in the specialty of masonry. The Board designates such a license as a "classification C-18" license. A person who holds a classification C-18 license may select, cut and lay brick, other baked clay products, rough cut and dressed stone, artificial stone, precast blocks and structural glass brick or block at random or in courses, with or without mortar. He may not apply tile to existing surfaces." See N.R.S. 624.350.
[15] See APCO's Attachment 3, where Kitson is properly crossed out with initials, attached as Exhibit 4.
[16] A printout of Henderson Masonry's license classification is attached as Exhibit 5.
[17] See Exhibit 1
[18] See Exhibit 2.
[19] And interestingly, Flagship listed improperly licensed Kitson to perform the work that improperly licensed Evergreene was to supervise.
[20] A printout of Evergreene's license classification is attached as Exhibit 6. Under a C-4(a) license, Evergreene may: "Apply any type of paint, varnish, shellac, stain, protective coatings and wax." Under a C-4(b) license, Evergreene may: "Attach papers, fabrics and plastics to the surfaces of buildings and their appurtenances."

do so per the ITB. So, since the "plastering" scope of work on this project requires a C-17B license, and since Evergreene would be unable to complete the plastering scope of work with its licenses, Flagship is in a position to illegally shop its bid for this scope of work.[21]

Conversely, APCO's bid lists Henderson Masonry, a properly licensed subcontractor, to perform the conservator scope. APCO further listed itself for the plastering work,[22] and Evergreene solely for the restoration painting. Significantly, Flagship did not list itself as self-performing any scope of work on this project.

Flagship's inclusion of these inadequately licensed subcontractors provides an opportunity for Flagship to now shop this bid after opening, in direct contravention of Nevada law and the ITB itself. As things stand, Flagship enjoys a competitive advantage and can use its purported low bidder position to obtain more favorable estimates from appropriately licensed subcontractors and thereby increase its profits, an advantage not provided to those bidders that properly complied with the ITB. The City should not condone Flagship's attempts to circumvent the licensing and listing requirements. The 5% and 1% subcontractor lists exist, in part, to prevent exactly what Flagship is in a position to do. And as the ITB itself notes, it does not matter whether Flagship's actions were intentional or otherwise – it violated the strict bid rules, rendering its bid non-responsive.

In addition to these deficiencies concerning Flagship's listing of inadequately licensed subcontractors, Flagship's bid contains yet another problem. On Attachment 6, the list of completed projects, Flagship claims to have performed work "conforming with the US Secretary of the Interior Standards for Rehabilitation similar to the work require by the Owner."[23] However, reviewing Flagship's attached description of the project demonstrates that the listed project did not actually conform to the Department of the Interior Standards as Flagship incorrectly claimed. This error is yet another reason why Flagship's bid should be deemed non-responsive.

This requirement to include properly licensed subcontractors on the 5% and 1% subcontractor lists is not a minor irregularity, and it should be rigidly enforced. In fact, APCO faced a similar concern and had a bid rejected on a project with the State of Nevada Public Works Board for similar issues. In a July 5, 2005 letter, the State described the dangerous precedent that such bid irregularities hold for procurement projects:

---

[21] The description for a C-17(b) license is: "PLASTERING (subclassification C-17b): The coating of surfaces with a plaster, made of a mixture of such materials as sand, cement, quicklime, hydrated lime and water, and the installation of lath or other base for the plaster." N.R.S. 624-340(2)(b).

[22] APCO further listed itself to self-perform rough carpentry and asbestos abatement.

[23] See Flagship's Attachment 6, included here as Exhibit 7.

> "Contractors submitting bids must be required to take responsibility for properly submitting bid documents. The failure to list subcontractors, subcontractor with adequate license limits and proper licenses does not indicate to me that APCO fulfilled such a responsibility. The SPWB will not set a policy that allows a prime contractor to list subcontractors and subcontractor information under NRS 338.141(1)(b) and possibly create a system that encourages bid shopping. To do so would create a system whereby bid shopping could occur and place one prime contractor in a position of unfair advantage over another."[24]

As a result of these deficiencies in Flagship's submission, which are a direct violation of both the solicitation requirements and Nevada law, APCO requests that the City immediately reject Flagship's bid for this project as being non-responsive and award the contract to APCO as the lowest responsible and responsive bidder. Flagship's submission is deficient and incomplete, and the City cannot legally award the contract to Flagship.

Sincerely,

FENNEMORE CRAIG, P.C.

John Randall Jefferies
Christopher H. Byrd

JRJ/wds
Enclosures

cc: Mr. Randy Nickerl, APCO Construction

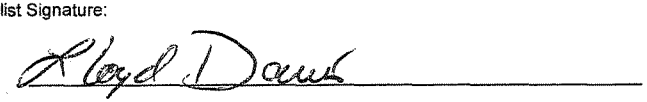
2114913

[24] See July 5, 2005 letter from Daniel K. O'Brien, P.E. of the State of Nevada Public Works Board, attached as Exhibit 8.

BID EVALU CHECKLIST
08.15341.04-LED (Revised)
Las Vegas Museum Phase III Rehabilitation

BID EVALUATION CRITERIA	APCO CONSTRUCTION	Flagship Construction Co., LLC	Jaynes Corporation
BID PROPOSAL SIGNED	Yes	Yes	Yes
BID SECURITY	Yes	Yes	Yes
BID SCHEDULE COMPLIANCE	Yes	Yes	Yes
ACKNOWLEDGE ADDENDA	Yes	Yes	Yes
ATTENDED MANDATORY PREBID	Yes	Yes	Yes
5% SUBCONTRACTOR LISTING	Yes	Yes	Yes
1% SUBCONTRACTOR LISTING	Yes	Yes	Yes
S ER LISTING	N/A	N/A	N/A
CONFIRMED BID SCHEDULE PRICING	Yes	Yes	Yes
BIDDER'S PREFERENCE APPLICABLE	N/A	N/A	N/A
GC LICENSE VERIFICATION	Yes	Yes	Yes
SUBS LICENSE VERIFICATION	[1&2]Yes	[1]Yes	[1]Yes
LABOR COMMISSIONER & FEDERAL DEBARRMENT	Not Listed	Not Listed	Not Listed
CLV BUSINESS LICENSE	Yes	Yes	Yes
SUPERINTENDENT RESUME	Yes, See attached comments from PW	No,See attached comments from PW	Yes, See attached comments from PW
PROJECT MANAGER RESUME	Yes, See attached comments from PW	Yes, See attached comments from PW	Yes, See attached comments from PW
SCHEDULE OF VALUES	Yes, See attached comments from PW	Yes, See attached comments from PW	Yes, See attached comments from PW
COMPLETED PROJECT LISTING	No, See attached comments from PW	No, See attached comments from PW	Yes, See attached comments from PW
M/W/DVBE GOOD FAITH EFFORTS	Excellent, See attached comments	Good, See attached comments	Good, See attached comments
BLDG & SITE MTN COST	N/A	N/A	N/A
CERTIFICATION/DEBARMENT	Yes	Yes	Yes
CERTIFICATION/LOBBYIST	Yes	Yes	Yes
COMMENTS:	[1] Lloyd's Refrigeration had an "Administrative Citation" against Liscense # 0019531, C21 Refrigeration & Air Conditionig, for "disregard or violation of building laws", investigative costs assessed. Lloyd's failed to obtain the required building permit prior to installation of a walk-in closet. [2] Embassy Glass, Inc. has a "pending" citation for action beyond the scope of the license. A complaint was filed that Embassy installed material that was outside the scope of their license, this action is still under investigation.	[1] Helix Electric had an "Administrative Citation" against their license for "willful or deliberate disregard and violation of the building laws", Administrative fines and investigative costs assessed. Helix failed to obtain the required building permit prior to starting work.	[1]See comments under APCO for Lloyd's Refrigeration and comments under Flagship for Helix Electric. Both have "Administrative Citations attached to their license.

Contracts Specialist Signature:



BID ABSTRACT
08.15341.[illegible]ED (REVISED)
Las Vegas Museum
Phase 3 Rehabilitation

DESCRIPTION	APCO CONSTRUCTION Lump Sum Amount	FLAGSHIP CONSTRUCTION CO. LLC Lump Sum Amount	JAYNES CORPORATION Lump Sum Amount	R & O CONSTRUCTION Lump Sum Amount
BASE BID: All Work indicated in the Drawings and Specifications in accordance with the General Conditions of the Contract.	**$11,512,000.00**	$12,664,629.00	$12,680,446.00	$13,129,569.00
Responsive Bidder	Yes			
Responsible Bidder	Yes			

DESCRIPTION	RAFAEL CONSTRUCTION, INC Lump Sum Amount	M & H ENTERPRISES INC. DBA MARTIN-HARRIS CONSTRUCTION Lump Sum Amount	MCCARTHY BUILDING COMPANIES, INC Lump Sum Amount	RICHARDSON CONSTRUCTION, INC Lump Sum Amount
BASE BID: All Work indicated in the Drawings and Specifications in accordance with the General Conditions of the Contract.	$13,555,000.00	$13,915,922.00	$14,462,808.00	$14,799,000.00
Architect Estimate: $19,100,000		+360,922 over low bid	+907,808 over low bid	
Responsive Bidder				
Responsible Bidder			+546,886 over 2nd low bid	

TO: Cheri Edelman . Please review and approve recommended award to APCO Construction

in the amount of **$11,512,000** .

Lloyd Davey — 5-26-09
Purchasing & Contracts Representative — Date

Cheri Edelman — 5/26/09
Department/Division Signature — Date

BID TRACT
Bid #: 08.15341.04-LED
Las Vegas Museum Phase 3 Rehabilitation

	Flagship Construction Co. LLC	APCO Construction	Rafael Construction, Inc.
DESCRIPTION	**Lump Sum Amount**	Lump Sum Amount	Lump Sum Amount
BASE BID: All Work indicated in the Drawings and Specifications in accordance with the General Conditions of the Contract.	**$13,361,418.00**	$13,900,000.00	$13,979,000.00
Responsive Bidder			
Responsible Bidder			

BID TRACT
Bid #: 08.15341.04-LED
Las Vegas Museum Phase 3 Rehabilitation

DESCRIPTION	M. & H. Enterprises Inc. dba Martin-Harris Construction Lump Sum Amount	Jaynes Corporation Lump Sum Amount	Central Environmental, inc. Lump Sum Amount
BASE BID: All Work indicated in the Drawings and Specifications in accordance with the General Conditions of the Contract.	$14,085,600.00	$14,097,915.00	$17,984,000.00

BID TRACT
Bid #: 08.15341.04-LED
Las Vegas Museum Phase 3 Rehabilitation

	The Whiting-Turner Contracting Company		
DESCRIPTION	Lump Sum Amount	Lump Sum Amount	Lump Sum Amount
BASE BID: All Work indicated in the Drawings and Specifications in accordance with the General Conditions of the Contract.	$18,195,000.00		
Architect Estimate: $19,100,000.00			

TO: Cheri Edelman . Please review and approve recommended award to Flagship Construction Co. LLC

in the amount of $ 13,361,418.00.

Purchasing & Contracts Representative — Date

Department/Division Signature — Date

l. Failure to provide the Certificate of Eligibility as required by ITB 7.02;

m. Failure to obtain the licensing as required by ITB 10;

n. Failure to complete the Additive Alternate Bid Section in the Bid Schedule as required by ITB 12.03;

o. Failure to complete the Additive/Deductive Unit Price Bid Section in the Bid Schedule as required by ITB 12.04;

p. Failure to comply with any other requirement of the Instructions to Bidders; or

q. Failure to submit the Federal Certifications Forms required by ITB 7.08.

The failure to comply with the requirements of the Instructions to the Bidders shall result in the automatic rejection of the Bid Proposal submitted by the Bidder if rejection is expressly provided for in the Instructions to Bidders. In the case of such automatic rejection, the requirement has been determined to be a material requirement by the Owner. For those requirements in the Instructions to Bidders for which (i) the consequences have not been expressly provided for, or (ii) the consequences state that the Bid Proposal may be rejected, the Owner shall have the discretion as to whether or not to waive the requirement entirely, or to require compliance with the requirement after the bid opening, whichever is determined to be in its best interests.

ITB 14 SUBSTITUTION OF SUBCONTRACTORS

The Bidder shall not substitute any person for itself, or substitute any Subcontractor listed on the 5% Subcontractor List or the 1% Subcontractor List except as provided pursuant to NRS Section 338.141, 338.13895 and 338.1475. If the Owner or State Labor Commissioner's Office has determined that a listed Subcontractor failed to pay prevailing wages for any reason, then this failure shall be cause for, but not necessarily the obligation of, the Owner to request a substitution of the Subcontractor.

As a requirement of the Contract executed with the Owner, the Bidder will be responsible for the acts or omissions of its Subcontractors and of the persons directly or indirectly employed by them. The Owner may request a copy of any or all subcontracts entered into by the Bidder which are a part of the Bid Proposal submitted to the Owner if such request is within the provisions of NRS 338.140(1)(d).

ITB 15 BID IRREGULARITIES

The Owner reserves the right to waive any formality or irregularity in any submitted Bid Proposal, or to reject any or all of the submitted Bid Proposals. In the case of the rejection of all of the Bid Proposals, the Owner reserves the right to advertise for new Bid Proposals, proceed to do the Work itself or take no further action, whichever is in the best interest of the Owner.

ITB 16 RESOLVING TIE BIDS

The procedure for resolving Tie Bids is to hold a public drawing. The winner of the draw shall be recommended for award of the Contract. The Purchasing and Contracts Division will notify the tied Bidders of the time and place of the drawing and invite the tied Bidders to attend, but attendance is not mandatory for the drawing. The drawing will be held in the presence of a minimum two employees of the Purchasing and Contracts Division.

ITB 17 BID PROTESTS

17.01 Protest Procedure

Any Bidder may protest to the Owner the proposed award of a contract by the Las Vegas City Council provided the Bidder complies with the procedure set forth in Resolution R-89-2004 (*Attachment 13 to the Instructions to Bidders*). The City Council will not consider any appeal unless the Bidder complies with this procedure.

17.02 No Liability for Protest Expenses

Neither the City, nor its employees will be liable for any costs, expenses or damages incurred by the Bidder in connection with the protest, such as, but not necessarily limited to, attorney fees, loss of income, bid preparation costs, bid protest costs or other damages sustained by the Bidder.

ITB 18 EQUAL OPPORTUNITY CONTRACTING POLICY

18.01 General Policy

Minority Owned Business Enterprises, Women-Owned Business Enterprises and Disabled Veteran-Owned Business Enterprises (collectively "M/W/DV Business Enterprises") shall be afforded the opportunity to submit bids for the award of a contract or subcontract in connection with the Project, and shall not be discriminated against on the basis of race, color, creed, sex or national origin. Each bidder shall be responsible for making a good faith effort to solicit bids from M/W/DVBE subcontractors and suppliers.

It is the bidder's responsibility to make a sufficient portion of the work available to subcontractors and suppliers and to select those portions of the work and/or material needs consistent with M/W/DVBE availability.

The lack of a good faith effort will subject the apparent low Bidder to additional scrutiny by the Purchasing and Contracts Division, and may affect the performance evaluation rating of the bidder awarded the contract. M/W/DVBE prime contractors are also expected to demonstrate a good faith effort to award subcontractors to M/W/DVBE firms. A M/W/DVBE prime contractor will be rated on the portion of the work to be completed by it own workforce and that of M/W/DVBE subcontractors and/or material suppliers.

18.02 Additional Information

Any Bidder needing additional information on the Owner's Equal Opportunity Contracting Policy or information regarding M/W/DV Business Enterprises may contact the Owner at (702) 229-6231.

E. MISCELLANEOUS PROVISIONS

ITB 19 SUBCONTRACTOR BONDS

Each Bidder is directed to review the provisions concerning the subcontractor bonding requirements set forth in Section 7.03 of the General Conditions (*Attachment 9 to the Instructions to Bidders*). The Bidder who is awarded the Project shall furnish to the Owner copies of the Subcontractor's Performance Bond, Labor and Material Payment Bond and the Guaranty Bond, which shall be provided prior to the Subcontractor performing any portion of the Work.

ITB 20 LIQUIDATED DAMAGES

Time is of the essence in the completion of this Project. The Bidder acknowledges and agrees that if the Project is not completed on time, or there is a failure to meet the milestones set forth in the Guaranteed Project Schedule, the Owner and, if applicable because of the nature of the Project, the general public, will suffer damages, the amount and extent of which are uncertain and immeasurable since such damages involved not only additional monetary expense to the Owner, but the lack of use and enjoyment of the Project by the Owner and/or the general public. For the aforementioned reasons, each Bidder is directed to review Section 6.01 of the General Conditions (*Attachment 9 to the Instructions to Bidders*) and Section 01700 of the Technical Specifications which impose Liquidated Damages upon the Bidder for failure to complete the Project on time, or to meet the milestones set forth in the Guaranteed Project Schedule.

ITB 21 APPLICABLE LAWS

21.01 In General

The Bidder should review Section 13 of the General Conditions (*Attachment 9 to the Instructions to Bidders*) that discuss the laws applicable to the Project. The laws listed therein, and which may be listed in this Section, are provided for informational purposes only, and are not intended to be exhaustive of all of the laws that may apply to the Project. Each Bidder is responsible for being aware of the federal, state and local laws that may apply to the Project and for taking into account the effect such laws may have in the preparation of its Bid Proposal submitted to the Owner.

ATTACHMENT 13

RESOLUTION NO. R-89-2004

RESOLUTION ADOPTING PROCEDURE FOR THE PROTEST OF THE PROPOSED AWARD OF CONTRACT

WHEREAS, the City Council adopted Resolution R-31-2001 on April 4, 2001 which sets forth the procedure to be followed by a bidder desiring to protest the bid solicitation or proposed award of a contract; and

WHEREAS, since the adoption of that Resolution, the State Legislature at the 2003 legislative session amended NRS Chapter 338 to set forth a bid procedure to be followed by each person desiring to protest the award of a contract pursuant to that chapter; and

WHEREAS, as a result of the passage of the new legislation (Assembly Bill 425), there exists a need to modify the City's current bid procedure in order to comply with the requirements of the new statutory bid procedure;

WHEREAS, with the adoption of this Resolution, the City Council intends to supercede the bid protest procedure previously approved by them with the bid protest procedure set forth herein.

NOW THEREFORE, BE IT HEREBY RESOLVED by the City Council that the procedure set forth in that document entitled, to-wit: PROCEDURE FOR THE PROTEST OF A PROPOSED AWARD OF CONTRACT, attached hereto as Attachment A and incorporated herein as a part hereof, is hereby adopted and approved in connection with the protest filed by a person who has submitted a bid or proposal to the City for the award of a contract pursuant to the provisions of NRS Chapter 332 (including a contract to be awarded pursuant to a Request for Proposal) and NRS Chapter 338. The bid protest procedures set forth herein shall become effective with the adoption of this Resolution.

The City will not review or consider any protest which does not comply with the procedures set forth in Attachment A.

...

...

...

THE FOREGOING RESOLUTION was passed, adopted and approved this 19 day of May, 2004.

CITY OF LAS VEGAS

By: _____
OSCAR B. GOODMAN, Mayor

ATTEST:

_____
BARBARA JO RONEMUS, City Clerk

APPROVED AS TO FORM:

_____ 5-6-04
Date

ATTACHMENT A

PROCEDURE FOR THE PROTEST OF A PROPOSED AWARD OF CONTRACT

A. Right of Protest. Any person who has submitted a bid or proposal to the City for the award of a contract pursuant to the provisions of NRS Chapters 332 (including a contract to be awarded in response to a Request for Proposal) and 338 may file a written protest with the City provided the Protester complies, as a condition precedent to consideration of such protest, with the procedure set forth herein.

B. Filing of Protest. The written protest must be submitted in writing to the Manager of the Purchasing and Contracts Division of the Department of Finance and Business Services within five (5) business days after the bid opening.

C. Protest Information. The written protest shall contain, at a minimum, the following information:

a. Bid or Request for Proposal identification number and title,

b. The name and address of the Protester and the title or position of the person submitting the protest on behalf of the Protester,

c. A statement setting forth with specificity all of the reasons the Protester believes the applicable provisions of law were violated and including as a part thereof the following:

(i) A detailed description explaining how the issue or issues protested created an advantage to the other bidders, or a disadvantage to the Protester, or both,

(ii) A detailed statement explaining how the issue or issues protested resulted in a higher bid being submitted by the Protester along with evidence showing the amount of the increase, and

(iii) A detailed statement explaining how the issue or issues protested resulted in a lower bid being submitted by the other bidders along with evidence showing the amount of the increase,

d. A statement describing the relief sought by the Protester, and

e. Such other information as the Protester deems to be material.

The Protester shall provide such additional information requested by the City which it deems pertinent to the consideration of the protest. The written protest shall identify all of the issues and arguments which support the Protester's claim that the award of the contract should not be made as proposed by the City, and any and all subsequent appeals of the decision rendered upon the protest shall be limited solely to the issues and arguments set forth therein, and shall not

include any new or additional issues or arguments.

D. Protest Security. As a condition precedent to any consideration of the written protest, the Protester must post a security (the "Protest Security") in the form of cash, bond, cashier's check, certified check or money order made payable to the City. The amount of the Protest Security shall be (i) 25% of the total value of the bid submitted by the Protester to the City, (ii) 25% of the amount of the contract as estimated by the City, or (iii) $250,000, whichever is the lesser amount. The Purchasing and Contracts Manager will deposit the Protest Security into the appropriate City account until a final determination is made on the Protest.

If the Protest is upheld, or the City decides to reject all bids in connection with the Project, the full amount of the Protest Security will be returned to the Protester. It the City renders an unfavorable decision on the protest (which includes an unfavorable decision by the administrative staff that is not appealed to the City Council or to the Director of the Department of Finance and Business Services as provided under Subsection F below), the City will return the Protest Security within thirty (30) days of the decision after deducting therefrom the costs and expenses (such as the hourly wage or salary of the employees involved in reviewing the protest) incurred by the City in considering the protest.

E. Protest Determination. With receipt of the protest and the Protest Security, the Purchasing and Contracts Manager will review the protest and, if the protest is not resolved by mutual agreement, render a written determination within ten (10) calendar days thereof, unless the nature and complexity of the protest requires additional time. In lieu of deciding the protest, the Purchasing and Contracts Manager may (i) forward the protest directly to the City Council for their determination, or (ii) forward the protest directly to the Director of the Department of Finance and Business Services.

F. Appeal of Decision. The decision of the Purchasing and Contracts Manager may be appealed provided written notice thereof is provided by the Protester within three business days of receipt of the decision. Such notice shall be given the Purchasing and Contracts Manager who, upon receipt of the notice, shall forward the appeal for determination to the Director of Finance and Business Services or, in the case of time sensitive projects, directly to the City Council, whichever is determined to be in the best interests of the City.

1. If the appeal is forwarded to the Director of Finance and Business Services, the Director will review the protest and issue a decision within ten (10) calendar days of receipt of the appeal unless the nature and complexity of the protest requires additional time. If the Protester is not satisfied with the decision, an appeal may be made to the City Council provided a request is received in writing by the Purchasing and Contracts Manager within three (3) business days of receipt by the Protester of the written decision by the Director.

2. Any appeal forwarded to the City Council will be placed on its agenda as soon as possible after taking into account the administrative deadlines in effect within the City.

G. Miscellaneous Provisions.

1. No award will be made of the contract until a determination is made by the City on the protest. The Protester shall not seek any type of judicial intervention until the City Council has made a determination on the protest and awarded the contract.

2. If the Protester seeks judicial relief from the decision of the City Council, the City will retain the Protest Security until a determination is made by a court of competent jurisdiction. If the court upholds the decision of the City Council, the City may retain an amount equal to the costs and expenses incurred by the City in processing the appeal including, but not limited to, court costs, attorney fees (including those in retaining private counsel to defend the decision of the City Council), staff time expended in processing the appeal, or costs to retain any needed consultants or experts. If the Protester prevails on the appeal the full amount of the Protest Security will be returned to the Protester.

3. The City Council will not consider any protest unless it complies with the procedure set forth above.

4. Regardless of the outcome of the appeal, neither the City, nor its officers, employees or authorized representative is liable for any costs, expenses, attorney fees, loss of income or other damages sustained by the Protester who submits a bid to the City.

Nevada State Contractors Board
2310 Corporate Circle, Suite 200 Henderson NV 89074 (702)486-1100 Fax: (702)486-1190 Investigations: (702)486-1110
9670 Gateway Drive, Suite 100 Reno NV 89521 (775)688-1141 Fax: (775)688-1271 Investigations: (775)688-1150
www.nscb.state.nv.us

License Search Details

Press "Previous Record" to view the previous record in the list

Press "Next Record" to view the next record in the list.

Press "Search Results" to return to the search results list screen.

Press "New Search Criteria" to revise your existing search criteria or enter new search criteria.

Press "New Search" to select a different search.

License Number:
0014563

Current Date: 06/17/2009 09:24 AM *(mm/dd/yyyy)*

Business Primary Name:	**APCO CONSTRUCTION**	License Monetary Limit:	**Unlimited**
Business Address:	**3432 N 5TH ST** **N LAS VEGAS, NV 89032**		
Phone Number:	**(702)734-0198**		
Status:	**Active**		
Status Date:	**05/30/2008** (mm/dd/yyyy)		
Origin Date:	**05/25/1977** (mm/dd/yyyy)		
Expiration Date:	**05/31/2010** (mm/dd/yyyy)		
Business Type:	**Corporation**		
Classification(s):	**AB - GENERAL ENGINEERING & GENERAL BUILDING**		

Principal Name	Relation Description
MENDENHALL, ROBERT L	**President Qualified Individual**
MENDENHALL, ROBERT T	**Vice President**
SMITH, JAY N	**Secretary**
NICKERL, RANDY L	**Treasurer**

Bonds

Bond Type:	**Surety Bond**
Bond Requirement:	**No Bond Required**
Effective Date:	**05/25/1979** (mm/dd/yyyy)

The information contained on these pages are provided as a courtesy and may

not reflect recent changes or updates. Neither the completeness nor accuracy is guaranteed. The Nevada State Contractors Board shall have no liability or responsibility for loss and damages arising from the information provided or retrieved from these pages.

Previous Record | Next Record | Search Results | New Search Criteria | New Search

2009-06-17 9:24:45 AM

Flagship Construction Bid Protest and Appeal
Las Vegas Museum Renovation Project

I. Initial Bid Process Fall of 2008 - Flagship should have been awarded Museum Contract

A. Flagship is the lowest responsive and responsible bidder.

B. APCO Construction submits protest to Flagship Bid.

C. City decides to reject all bids, revise Instructions to Bidders and Technical Specifications.

D. Based upon standards currently applied to APCO's bid, Flagship's fall 2008 bid was the lowest responsive, responsible bid. The City was thus required to award the contract to Flagship in Fall of 2008.

II. Second and Revised Bid, Spring 2009 - City wrongfully proposes to award Contract to APCO

A. APCO not responsive or responsible bidder.

1. APCO and Superintendant Brian Benson do not have requisite experience with Historical Renovation in similar size and scope.
2. APCO recently experienced several failed projects as defined by NRS 338.1377
    a. Ongoing litigation between City of Las Vegas and APCO Construction regarding Centennial Hills, Washington Buffalo Park Project. City currently prosecuting a counterclaim against APCO Construction.
    b. Aliante Library Project. Project delayed, completed late and liquidated damages provision was implemented against APCO Construction.
3. APCO's bid documentation included inaccurate or false information relating to failed projects
4. APCO submitted a bid for subcontractor Cogent Electric, whose license status is currently suspended as a result of a failure to post bond.
5. APCO identified Wallternatives as Conservator based on St. Patrick's Church renovation project in Chicago Illinois. Requisite experience to be questioned.

Submitted at City Council
Date 6/17/09 Item 104

Document Binder Index

1. APCO Bid Protest

2. KKBRF October 9, 2008 Response

3. KKBRF October 10, 2008 Response Follow Up

4. La Concha Lobby/Neon Museum Project Information

5. KKBRF November 5, 2008 Response to City Decision

6. Pre Bid Meeting Minutes Transcript - Original Bid

6(a). Pre Bid Meeting Minutes Transcript - Revised Bid

7. Letter From City stating decision to reject all bids

8. KKBRF October 27, 2008 Demand for City for reasons, justifications and findings

9. October 30, 2008 City response to Demand

10/11. Follow up Detail regarding Evergreen Painting

12. NRS 338

13. Instructions to Bidders

14. Attachment 6 APCO Bid Description of Brian Benson Experience

15. Brian Benson Affidavit 1

16. Brian Benson Affidavit 2

17. APCO Construction v. City of Las Vegas Motion for Injunction removing arbitrator in Centennial Hills matter

18. APCO Construction v. City of Las Vegas Petition for Writ of Mandamus Centennial Hills matter

19. Contractor performance evaluation - Centennial Hills matter

20. Article re: Centennial Hills lawsuit

21. Aliante Library Board of Trustees Meeting Minutes
22. Attachment 6 - APCO Experience Aliante Library

23. Attachment 6 - APCO List of Completed Projects QUestionaire

24. Cogent Electric License Status

25. Jaynes letter confirming Cogent Electric's withdrawal from Family Court Building remodel bid for failure to bond.

26. Flagship Affidavits re: Cogent Electric's inability to Bond.

FENNEMORE CRAIG, P.C.

Suite 1400 Bank of America Plaza
300 South Fourth Street
Las Vegas, Nevada 89101
(702) 692-8000

John Randall Jefferies
Direct Phone: (602) 916-5313
Direct Fax: (602) 916-5513
rjefferi@fclaw.com

Law Offices
Phoenix (602) 916-5000
Tucson (520) 879-6800
Nogales (520) 281-3480
Las Vegas (702) 692-8000
Denver (303) 291-3200

October 2, 2008

BY HAND DELIVERY

Ms. Kathleen C. Rainey
Manager, Purchasing & Contracts
City of Las Vegas
City Hall, 1st Floor
400 Stewart Avenue
Las Vegas, NV 89101-2986

Re: City of Las Vegas Museum Phase 3 – Rehabilitation
Bid No. 08.15341.04-LED
Bid Protest of APCO Construction

Dear Ms. Rainey:

This law firm represents APCO Construction ("APCO") and has been authorized to submit this formal protest to the proposed award of the above-referenced contract to Flagship Construction, LLC ("Flagship"). Flagship's bid listed two inadequately and improperly licensed subcontractors on its 5% and 1% subcontractor lists, creating an opportunity for Flagship to illegally shop the bids for those particular scopes of work. That provides Flagship with an unwarranted and damaging competitive advantage over APCO and other bidders. As a result of this deficiency, Flagship's bid must be deemed non-responsive to the solicitation requirements, and the City should therefore award this contract to APCO as the lowest responsive and responsible bidder. To do otherwise would set a dangerous precedent that will have long term impacts upon the integrity of the City's' procurement program.

The primary defects in Flagship's bid arise out of its failure to comply with both the anti-bid shopping policies underlying N.R.S. §338.141[1] and the Instructions to Bidders ("ITB") by listing two inadequately licensed subcontractors. With regard to this statute, the Nevada legislature commented:

> [The legislature] finds and declares that it is the policy of this state to ensure that the public receives the full benefits for fair competition among contractors and subcontractors in public works and has therefore

[1] N.R.S. § 338.141 requires, *inter alia*, bidders to provide the 5% and 1% subcontractor lists.

> enacted [N.R.S. 338.141] to limit the practice of shopping for bids for the construction, alteration and repair of public improvements.[2]

Moreover, the Federal District Court of Nevada confirmed that N.R.S. §338.141 was enacted to prevent "the evil of bid shopping" and to "limit the practice of shopping for bids."[3] And an Associated General Contractors of America representative testified before the Nevada legislature "that bid shopping is not a practice the state wants as part of public works projects. ... [T]he construction industry believes bid shopping gives an unfair advantage to those involved [i.e. general contractors who shop bids and subcontractors who peddle bids], is unethical, and is adamantly opposed to the practice."[4] "The purpose of bidding is to secure competition, save public funds, and to guard against favoritism, improvidence and corruption."[5] As Gulf Oil Corp. v. Clark County points out, the structure of the bidding process exists to prevent even the appearance of such impropriety.[6]

Similarly, the ITB for this project contains specific instructions aimed, in part, at preventing bid shopping by requiring prime contractors to do the proper due diligence to confirm the proper licensure and capabilities of the listed subcontractors. For example, section 13.03(f) requires compliance with these respective subcontractor lists as a prerequisite to a finding of responsiveness and proscribes "circumventing the Subcontractor list Requirements by disingenuous issuance of contractors or purchase orders that avoid such listing, whether these acts and omissions are intentional or otherwise."[7] The ITB further mandates compliance by the bidder and subcontractors with the licensing requirements of Nevada Revised Statutes "during the bidding phase and ... through the completion of the project."[8]

Evaluating Flagship's bid in conjunction with these anti-bid shopping prohibitions confirms that Flagship's bid was non-responsive and should be rejected. To do otherwise would allow bidders to pick and choose ITB requirements to achieve an unwarranted competitive advantage. For example,

---

[2] Act of July 12, 1993, ch 514, Section 1, 1993 Nev. Stat. 2130 (codified in part at Nev. Rev. Stat. Ann. Section 338.141 (Michie 1994)).

[3] Clark Pacific v. Krump Constr. Inc., 942 F.Supp. 1324, 1341, 1339 (D.Nev. 1996)("Because it was the apparent purpose of the Nevada legislature in enacting S.B. 474 to prevent bid-shopping in public works contracts, the court must read [N.R.S. 338.141] to give effect to that purpose").

[4] Id. (citing Hearings on S.B. 474 before the Comm. On Gov't Affairs, 67th Nevada Legis. Sess. (1993)).

[5] Gulf Oil Corp. v. Clark County, 94 Nev. 116, 118, 575 P.2d 1332, 1333 (1978).

[6] Id.

[7] ITB § 13.03(f) reads: "As a pre-requisite to the award of the Contract, and in addition to the determination that the Bidder is responsible, the lowest Bidder or Best Bidder, as the case may be, must be a responsive Bidder as determined by the Owner. In determining whether the Bidder is responsive, any one or more of the following may be considered: ... Failure to complete and submit the Subcontractor Listings as required by ITB 5.04 and ITB 6.01, or circumventing the Subcontractor List requirements by disingenuous issuance of contracts or purchase orders that avoid such listing, whether these acts and omission are intentional or otherwise."

[8] ITB 10.

on Attachment 3, Flagship lists Kitson Specialty Contracting, LLC ("Kitson") for bid specification 040120 – Masonry Rehabilitation.[9] The specifications for this scope require "maintenance of unit masonry consisting of brick and terra cotta clay masonry rehabilitation" and "replicating extant marble radiator covers."[10] Kitson's license number is 0040097, as noted on the 1% subcontractor list,[11] and is classified as a C-15D.[12] Under its license, Kitson is only permitted to perform "waterproofing" including "the application of solutions of rubber, latex, asphalt, pitch, tar and other materials to surfaces to prevent water in any form from penetrating surfaces."[13] Given the nature of work at issue on this project for this scope of work, the applicable subcontractor must possess a C-18 Masonry license.[14] Because Kitson is inadequately licensed, it cannot perform the work designated by Flagship on Attachments 3 and 8. Incidentally, APCO received a price quotation from Kitson to perform the masonry rehabilitation work. Upon learning that Kitson was improperly licensed, however, APCO removed them from its bid because of the licensing limitations[15] and listed instead a properly licensed subcontractor – Henderson Masonry and its C-18 masonry license – for this scope of work.[16]

Similarly, Flagship's 5% subcontractor list includes Evergreene Painting Studios, Inc. ("Evergreene") for bid section 011000 – Conservator.[17] On the 1% subcontractor list, Flagship lists Evergreene with license number 0054721 to perform "conservator, plaster & painting" work.[18] Per the specifications, that work requires three separate license classifications to perform the following work: (1) masonry restoration,[19] (2) plastering, and (3) restoration painting. Evergreene only has C4A and C4B licenses.[20] Under its licenses, Evergreene could only properly perform the third of the three required scopes of work, yet Flagship listed Evergreene for all three. Flagship further failed to list any properly licensed subcontractors for the other necessary scopes of work, even though it was required to

---

[9] A copy of Flagship's Bid's Attachment 3 is attached as Exhibit 1.
[10] Specifications Section 040120 – Masonry Rehabilitation, Part 1.2(A).
[11] A copy of Flagship's Bid's Attachment 8 is attached as Exhibit 2.
[12] A printout of Kitson's license classification is attached as Exhibit 3.
[13] N.R.S. 624.320(2)(d).
[14] The description under a C-18 license: "The Board will grant to qualified applicants a license in the specialty of masonry. The Board designates such a license as a "classification C-18" license. A person who holds a classification C-18 license may select, cut and lay brick, other baked clay products, rough cut and dressed stone, artificial stone, precast blocks and structural glass brick or block at random or in courses, with or without mortar. He may not apply tile to existing surfaces." See N.R.S. 624.350.
[15] See APCO's Attachment 3, where Kitson is properly crossed out with initials, attached as Exhibit 4.
[16] A printout of Henderson Masonry's license classification is attached as Exhibit 5.
[17] See Exhibit 1.
[18] See Exhibit 2.
[19] And interestingly, Flagship listed improperly licensed Kitson to perform the work that improperly licensed Evergreene was to supervise.
[20] A printout of Evergreene's license classification is attached as Exhibit 6. Under a C-4(a) license, Evergreene may: "Apply any type of paint, varnish, shellac, stain, protective coatings and wax." Under a C-4(b) license, Evergreene may: "Attach papers, fabrics and plastics to the surfaces of buildings and their appurtenances."

do so per the ITB. So, since the "plastering" scope of work on this project requires a C-17B license, and since Evergreene would be unable to complete the plastering scope of work with its licenses, Flagship is in a position to illegally shop its bid for this scope of work.[21]

Conversely, APCO's bid lists Henderson Masonry, a properly licensed subcontractor, to perform the conservator scope. APCO further listed itself for the plastering work,[22] and Evergreene solely for the restoration painting. Significantly, Flagship did not list itself as self-performing any scope of work on this project.

Flagship's inclusion of these inadequately licensed subcontractors provides an opportunity for Flagship to now shop this bid after opening, in direct contravention of Nevada law and the ITB itself. As things stand, Flagship enjoys a competitive advantage and can use its purported low bidder position to obtain more favorable estimates from appropriately licensed subcontractors and thereby increase its profits, an advantage not provided to those bidders that properly complied with the ITB. The City should not condone Flagship's attempts to circumvent the licensing and listing requirements. The 5% and 1% subcontractor lists exist, in part, to prevent exactly what Flagship is in a position to do. And as the ITB itself notes, it does not matter whether Flagship's actions were intentional or otherwise – it violated the strict bid rules, rendering its bid non-responsive.

In addition to these deficiencies concerning Flagship's listing of inadequately licensed subcontractors, Flagship's bid contains yet another problem. On Attachment 6, the list of completed projects, Flagship claims to have performed work "conforming with the US Secretary of the Interior Standards for Rehabilitation similar to the work require by the Owner."[23] However, reviewing Flagship's attached description of the project demonstrates that the listed project did not actually conform to the Department of the Interior Standards as Flagship incorrectly claimed. This error is yet another reason why Flagship's bid should be deemed non-responsive.

This requirement to include properly licensed subcontractors on the 5% and 1% subcontractor lists is not a minor irregularity, and it should be rigidly enforced. In fact, APCO faced a similar concern and had a bid rejected on a project with the State of Nevada Public Works Board for similar issues. In a July 5, 2005 letter, the State described the dangerous precedent that such bid irregularities hold for procurement projects:

---

[21] The description for a C-17(b) license is: "PLASTERING (subclassification C-17b): The coating of surfaces with a plaster, made of a mixture of such materials as sand, cement, quicklime, hydrated lime and water, and the installation of lath or other base for the plaster." N.R.S. 624-340(2)(b).

[22] APCO further listed itself to self-perform rough carpentry and asbestos abatement.

[23] See Flagship's Attachment 6, included here as Exhibit 7.

> "Contractors submitting bids must be required to take responsibility for properly submitting bid documents. The failure to list subcontractors, subcontractor with adequate license limits and proper licenses does not indicate to me that APCO fulfilled such a responsibility. The SPWB will not set a policy that allows a prime contractor to list subcontractors and subcontractor information under NRS 338.141(1)(b) and possibly create a system that encourages bid shopping. To do so would create a system whereby bid shopping could occur and place one prime contractor in a position of unfair advantage over another."[24]

As a result of these deficiencies in Flagship's submission, which are a direct violation of both the solicitation requirements and Nevada law, APCO requests that the City immediately reject Flagship's bid for this project as being non-responsive and award the contract to APCO as the lowest responsible and responsive bidder. Flagship's submission is deficient and incomplete, and the City cannot legally award the contract to Flagship.

Sincerely,

FENNEMORE CRAIG, P.C.

John Randall Jefferies
Christopher H. Byrd

JRJ/wds
Enclosures

cc: Mr. Randy Nickerl, APCO Construction

2114913

[24] See July 5, 2005 letter from Daniel K. O'Brien, P.E. of the State of Nevada Public Works Board, attached as Exhibit 8.

EVERGREENE
PAINTING STUDIOS, INC.

FACSIMILE TRANSMITTAL SHEET

TO:	FROM:
Pierre Vedel	Terry VanderWell
COMPANY:	**DATE:**
Flagship Construction Co, LLC	8/25/08
FAX NUMBER:	**TOTAL NUMBER OF PAGES (INCLUDING COVER)**
702-739-1724	3
PHONE NUMBER:	**RE:**
702-739-1722	Las Vegas Bid

☐ URGENT ☐ FOR REVIEW ☐ PLEASE REPLY

NOTES/COMMENTS:

This message contains information from EverGreene Painting Studios, Inc. that may be confidential and is intended solely for the use of the addressee. If you are not the addressee, your disclosure, copying, or use of the contents of this message is prohibited. If this message has been sent to you in error, please notify the sender by return phone or fax and discard this message appropriately.

New York
450 West 31st Street, 7th Floor, New York, NY 10001-4608
Tel: (212) 244-2800 Fax: (212) 244-6204

Chicago
711 South Boulevard, Suite 7, Oak Park, IL 60302-2921
Tel: (708) 358-1642 Fax: (708) 358-1656

www.evergreene.com info@evergreene.com

KUMMER KAEMPFER BONNER RENSHAW & FERRARIO

ATTORNEYS AT LAW

LAS VEGAS OFFICE

WILLIAM J. WRAY
wwray@kkbrf.com
702.693.4254

LAS VEGAS OFFICE
3800 Howard Hughes Parkway
Seventh Floor
Las Vegas, NV 89169
Tel: 702.792.7000
Fax: 702.796.7181

RENO OFFICE
5585 Kietzke Lane
Reno, NV 89511
Tel: 775.852.3900
Fax: 775.852.3982

CARSON CITY OFFICE
510 W. Fourth Street
Carson City, NV 89703
Tel: 775.884.8300
Fax: 775.882.0257

October 9, 2008

Via Fax (702) 464-2578 and Regular Mail
Ms. Kathleen C. Rainey
Manager of Purchasing and Contracts
City of Las Vegas
400 Stewart Avenue
Las Vegas, Nevada 89101

Re: Response to Bid Protest of APCO Construction
Project: Las Vegas Museum Phase 3 – Rehabilitation
Bid No. 08.15341.04-LED
Our Client/Successful Bidder: Flagship Construction Company, LLC

Dear Ms. Rainey:

Our firm represents Flagship Construction Company, LLC (Flagship) in connection with the above-referenced Las Vegas Museum Phase 3 Rehabilitation Project and Bid, and the Bid Protest of APCO Construction (APCO). This letter is in response to your letter of October 7, 2008 and your corresponding request for information from Flagship in order to respond to the Bid Protest.

APCO's Bid Protest is baseless and in bad faith. If they have not done so already, APCO must be compelled to post Security in the amount of $250,000 as required by statute[1] to secure against the costs incurred by the Protest. Unless and until APCO has posted the security, the City should not act on or respond to the Protest.

Summary of Arguments

As set forth in more detail below, APCO's Bid Protest and the arguments in support thereof are flawed. The stated basis for the Protest – that Flagship has listed subcontractors on its 1% and 5% lists who are not properly licensed and qualified to complete the scopes of work for which they are listed and that Flagship cannot abandon those listed subcontractors and bid shop those scopes of work – is simply false.

First, the listed subcontractors are qualified to complete the scopes of work for which they are listed.

[1] Both NRS 338.142(3) and City of Las Vegas Resolution 8-89-2004, Attachment A, Paragraph D, requires that a Bid Protester post security in the amount of the lesser of: 25% of the total bid submitted by the Protester; 25% of the City's contract estimate for the Project; or $250,000.

KUMMER KAEMPFER

Second, pursuant to the same body of statutes and law cited by APCO, Flagship cannot shop those subcontractor bids and is bound to the listed subcontractor unless the City determines that there is a statutory basis for a substitution and then approves the substitution. In the event that any listed subcontractor is truly not properly qualified as determined by the City, and so long as Flagship exercised reasonable due diligence, Flagship's Bid is not rendered void or non-responsive. In that event a substitution can be made, and such substitution is safeguarded against bid shopping by the oversight and approval of the City.

Finally, it should be noted that restoration and rehabilitation of historical structures is itself a unique and highly specialized area of construction, but for which Nevada has no specialty contractor's license under NAC 624. Both Kitson and Evergreene (the listed subcontractors questioned by APCO addressed herein below) possess the highest levels of training and specialization in this area, as demonstrated by the Qualification Questionnaires submitted.

Kitson is Qualified to Complete its Listed Scope of Work

Flagship listed Kitson Specialty Contracting, Inc. (Kitson), based upon a good faith understanding and belief that Kitson was and is qualified and properly licensed to completely perform the masonry rehabilitation scope of work for which it was listed. APCO correctly notes that Kitson holds a C-15(d) Waterproofing specialty contractors license in Nevada. However, contrary to the position in APCO's Protest, that license does qualify Kitson to complete the work for which it is listed.

By way of a letter dated October 8, 2008, Kitson has sought clarification and confirmation from the Nevada State Contractors Board that its license status qualifies it to do the work for which it is listed. A copy of that letter is attached hereto as **Exhibit A**. It should be noted that Flagship and Kitson continue to proceed based upon a good faith understanding that Kitson is, in fact, properly, fully and uniquely qualified to complete the rehabilitation for which it was listed in Flagship's Bid. However, as set forth further herein, even if Kitson is determined to not be properly qualified, that does not invalidate or negate Flagship's bid, or render it non-responsive or non-responsible.

The masonry rehabilitation work contemplated at the Project and outlined in the Bid Documents does not primarily entail masonry contraction work. Rather, the work primarily entails remediation of moisture-damaged elements of existing construction, including masonry and waterproofing, so as to forestall additional deterioration. The focus of the masonry rehabilitation work is restoration, and the re-pointing of brick and terra cotta to prevent water infiltration. This is within the scope of the license and specialization that Kitson possesses.

The Bid Specifications support Flagship's position in this regard. The Summary of the Masonry Rehabilitation work as set forth in the Masonry Rehabilitation Specifications, Section 1.2(A)(1)-(2) calls for: 1) Maintenance of unit masonry consisting of brick and terra cotta clay masonry rehabilitation; and, 2) Replacing extant marble radiator covers (emphasis added). Nothing in the

KUMMER KAEMPFER

Specification indicates a requirement for a C-18, specialty masonry contractor; which according to NAC 624.350 qualifies a licensee to "select, cut and lay brick." The C-18 trade credentials is NOT what is required by the subject scope of work, and, at best, is simply incidental and supplemental to the subject work for which Kitson was listed. Further, Section 3.1(A) of the Masonry Rehabilitation Specifications calls "Restoration Specialist Firms: Subject to compliance with requirements, provide masonry restoration and cleaning by a preapproved restoration specialist." (emphasis added). These are the unique qualifications that Kitson (and Evergreene) possess, as evidenced in the Qualification Questionnaires. From what can be told to date, APCO's proposed listed subcontractor DOES NOT have these qualifications.

Additionally, the Bid Specifications expressly call for the use of certain specific manufacturers' products and materials for the masonry and terra cotta repair (including, for example, "Cathedral Stone" masonry patching products). *See e.g.*, Masonry Rehabilitation Specifications, Section 2.4(A)(1). These specific manufacture and product specifications, in turn, require specialized training and certification for installation.[2] As set forth in Kitson's attached letter (Exhibit A), Kitson possesses the proper manufacturers' training and certification, while, as far as can be currently determined, APCO's proposed subcontractor does not.

The fact that the word "masonry," as used in the work description, does not (as APCO would argue) directly lead to the conclusion that a C-18 specialty masonry license is required. The nature of the masonry rehabilitation work called for in the Project Bid Documents is not that of an original construction masonry contractor, but more focused on historical restoration and rehabilitation. The focus of the work for which Kitson was listed is waterproofing and the installation of specified manufacturers' systems for which Kitson is both licensed by Nevada and qualified by the specific manufacturers. Any actual masonry construction work that may be required would be incidental and supplemental to the historical restoration and waterproofing work and the installation of the called-for manufacturers' systems. Nevada law clearly provides that Kitson can perform such supplemental work with the corresponding specialty license. NRS 664.220(4): "*... nothing contained in this section prohibits a specialty contractor from taking and executing a contract involving the use of two or more crafts or trades, if the performance of the work in the crafts or trades, other than in which he is licensed, is incidental and supplemental to the performance of work in the craft for which the specialty contractor is licensed.*"

Finally, it should be noted that Flagship and Kitson completed and submitted the Qualifications Questionnaire for Kitson, a copy of which is attached hereto as **Exhibit B**.

Based upon the foregoing, it is Flagship's position that Kitson was properly considered and listed by Flagship and that Kitson is properly licensed and qualified to complete the work for which it was listed.

[2] With the Cathedral products, for example, you cannot even purchase the materials unless you have the requisite Cathedral installation training and certification.

KUMMER KAEMPFER

Evergreene is Qualified to Complete its Listed Scope of Work

Flagship listed Evergreene Painting Studios, Inc. (Evergreene), based upon both: the understanding that Evergreene was specifically prequalified by the City to fully perform the Conservator scope of work; and, the further good faith understanding and belief that Evergreene was and is qualified and properly licensed to completely perform the work for which it was listed in Flagship's bid.

Evergreene was and is a prequalified conservator specializing in the preservation and rehabilitation of historic landmark structures for scopes of work including masonry and plaster restoration and ornamental painting. Pursuant to Conservator Rehabilitation Specifications, Section 1.6(B)(1) Evergreene was expressly prequalified. Furthermore, and inasmuch as Addendum 1 clarified the Conservator qualifications and requested the completion and submission of a Conservator Qualifications Questionnaire, Evergreene and Flagship completed that questionnaire and submitted the requested Questionnaire, a copy of which is attached hereto as **Exhibit C**. Evergreene properly documented the appropriate experience and was, accordingly, properly listed by Flagship.

Finally, it should be noted that, just like with Kitson, Evergreene, as a licensed specialty contactor in Nevada, is allowed to perform work which is outside its respective specialty classification, which is incidental or supplemental to the work for which Evergreene is licensed. NRS 664.220(4).

Upon the foregoing, it is Flagship's position that Evergreene was properly considered and listed by Flagship and that Evergreene is properly licensed and qualified to complete the work for which it was listed.

There Is No Real Threat of Bid Shopping

There is no real or legitimate concern that Flagship can now shop the bids for the masonry rehabilitation and conservator scopes of work. APCO is clearly trying to add false emphasis and urgency to its Bid Protest by its repeated, unsupported, inflammatory and hyperbolic allegations of potential bid shopping.

As pointed out herein above, the subject listed subcontractors are properly qualified and licensed for the respective scopes of work for which they are listed. There is no real threat of bid shopping because Flagship is bound to those listed subcontractors to complete the work subject to the provisions of NRS 338.141.

If a listed subcontractor is determined to be disqualified by the public body (the City) under one of the enumerated conditions of NRS 338.141(5)(b), which would include not having the proper licensing to complete the listed scope of work, then Flagship can substitute an alternate

KUMMER KAEMPFER

subcontractor, and then only subject to the public body oversight and approval. Protections against bid shopping are built into the system.

No authority cited by APCO, even given the false facts as presented by APCO, justifies the discarding of Flagship's lowest responsive and responsible bid, and the awarding of the contract to APCO at a higher price. This notion completely skirts the public policy behind competitive bidding and getting the best price for the public body. Instead, if any of the listed subcontractors are truly not qualified, the recourse is to substitute those subcontractors in accordance with the protections set out in NRS 338.141. However, such analysis in this case is purely academic inasmuch as Flagship understands and believes that Kitson and Evergreene are properly qualified for the work for which they are listed, and Flagship further expects to proceed with the project and contract using those subcontractors as listed.

Conclusion

Flagship is the lowest responsive responsible bidder and should be awarded the subject contract. Fair notions of competitive bidding and the public interest further support the award to Flagship as the best bargain for the public.

The challenges put forth by APCO have been dispelled. However, to the extent there is any legitimate concern based upon the allegations set forth by APCO, then the City's proper recourse is not to give APCO the contract, but is to follow the processes set forth in NRS 338.141 and corollary law to deal with potentially disqualified subcontractors.

Upon the foregoing, Flagship respectfully requests that you deny APCO's Bid Protest and proceed with the award and contract to Flagship.

Please feel free to contact either the undersigned or our client directly if you have any questions or need any additional information or documents.

Very truly yours,

KUMMER KAEMPFER BONNER
RENSHAW & FERRARIO

WDW
for
MEF

Mark E. Ferrario, Esq.

cc: Nancy Paolino

EXHIBIT A

MERITAS
LAW FIRMS WORLDWIDE

FAX

Kummer Kaempfer Bonner Renshaw & Ferrario
Seventh Floor
3800 Howard Hughes Parkway
Las Vegas, NV 89169
Phone: (702) 792-7000
Fax: (702) 796-7181

Date: 10/9/08

No. of Pages: 20
(Including cover sheet)

TO:	Fax No:	Phone No:
Kathleen C. Rainey, Manager of Purchasing and Contractors, City of Las Vegas	702-464-2578	
cc: Nancy Paolino, Flagship Construction Co.	702-739-1724	

FROM:	Client/Matter No:
S. Renee Hoban, Legal Assistant to William J. Wray, Esq.	14439-00003

Regarding:

Response to Bid Protest of APCO Construction; Project: Las Vegas Museum Phase 3 - Rehabilitation; Bid No. 08.15341.04-LED; Our Client/Successful Bidder: Flagship Construction Company, LLC

Message:

Please see the attached letter from Mark E. Ferrario, Esq., of today's date.

HE FOLLOWING PAGES ARE A CONFIDENTIAL ATTORNEY-CLIENT COMMUNICATION INTENDED ONLY FOR THE ERSON NAMED ABOVE. IF YOU ARE NOT THE PERSON NAMED ABOVE, OR THE EMPLOYEE OR AGENT RESPONSIBLE FOR DELIVERY OF THE FOLLOWING INFORMATION, YOU ARE HEREBY NOTIFIED THAT ANY DISSEMINATION, DISTRIBUTION OR COPYING OF THIS COMMUNICATION IS STRICTLY PROHIBITED. IF YOU HAVE RECEIVED THIS COMMUNICATION IN ERROR, PLEASE NOTIFY US IMMEDIATELY BY TELEPHONE AND RETURN THE ORIGINAL MESSAGE TO US BY MAIL. WE WILL GLADLY REIMBURSE YOUR POSTAGE EXPENSE. THANK YOU.

KUMMER KAEMPFER
ATTORNEYS AT LAW

KUMMER KAEMPFER BONNER
RENSHAW & FERRARIO

LAS VEGAS OFFICE
WILLIAM J. WRAY
wwray@kkbrf.com
702.693.4264

LAS VEGAS OFFICE
3800 Howard Hughes Parkway
Seventh Floor
Las Vegas, NV 89169
Tel: 702.792.7000
Fax: 702.796.7181

RENO OFFICE
5585 Kietzke Lane
Reno, NV 89511
Tel: 775.852.3900
Fax: 775.852.3982

CARSON CITY OFFICE
510 W. Fourth Street
Carson City, NV 89703
Tel: 775.884.8300
Fax: 775.882.0257

October 9, 2008

Via Fax (702) 464-2578 and Regular Mail
Ms. Kathleen C. Rainey
Manager of Purchasing and Contracts
City of Las Vegas
400 Stewart Avenue
Las Vegas, Nevada 89101

Re: Response to Bid Protest of APCO Construction
Project: Las Vegas Museum Phase 3 – Rehabilitation
Bid No. 08.15341.04-LED
Our Client/Successful Bidder: Flagship Construction Company, LLC
Flagship's Construction Company, LLC's Supporting Bid Documents

Dear Ms. Rainey:

As you know from prior correspondence, our office represents Flagship Construction Company, LLC ("Flagship"), in connection with the Bid Protest filed by APCO Construction Company.

This letter is in follow-up to my letter sent to you yesterday, setting forth Flagship's analysis and response to the Bid Protest. This letter encloses copies of additional documents utilized or generated by Flagship in preparation of its bid as it relates to the trade contractor work in question as requested in your letter of October 7, 2008. The enclosed documents include bid documents and correspondence submitted by various prospective subcontractors for the trade work in question, and Flagship's sample spreadsheets and bid analysis utilized in analyzing scopes of work, general project requirements and determining which subcontractors to use and list in connection with the subject scopes of trade work. If you cannot read the faxed copies of the spreadsheets, I can e-mail PDF copies which may be easier to read. Also, it should be noted that other general drywall bidders (other than the one listed by Flagship) excluded the ornamental plaster scope of work from their bids.

The enclosed documents contain confidential, trade secret and proprietary information. The documents are being provided for review and consideration by the City of Las Vegas and its personnel only, in connection with the subject Bid Protest. The documents are not to be shared, published, distributed or otherwise disclosed to others, particularly competitors, subcontractors or potential subcontractors of Flagship, inasmuch as the same would be a breach of trade secret information and would give others an unfair competitive advantage.

IRMS WORLDWIDE MERITAS

KUMMER KAEMPFER

Please contact the undersigned if you have any questions or comments, or if you require any additional information or documents.

Very truly yours,

KUMMER KAEMPFER BONNER
RENSHAW & FERRARIO

William J. Wray, Esq.

WJW/rh
Enclosure as stated.

cc: Nancy Paolino (via fax)

MERITAS
LAW FIRMS WORLDWIDE

FAX

Kummer Kaempfer Bonner Renshaw & Ferrario
Seventh Floor
3800 Howard Hughes Parkway
Las Vegas, NV 89169
Phone: (702) 792-7000
Fax: (702) 796-7181

Date: 10/10/08

No. of Pages: 29
(Including cover sheet)

TO:	Fax No:	Phone No:
Kathleen C. Rainey, Manager of Purchasing and Contractors, City of Las Vegas	702-464-2578	
cc: Nancy Paolino, Flagship Construction Co.	702-739-1724	

FROM:	Client/Matter No:
S. Renee Hoban, Legal Assistant to William J. Wray, Esq.	14439-00003

Regarding:

Response to Bid Protest of APCO Construction; Project: Las Vegas Museum Phase 3 - Rehabilitation; Bid No. 08.15341.04-LED; Our Client/Successful Bidder: Flagship Construction Company, LLC

Message:

Please see the attached letter from William J. Wray, Esq., of today's date.

Lloyd

Fgcc

Spread sheet
re DBW | Plastering
and conservator

LDavis @ LasVegasNevada.gov

HE FOLLOWING PAGES ARE A CONFIDENTIAL ATTORNEY-CLIENT COMMUNICA
.ERSON NAMED ABOVE. IF YOU ARE NOT THE PERSON NAMED ABOVE, (
RESPONSIBLE FOR DELIVERY OF THE FOLLOWING INFORMATION, YOU ARE
DISSEMINATION, DISTRIBUTION OR COPYING OF THIS COMMUNICATION IS S
HAVE RECEIVED THIS COMMUNICATION IN ERROR, PLEASE NOTIFY US IMMI
RETURN THE ORIGINAL MESSAGE TO US BY MAIL. WE WILL GLADLY REIMBU
THANK YOU.

PROJECT 1:

Project Name: La Concha Lobby / Neon Museum

Project Address: Las Vegas Boulevard North

Las Vegas Nevada 89101

Owner's Name: Neon Museum

Owner's Point of Contact: Dorothy Wright - Neon Museum Facilities Chair

Phone Number: 702-455-8242

Project Description:

The Neon Museum project incorporates the La Concha Lobby as the Museum's Visitors Center.

* The La Concha building was cut into 8 large sections, shored and moved to a downtown location. The building was then reassembled utilizing various methods that allowed us to retain the properties historical character. The project included: artistically applied plaster to restore it to its original condition and new roof system to replicate original. The La Concha is listed on the Historical Register, due to its thin-shell concrete structure designed in 1961 by renowned African American architect Paul Revere Williams.

* The project scope required extensive asbestos abatement, selective demolition, historic salvage, reassembly and restoration.

Award Amount: $ 1.1 Million

Year Completed: 2008

Was this project completed late? ☐ YES ☒ NO

Did the contract contain liquidated damages or penalty clauses? ☐ YES ☒ NO

If yes, were damages assessed? ☐ YES ☐ NO

What was the amount assessed? _____

Were any judgments entered pertaining to this project? ☐ YES ☒ NO

September 10, 2008

To Whom it May Concern:

The Neon Museum has worked with Flagship Construction since the fall of 2006 on the disassembly, move and reassembly of the historic La Concha Motel Lobby, which will be used as the Museum's Visitors' Center on Las Vegas Blvd N. and McWilliams Street.

This has been a very challenging and in fact unprecedented project, and Flagship successfully carried it out without damage to the historic building. The building had to be cut in pieces, transported, and then reassembled and restored. Flagship has been easy to work with and has worked well with the architects, the structural engineer and the project manager.

Flagship has also been very understanding of the Museum's need to phase the project for budget purposes. The first phase of the project was completed on time and on budget. The current phase is in the process of wrapping up, and it has met all expectations.

As the Neon Museum's Facilities Chair I have had the opportunity to meet often with Flagship's owners and staff, and I can say they are a pleasure to work with.

Sincerely,

Dorothy Wright
Neon Museum Facilities Chair

FLAGSHIP CONSTRUCTION Co., LLC
A NATIONAL CONSTRUCTION ENTERPRISES COMPANY

September 30, 2008

Lloyd E. Davis
City of Las Vegas
400 Stewart Avenue
Las Vegas, NV 89101-1286

Dr. Mr. Davis,

In response to your inquiry regarding the scope of work required for the LaConcha Lobby/ Neon Museum project, Flagship Construction offers the following:

The LaConcha Motel was designed by internationally know African-American architect Paul R. Williams. The structure is an example of Williams' later work that embraced Modernism. Through more expressive forms with impressive fin shapes and parabolic concrete forms, "Googie" style architecture became known. The thin concrete "clam-shell" structure of the LaConcha Lobby is an excellent example of Googie architecture.

The project first included asbestos abatement and a delicate disassembly that included cutting the structure into 8 large pieces and relocating them to the future home of the Neon Museum located in downtown Las Vegas. The project was directed by Melvyn Green and Associates, Inc., a structural engineering and historic preservation firm.

The reassembly phase included re-assembly through multiple methods of welding that utilized all existing rebar within the existing structure, concrete, waterproofing, roofing , plaster and painting. These items are similar to the work required in the Las Vegas Museum. The project did conform to the Standards for Rehabilitation & Guidelines for Rehabilitating Historic Buildings as follows:

- The property will be used with minimal change to the distinctive materials, features, spaces and spatial relationships. A numbered diagram produced by Melvyn Green and Associates was provided for the disassembly to ensure structural integrity and utilized in the same prioritized manner for the re-assembly.
- The historic character of the property was retained and preserved and the removal of distinctive materials and alterations of features, spaces and spatial relationships that characterize the property was avoided.
- The property is recognized as a physical record of its time, place and use. The building will be utilized as the lobby and visitor's center for the Neon Museum.
- The materials, features, finishes and construction techniques that characterize the property were preserved.
- Deteriorated features were repaired. The existing structure was minimally pealed back as required for re-assembly and minimal patching was done on the surface of the existing thin shell concrete shell. The cutting of damaged concrete back to remove deterioration and patching was done carefully to ensure proper bonding and match to the historic concrete.
- The exterior work and related new construction preserved the historic materials, features and spatial relationships that characterize the property.

Specific conformance with the Standards for Rehabilitation and Guidelines for Historic Buildings are exampled through the following particulars:

- The project scope included the retaining and preserving of the historic building as defined by the form and detailing of exterior material.
- As previously mentioned, repair in lieu of replacement was done throughout the project.
- Cleaning of surfaces was done with the gentlest methods possible to prevent any damage to existing surfaces.
- Re-plastering as required and repainting of deteriorated areas was completed with colors appropriate to the historic building.

In closing, the project scope through construction means and methods displayed true rehabilitation as defined as the "act or process of making possible a compatible use for a property, through repair, alterations and additions while preserving those portions or features which convey its historical, cultural or architectural values."

Please feel free to contact me with any questions you may have. We look forward to working with you on this project.

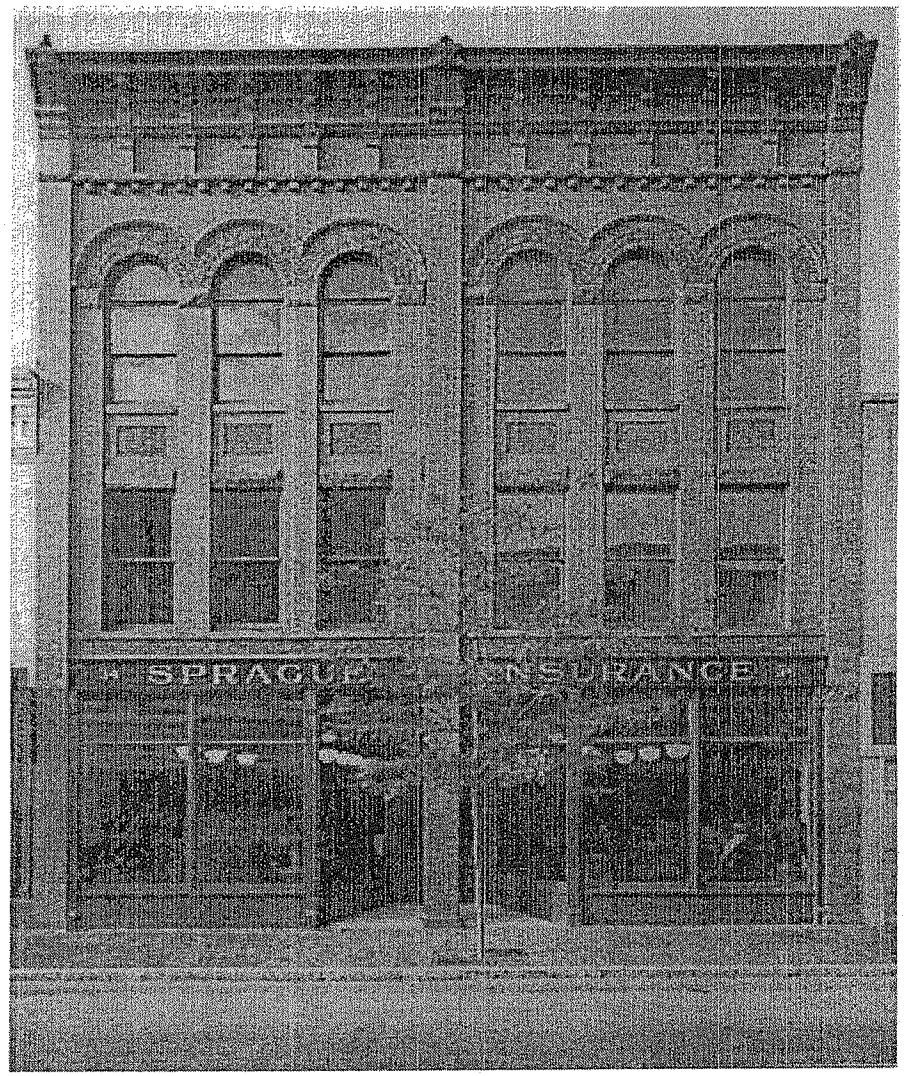
Regards,

Nancy Paolino
Vice President

Attachments:

Standards for Rehabilitation & Guidelines for Rehabilitating Historic Buildings (54 Pgs.)
Press Releases and Data (8 Pgs.)

Standards for Rehabilitation & Guidelines for Rehabilitating Historic Buildings



Rehabilitation is defined as the act or process of making possible a compatible use for a property through repair, alterations, and additions while preserving those portions or features which convey its historical, cultural, or architectural values.

Guidelines for Rehabilitating Historic Buildings

Introduction

In **Rehabilitation**, historic building materials and character-defining features are protected and maintained as they are in the treatment Preservation; however, an assumption is made prior to work that existing historic fabric has become damaged or deteriorated over time and, as a result, more repair and replacement will be required. Thus, latitude is given in the **Standards for Rehabilitation and Guidelines for Rehabilitation** to replace extensively deteriorated, damaged, or missing features using either traditional or substitute materials. Of the four treatments, only Rehabilitation includes an opportunity to make possible an efficient contemporary use through alterations and additions.

Identify, Retain, and Preserve Historic Materials and Features

Like Preservation, guidance for the treatment **Rehabilitation** begins with recommendations to identify the form and detailing of those architectural materials and features that are important in defining the building's historic character and which must be retained in order to preserve that character. Therefore, guidance on *identifying, retaining, and preserving* character-defining features is always given first. The character of a historic building may be defined by the form and detailing of exterior materials, such as masonry, wood, and metal; exterior features, such as roofs, porches, and windows; interior materials, such as plaster and paint; and interior features, such as moldings and stairways, room configuration and spatial relationships, as well as structural and mechanical systems.

Protect and Maintain Historic Materials and Features

After identifying those materials and features that are important and must be retained in the process of **Rehabilitation** work, then *protecting and maintaining* them are addressed. Protection generally involves the least degree of intervention and is preparatory to other work. For example, protection includes the maintenance of historic material through treatments such as rust removal, caulking, limited paint removal, and re-application of protective coatings; the cyclical cleaning of roof gutter systems; or installation of fencing, alarm systems and other temporary protective measures. Although a historic building will usually require more extensive work, an overall evaluation of its physical condition should always begin at this level.

Repair Historic Materials and Features

Next, when the physical condition of character-defining materials and features warrants additional work *repairing* is recommended. **Rehabilitation** guidance for the repair of historic materials such as masonry, wood, and architectural metals again begins with the least degree of intervention possible such as patching, piecing-in, splicing, consolidating, or otherwise reinforcing or upgrading them according to recognized preservation methods. Repairing also includes the limited replacement in kind—or with

---

Note: The Guidelines for Rehabilitating Historic Buildings in this chapter have already appeared in *The Secretary of the Interior's Standards for Rehabilitation & Illustrated Guidelines for Rehabilitating Historic Buildings*, published in 1992.



Originally built as single-family, semi-detached duplexes, these houses were rehabilitated for a new use as rental apartments. While some alteration to non-significant interior features and spaces was necessary in each one, the exteriors were essentially preserved. Photos: Mistick, Inc.

compatible substitute material—of extensively deteriorated or missing parts of features when there are surviving prototypes (for example, brackets, dentils, steps, plaster, or portions of slate or tile roofing). Although using the same kind of material is always the preferred option, substitute material is acceptable if the form and design as well as the substitute material itself convey the visual appearance of the remaining parts of the feature and finish.

Replace Deteriorated Historic Materials and Features

Following repair in the hierarchy, **Rehabilitation** guidance is provided for ***replacing*** an entire character-defining feature with new material because the level of deterioration or damage of materials precludes repair (for example, an exterior cornice; an interior staircase; or a complete porch or storefront). If the essential form and detailing are still evident so that the physical evidence can be used to re-establish the feature as an integral part of the rehabilitation, then its replacement is appropriate. Like the guidance for repair, the preferred option is always replacement of the entire feature in kind, that is, with the same material. Because this approach may not always be technically or economically feasible, provisions are made to consider the use of a compatible substitute material.

It should be noted that, while the National Park Service guidelines recommend the replacement of an entire character-defining feature that is extensively deteriorated, they never recommend removal and replacement with new material of a feature that—although damaged or deteriorated—could reasonably be repaired and thus preserved.

Design for the Replacement of Missing Historic Features

When an entire interior or exterior feature is missing (for example, an entrance, or cast iron facade; or a principal staircase), it no longer plays a role in physically defining the historic character of the building unless it can be accurately recovered in form and detailing through the process of carefully documenting the historical appearance. Although accepting the loss is one possibility, where an important architectural feature is missing, its replacement is always recommended in the **Rehabilitation** guidelines as the *first* or preferred, course of action. Thus, if adequate historical, pictorial, and physical documentation exists so that the feature may be accurately reproduced, and if it is desirable to re-establish the feature as part of the building's historical appearance, then designing and constructing a new feature based on such information is appropriate. However, a *second* acceptable option for the replacement feature is a new design that is compatible with the remaining character-defining features of the historic building. The new design should always take into account the size, scale, and material of the historic building itself and, most importantly, should be clearly differentiated so that a false historical appearance is not created.

Alterations/Additions for the New Use

Some exterior and interior alterations to a historic building are generally needed to assure its continued use, but it is most important that such alterations do not radically change, obscure, or destroy character-defining spaces, materials, features, or finishes. Alterations may include providing additional parking space on an existing historic building site; cutting new entrances or windows on secondary elevations; inserting an additional floor; installing an entirely new mechanical system; or creating an atrium or light well. Alteration may also include the selective removal of buildings or other features of the environment or building site that are intrusive and therefore detract from the overall historic character.

The construction of an exterior addition on a historic building may seem to be essential for the new use, but it is emphasized in the **Rehabilitation** guidelines that such new additions should be avoided, if possible, and considered *only* after it is determined that those needs cannot be met by altering secondary, i.e., non character-defining interior spaces. If, after a thorough evaluation of interior solutions, an exterior addition is still judged to be the only viable alterative, it should be designed and constructed to be clearly differentiated from the historic building and so that the character-defining features are not radically changed, obscured, damaged, or destroyed.

Additions and alterations to historic buildings are referenced within specific sections of the **Rehabilitation** guidelines such as Site, Roofs, Structural Systems, etc., but are addressed in detail in *New Additions to Historic Buildings*, found at the end of this chapter.

Energy Efficiency/Accessibility Considerations/Health and Safety Code Considerations

These sections of the guidance address work done to meet accessibility requirements and health and safety code requirements; or retrofitting measures to improve energy efficiency. Although this work is quite often an important aspect of Rehabilitation projects, it is usually not a part of the overall process of protecting or repairing character-defining features; rather, such work is assessed for its potential negative impact on the building's historic character. For this reason, particular care must be taken not to radically change, obscure, damage, or destroy character-defining materials or features in the process of meeting code and energy requirements.

Rehabilitation as a Treatment When repair and replacement of deteriorated features are necessary; when alterations or additions to the property are planned for a new or continued use; and when its depiction at a particular time is not appropriate, Rehabilitation may be considered as a treatment. Prior to undertaking work, a documentation plan for Rehabilitation should be developed.

Building Exterior

Masonry: Brick, stone, terra cotta, concrete, adobe, stucco and mortar

Recommended	*Not Recommended*
Identifying, retaining, and preserving masonry features that are important in defining the overall historic character of the building such as walls, brackets, railings, cornices, window architraves, door pediments, steps, and columns; and details such as tooling and bonding patterns, coatings, and color.	Removing or radically changing masonry features which are important in defining the overall historic character of the building so that, as a result, the character is diminished.
	Replacing or rebuilding a major portion of exterior masonry walls that could be repaired so that, as a result, the building is no longer historic and is essentially new construction.
	Applying paint or other coatings such as stucco to masonry that has been historically unpainted or uncoated to create a new appearance.
	Removing paint from historically painted masonry.
	Radically changing the type of paint or coating or its color.
Protecting and maintaining masonry by providing proper drainage so that water does not stand on flat, horizontal surfaces or accumulate in curved decorative features.	Failing to evaluate and treat the various causes of mortar joint deterioration such as leaking roofs or gutters, differential settlement of the building, capillary action, or extreme weather exposure.
Cleaning masonry only when necessary to halt deterioration or remove heavy soiling.	Cleaning masonry surfaces when they are not heavily soiled to create a new appearance, thus needlessly introducing chemicals or moisture into historic materials.
Carrying out masonry surface cleaning tests after it has been determined that such cleaning is appropriate. Tests should be observed over a sufficient period of time so that both the immediate and the long range effects are known to enable selection of the gentlest method possible.	Cleaning masonry surfaces without testing or without sufficient time for the testing results to be of value.

Recommended	*Not Recommended*
Cleaning masonry surfaces with the gentlest method possible, such as low pressure water and detergents, using natural bristle brushes.	Sandblasting brick or stone surfaces using dry or wet grit or other abrasives. These methods of cleaning permanently erode the surface of the material and accelerate deterioration.
	Using a cleaning method that involves water or liquid chemical solutions when there is any possibility of freezing temperatures.
	Cleaning with chemical products that will damage masonry, such as using acid on limestone or marble, or leaving chemicals on masonry surfaces.
	Applying high pressure water cleaning methods that will damage historic masonry and the mortar joints.
Inspecting painted masonry surfaces to determine whether repainting is necessary.	Removing paint that is firmly adhering to, and thus protecting, masonry surfaces.
Removing damaged or deteriorated paint only to the next sound layer using the gentlest method possible (e.g., hand-scraping) prior to repainting.	Using methods of removing paint which are destructive to masonry, such as sandblasting, application of caustic solutions, or high pressure waterblasting.
Applying compatible paint coating systems following proper surface preparation.	Failing to follow manufacturers' product and application instructions when repainting masonry.
Repainting with colors that are historically appropriate to the building and district.	Using new paint colors that are inappropriate to the historic building and district.
Evaluating the overall condition of the masonry to determine whether more than protection and maintenance are required, that is, if repairs to masonry features will be necessary.	Failing to undertake adequate measures to assure the protection of masonry features.
Repairing masonry walls and other masonry features by repointing the mortar joints where there is evidence of deterioration such as disintegrating mortar, cracks in mortar joints, loose bricks, damp walls, or damaged plasterwork.	Removing nondeteriorated mortar from sound joints, then repointing the entire building to achieve a uniform appearance.
Removing deteriorated mortar by carefully hand-raking the joints to avoid damaging the masonry.	Using electric saws and hammers rather than hand tools to remove deteriorated mortar from joints prior to repointing.

Recommended	*Not Recommended*
Duplicating old mortar in strength, composition, color, and texture.	Repointing with mortar of high portland cement content (unless it is the content of the historic mortar). This can often create a bond that is stronger than the historic material and can cause damage as a result of the differing coefficient of expansion and the differing porosity of the material and the mortar.
	Repointing with a synthetic caulking compound.
	Using a "scrub" coating technique to repoint instead of traditional repointing methods.
Duplicating old mortar joints in width and in joint profile.	Changing the width or joint profile when repointing.
Repairing stucco by removing the damaged material and patching with new stucco that duplicates the old in strength, composition, color, and texture.	Removing sound stucco; or repairing with new stucco that is stronger than the historic material or does not convey the same visual appearance.
Using mud plaster as a surface coating over unfired, unstabilized adobe because the mud plaster will bond to the adobe.	Applying cement stucco to unfired, unstabilized adobe. Because the cement stucco will not bond properly, moisture can become entrapped between materials, resulting in accelerated deterioration of the adobe.
Cutting damaged concrete back to remove the source of deterioration (often corrosion on metal reinforcement bars). The new patch must be applied carefully so it will bond satisfactorily with, and match, the historic concrete.	Patching concrete without removing the source of deterioration.
Repairing masonry features by patching, piecing-in, or consolidating the masonry using recognized preservation methods. Repair may also include the limited replacement in kind—or with compatible substitute material—of those extensively deteriorated or missing parts of masonry features when there are surviving prototypes such as terra-cotta brackets or stone balusters.	Replacing an entire masonry feature such as a cornice or balustrade when repair of the masonry and limited replacement of deteriorated or missing parts are appropriate.
	Using a substitute material for the replacement part that does not convey the visual appearance of the surviving parts of the masonry feature or that is physically or chemically incompatible.

Recommended	*Not Recommended*
Applying new or non-historic surface treatments such as water-repellent coatings to masonry only after repointing and only if masonry repairs have failed to arrest water penetration problems.	Applying waterproof, water repellent, or non-historic coatings such as stucco to masonry as a substitute for repointing and masonry repairs. Coatings are frequently unnecessary, expensive, and may change the appearance of historic masonry as well as accelerate its deterioration.
Replacing in kind an entire masonry feature that is too deteriorated to repair—if the overall form and detailing are still evident—using the physical evidence as a model to reproduce the feature. Examples can include large sections of a wall, a cornice, balustrade, column, or stairway. If using the same kind of material is not technically or economically feasible, then a compatible substitute material may be considered.	Removing a masonry feature that is unrepairable and not replacing it; or replacing it with a new feature that does not convey the same visual appearance.

The following work is highlighted to indicate that it represents the particularly complex technical or design aspects of **Rehabilitation** *projects and should only be considered after the preservation concerns listed above have been addressed.*

Recommended	*Not Recommended*
Design for the Replacement of Missing Historic Features Designing and installing a new masonry feature such as steps or a door pediment when the historic feature is completely missing. It may be an accurate restoration using historical, pictorial, and physical documentation; or be a new design that is compatible with the size, scale, material, and color of the historic building.	Creating a false historical appearance because the replaced masonry feature is based on insufficient historical, pictorial, and physical documentation. Introducing a new masonry feature that is incompatible in size, scale, material and color.

Building Exterior

Wood: Clapboard, weatherboard, shingles, and other wooden siding and decorative elements

Recommended	*Not Recommended*
Identifying, retaining, and preserving wood features that are important in defining the overall historic character of the building such as siding, cornices, brackets, window architraves, and doorway pediments; and their paints, finishes, and colors.	Removing or radically changing wood features which are important in defining the overall historic character of the building so that, as a result, the character is diminished.
	Removing a major portion of the historic wood from a facade instead of repairing or replacing only the deteriorated wood, then reconstructing the facade with new material in order to achieve a uniform or "improved" appearance.
	Radically changing the type of finish or its color or accent scheme so that the historic character of the exterior is diminished.
	Stripping historically painted surfaces to bare wood, then applying clear finishes or stains in order to create a "natural look."
	Stripping paint or varnish to bare wood rather than repairing or reapplying a special finish, i.e., a grained finish to an exterior wood feature such as a front door.
Protecting and maintaining wood features by providing proper drainage so that water is not allowed to stand on flat, horizontal surfaces or accumulate in decorative features.	Failing to identify, evaluate, and treat the causes of wood deterioration, including faulty flashing, leaking gutters, cracks and holes in siding, deteriorated caulking in joints and seams, plant material growing too close to wood surfaces, or insect or fungus infestation.
Applying chemical preservatives to wood features such as beam ends or outriggers that are exposed to decay hazards and are traditionally unpainted.	Using chemical preservatives such as creosote which, unless they were used historically, can change the appearance of wood features.
Retaining coatings such as paint that help protect the wood from moisture and ultraviolet light. Paint removal should be considered only where there is paint surface deterioration and as part of an overall maintenance program which involves repainting or applying other appropriate protective coatings.	Stripping paint or other coatings to reveal bare wood, thus exposing historically coated surfaces to the effects of accelerated weathering.

Recommended

Inspecting painted wood surfaces to determine whether repainting is necessary or if cleaning is all that is required.

Removing damaged or deteriorated paint to the next sound layer using the gentlest method possible (handscraping and handsanding), then repainting.

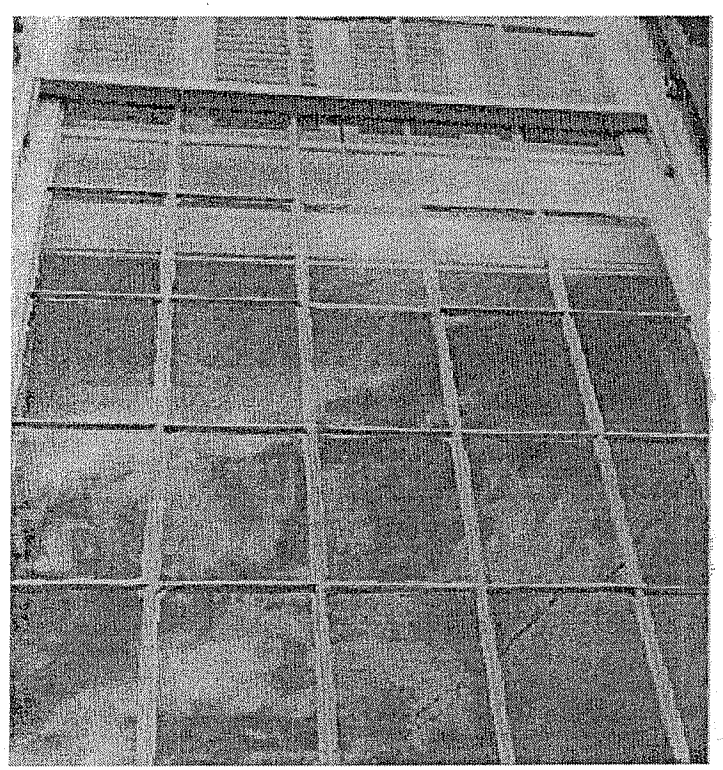
Using with care electric hot-air guns on decorative wood features and electric heat plates on flat wood surfaces when paint is so deteriorated that total removal is necessary prior to repainting.

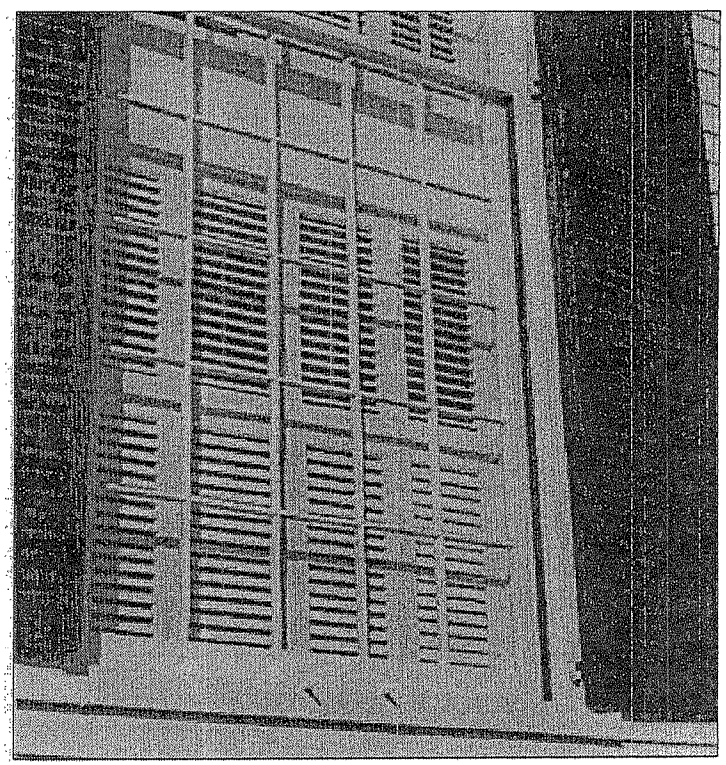
Not Recommended

Removing paint that is firmly adhering to, and thus, protecting wood surfaces.

Using destructive paint removal methods such as propane or butane torches, sandblasting or waterblasting. These methods can irreversibly damage historic woodwork.

Using thermal devices improperly so that the historic woodwork is scorched.





According to the Standards for Rehabilitation, existing historic materials should be protected, maintained and repaired. In an exemplary project, the windows and shutters of this historic residence were carefully preserved.

Recommended

Using chemical strippers primarily to supplement other methods such as handscraping, handsanding and the above-recommended thermal devices. Detachable wooden elements such as shutters, doors, and columns may—with the proper safeguards—be chemically dip-stripped.

Applying compatible paint coating systems following proper surface preparation.

Repainting with colors that are appropriate to the historic building and district.

Evaluating the overall condition of the wood to determine whether more than protection and maintenance are required, that is, if repairs to wood features will be necessary.

Repairing wood features by patching, piecing-in, consolidating, or otherwise reinforcing the wood using recognized preservation methods. Repair may also include the limited replacement in kind—or with compatible substitute material—of those extensively deteriorated or missing parts of features where there are surviving prototypes such as brackets, molding, or sections of siding.

Replacing in kind an entire wood feature that is too deteriorated to repair—if the overall form and detailing are still evident—using the physical evidence as a model to reproduce the feature. Examples of wood features include a cornice, entablature or balustrade. If using the same kind of material is not technically or economically feasible, then a compatible substitute material may be considered.

Not Recommended

Failing to neutralize the wood thoroughly after using chemicals so that new paint does not adhere.

Allowing detachable wood features to soak too long in a caustic solution so that the wood grain is raised and the surface roughened.

Failing to follow manufacturers' product and application instructions when repainting exterior woodwork.

Using new colors that are inappropriate to the historic building or district.

Failing to undertake adequate measures to assure the protection of wood features.

Replacing an entire wood feature such as a cornice or wall when repair of the wood and limited replacement of deteriorated or missing parts are appropriate.

Using substitute material for the replacement part that does not convey the visual appearance of the surviving parts of the wood feature or that is physically or chemically incompatible.

Removing an entire wood feature that is unrepairable and not replacing it; or replacing it with a new feature that does not convey the same visual appearance.

The following work is highlighted to indicate that it represents the particularly complex technical or design aspects of Rehabilitation *projects and should only be considered after the preservation concerns listed above have been addressed.*

Recommended	*Not Recommended*
Design for the Replacement of Missing Historic Features	
Designing and installing a new wood feature such as a cornice or doorway when the historic feature is completely missing. It may be an accurate restoration using historical, pictorial, and physical documentation; or be a new design that is compatible with the size, scale, material, and color of the historic building.	Creating a false historical appearance because the replaced wood feature is based on insufficient historical, pictorial, and physical documentation. Introducing a new wood feature that is incompatible in size, scale, material and color.

Building Exterior

Architectural Metals: Cast iron, steel, pressed tin, copper, aluminum, and zinc

Recommended	*Not Recommended*
Identifying, retaining, and preserving architectural metal features such as columns, capitals, window hoods, or stairways that are important in defining the overall historic character of the building; and their finishes and colors. Identification is also critical to differentiate between metals prior to work. Each metal has unique properties and thus requires different treatments.	Removing or radically changing architectural metal features which are important in defining the overall historic character of the building so that, as a result, the character is diminished.
	Removing a major portion of the historic architectural metal from a facade instead of repairing or replacing only the deteriorated metal, then reconstructing the facade with new material in order to create a uniform, or "improved" appearance.
	Radically changing the type of finish or its historic color or accent scheme.
Protecting and maintaining architectural metals from corrosion by providing proper drainage so that water does not stand on flat, horizontal surfaces or accumulate in curved, decorative features.	Failing to identify, evaluate, and treat the causes of corrosion, such as moisture from leaking roofs or gutters.
	Placing incompatible metals together without providing a reliable separation material. Such incompatibility can result in galvanic corrosion of the less noble metal, e.g., copper will corrode cast iron, steel, tin, and aluminum.
Cleaning architectural metals, when appropriate, to remove corrosion prior to repainting or applying other appropriate protective coatings.	Exposing metals which were intended to be protected from the environment.
	Applying paint or other coatings to metals such as copper, bronze, or stainless steel that were meant to be exposed.
Identifying the particular type of metal prior to any cleaning procedure and then testing to assure that the gentlest cleaning method possible is selected or determining that cleaning is inappropriate for the particular metal.	Using cleaning methods which alter or damage the historic color, texture, and finish of the metal; or cleaning when it is inappropriate for the metal.
	Removing the patina of historic metal. The patina may be a protective coating on some metals, such as bronze or copper, as well as a significant historic finish.

Recommended	*Not Recommended*
Cleaning soft metals such as lead, tin, copper, terneplate, and zinc with appropriate chemical methods because their finishes can be easily abraded by blasting methods.	Cleaning soft metals such as lead, tin, copper, terneplate, and zinc with grit blasting which will abrade the surface of the metal.
Using the gentlest cleaning methods for cast iron, wrought iron, and steel—hard metals—in order to remove paint buildup and corrosion. If handscraping and wire brushing have proven ineffective, low pressure grit blasting may be used as long as it does not abrade or damage the surface.	Failing to employ gentler methods prior to abrasively cleaning cast iron, wrought iron or steel; or using high pressure grit blasting.
Applying appropriate paint or other coating systems after cleaning in order to decrease the corrosion rate of metals or alloys.	Failing to re-apply protective coating systems to metals or alloys that require them after cleaning so that accelerated corrosion occurs.
Repainting with colors that are appropriate to the historic building or district.	Using new colors that are inappropriate to the historic building or district.
Applying an appropriate protective coating such as lacquer to an architectural metal feature such as a bronze door which is subject to heavy pedestrian use.	Failing to assess pedestrian use or new access patterns so that architectural metal features are subject to damage by use or inappropriate maintenance such as salting adjacent sidewalks.
Evaluating the overall condition of the architectural metals to determine whether more than protection and maintenance are required, that is, if repairs to features will be necessary.	Failing to undertake adequate measures to assure the protection of architectural metal features.
Repairing architectural metal features by patching, splicing, or otherwise reinforcing the metal following recognized preservation methods. Repairs may also include the limited replacement in kind—or with a compatible substitute material—of those extensively deteriorated or missing parts of features when there are surviving prototypes such as porch balusters, column capitals or bases; or porch cresting.	Replacing an entire architectural metal feature such as a column or a balustrade when repair of the metal and limited replacement of deteriorated or missing parts are appropriate.
	Using a substitute material for the replacement part that does not convey the visual appearance of the surviving parts of the architectural metal feature or that is physically or chemically incompatible.

Recommended	*Not Recommended*
Replacing in kind an entire architectural metal feature that is too deteriorated to repair—if the overall form and detailing are still evident—using the physical evidence as a model to reproduce the feature. Examples could include cast iron porch steps or steel sash windows. If using the same kind of material is not technically or economically feasible, then a compatible substitute material may be considered.	Removing an architectural metal feature that is unrepairable and not replacing it; or replacing it with a new architectural metal feature that does not convey the same visual appearance.

The following work is highlighted to indicate that it represents the particularly complex technical or design aspects of Rehabilitation *projects and should only be considered after the preservation concerns listed above have been addressed.*

Recommended	*Not Recommended*
Design for the Replacement of Missing Historic Features	
Designing and installing a new architectural metal feature such as a metal cornice or cast iron capital when the historic feature is completely missing. It may be an accurate restoration using historical, pictorial, and physical documentation; or be a new design that is compatible with the size, scale, material, and color of the historic building.	Creating a false historical appearance because the replaced architectural metal feature is based on insufficient historical, pictorial, and physical documentation. Introducing a new architectural metal feature that is incompatible in size, scale, material, and color.

Building Exterior

Roofs

Recommended	*Not Recommended*
Identifying, retaining, and preserving roofs—and their functional and decorative features—that are important in defining the overall historic character of the building. This includes the roof's shape, such as hipped, gambrel, and mansard; decorative features such as cupolas, cresting chimneys, and weathervanes; and roofing material such as slate, wood, clay tile, and metal, as well as its size, color, and patterning.	Radically changing, damaging, or destroying roofs which are important in defining the overall historic character of the building so that, as a result, the character is diminished.
	Removing a major portion of the roof or roofing material that is repairable, then reconstructing it with new material in order to create a uniform, or "improved" appearance.
	Changing the configuration of a roof by adding new features such as dormer windows, vents, or skylights so that the historic character is diminished.
	Stripping the roof of sound historic material such as slate, clay tile, wood, and architectural metal.
	Applying paint or other coatings to roofing material which has been historically uncoated.
Protecting and maintaining a roof by cleaning the gutters and downspouts and replacing deteriorated flashing. Roof sheathing should also be checked for proper venting to prevent moisture condensation and water penetration; and to ensure that materials are free from insect infestation.	Failing to clean and maintain gutters and downspouts properly so that water and debris collect and cause damage to roof fasteners, sheathing, and the underlying structure.
Providing adequate anchorage for roofing material to guard against wind damage and moisture penetration.	Allowing roof fasteners, such as nails and clips to corrode so that roofing material is subject to accelerated deterioration.
Protecting a leaking roof with plywood and building paper until it can be properly repaired.	Permitting a leaking roof to remain unprotected so that accelerated deterioration of historic building materials—masonry, wood, plaster, paint and structural members—occurs.

Recommended

Repairing a roof by reinforcing the historic materials which comprise roof features. Repairs will also generally include the limited replacement in kind—or with compatible substitute material—of those extensively deteriorated or missing parts of features when there are surviving prototypes such as cupola louvers, dentils, dormer roofing; or slates, tiles, or wood shingles on a main roof.

Replacing in kind an entire feature of the roof that is too deteriorated to repair—if the overall form and detailing are still evident—using the physical evidence as a model to reproduce the feature. Examples can include a large section of roofing, or a dormer or chimney. If using the same kind of material is not technically or economically feasible, then a compatible substitute material may be considered.

Not Recommended

Replacing an entire roof feature such as a cupola or dormer when repair of the historic materials and limited replacement of deteriorated or missing parts are appropriate.

Failing to reuse intact slate or tile when only the roofing substrate needs replacement.

Using a substitute material for the replacement part that does not convey the visual appearance of the surviving parts of the roof or that is physically or chemically incompatible.

Removing a feature of the roof that is unrepairable, such as a chimney or dormer, and not replacing it; or replacing it with a new feature that does not convey the same visual appearance.

The following work is highlighted to indicate that it represents the particularly complex technical or design aspects of **Rehabilitation** *projects and should only be considered after the preservation concerns listed above have been addressed.*

Recommended	*Not Recommended*
Design for the Replacement of Missing Historic Features	
Designing and constructing a new feature when the historic feature is completely missing, such as chimney or cupola. It may be an accurate restoration using historical, pictorial, and physical documentation; or be a new design that is compatible with the size, scale, material, and color of the historic building.	Creating a false historical appearance because the replaced feature is based on insufficient historical, pictorial, and physical documentation. Introducing a new roof feature that is incompatible in size, scale, material and color.
Alterations/Additions for the New Use	
Installing mechanical and service equipment on the roof such as air conditioning, transformers, or solar collectors when required for the new use so that they are inconspicuous from the public right-of-way and do not damage or obscure character-defining features.	Installing mechanical or service equipment so that it damages or obscures character-defining features; or is conspicuous from the public right-of-way.
Designing additions to roofs such as residential, office, or storage spaces; elevator housing; decks and terraces; or dormers or skylights when required by the new use so that they are inconspicuous from the public right-of-way and do not damage or obscure character-defining features.	Radically changing a character-defining roof shape or damaging or destroying character-defining roofing material as a result of incompatible design or improper installation techniques.

Building Exterior

Windows

Recommended

Identifying, retaining, and preserving windows—and their functional and decorative features—that are important in defining the overall historic character of the building. Such features can include frames, sash, muntins, glazing, sills, heads, hoodmolds, panelled or decorated jambs and moldings, and interior and exterior shutters and blinds.

Conducting an indepth survey of the condition of existing windows early in rehabilitation planning so that repair and upgrading methods and possible replacement options can be fully explored.

Protecting and maintaining the wood and architectural metals which comprise the window frame, sash, muntins, and surrounds through appropriate surface treatments such as cleaning, rust removal, limited paint removal, and re-application of protective coating systems.

Making windows weathertight by re-caulking and replacing or installing weatherstripping. These actions also improve thermal efficiency.

Not Recommended

Removing or radically changing windows which are important in defining the historic character of the building so that, as a result, the character is diminished.

Changing the number, location, size or glazing pattern of windows, through cutting new openings, blocking-in windows, and installing replacement sash that do not fit the historic window opening.

Changing the historic appearance of windows through the use of inappropriate designs, materials, finishes, or colors which noticeably change the sash, depth of reveal, and muntin configuration; the reflectivity and color of the glazing; or the appearance of the frame.

Obscuring historic window trim with metal or other material.

Stripping windows of historic material such as wood, cast iron, and bronze.

Replacing windows solely because of peeling paint, broken glass, stuck sash, and high air infiltration. These conditions, in themselves, are no indication that windows are beyond repair.

Failing to provide adequate protection of materials on a cyclical basis so that deterioration of the window results.

Retrofitting or replacing windows rather than maintaining the sash, frame, and glazing.

Recommended

Evaluating the overall condition of materials to determine whether more than protection and maintenance are required, i.e. if repairs to windows and window features will be required.

Repairing window frames and sash by patching, splicing, consolidating or otherwise reinforcing. Such repair may also include replacement in kind—or with compatible substitute material—of those parts that are either extensively deteriorated or are missing when there are surviving prototypes such as architraves, hoodmolds, sash, sills, and interior or exterior shutters and blinds.

Replacing in kind an entire window that is too deteriorated to repair using the same sash and pane configuration and other design details. If using the same kind of material is not technically or economically feasible when replacing windows deteriorated beyond repair, then a compatible substitute material may be considered.

Not Recommended

Failing to undertake adequate measures to assure the protection of historic windows.

Replacing an entire window when repair of materials and limited replacement of deteriorated or missing parts are appropriate.

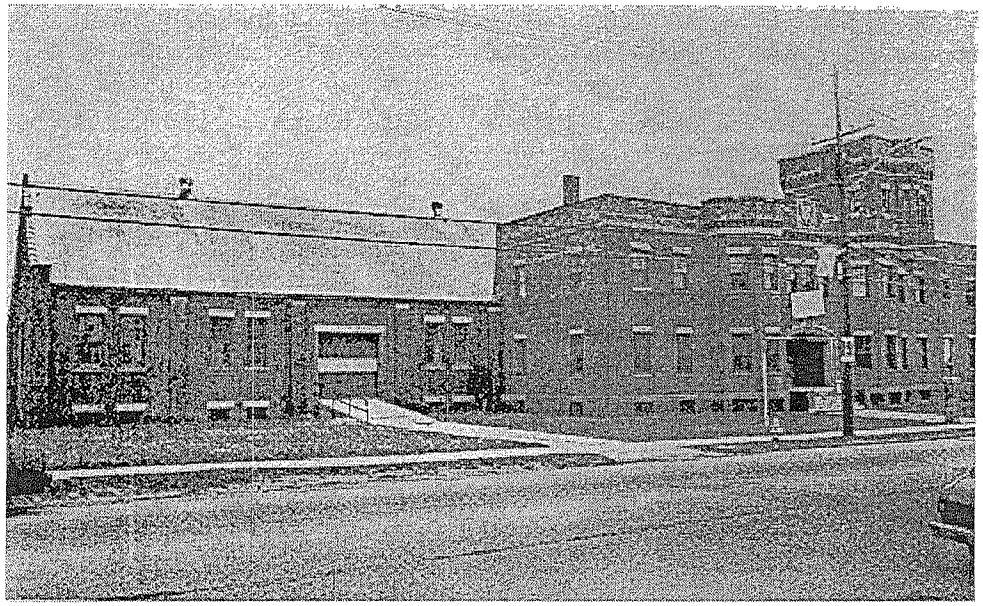
Failing to reuse serviceable window hardware such as brass sash lifts and sash locks.

Using substitute material for the replacement part that does not convey the visual appearance of the surviving parts of the window or that is physically or chemically incompatible.

Removing a character-defining window that is unrepairable and blocking it in; or replacing it with a new window that does not convey the same visual appearance.

The following work is highlighted to indicate that it represents the particularly complex technical or design aspects of Rehabilitation *projects and should only be considered after the preservation concerns listed above have been addressed.*

Recommended	*Not Recommended*
Design for the Replacement of Missing Historic Features	
Designing and installing new windows when the historic windows (frames, sash and glazing) are completely missing. The replacement windows may be an accurate restoration using historical, pictorial, and physical documentation; or be a new design that is compatible with the window openings and the historic character of the building.	Creating a false historical appearance because the replaced window is based on insufficient historical, pictorial, and physical documentation. Introducing a new design that is incompatible with the historic character of the building.
Alterations/Additions for the New Use	
Designing and installing additional windows on rear or other non-character-defining elevations if required by the new use. New window openings may also be cut into exposed party walls. Such design should be compatible with the overall design of the building, but not duplicate the fenestration pattern and detailing of a character-defining elevation.	Installing new windows, including frames, sash, and muntin configuration that are incompatible with the building's historic appearance or obscure, damage, or destroy character-defining features.
Providing a setback in the design of dropped ceilings when they are required for the new use to allow for the full height of the window openings.	Inserting new floors or furred-down ceilings which cut across the glazed areas of windows so that the exterior form and appearance of the windows are changed.



a



c



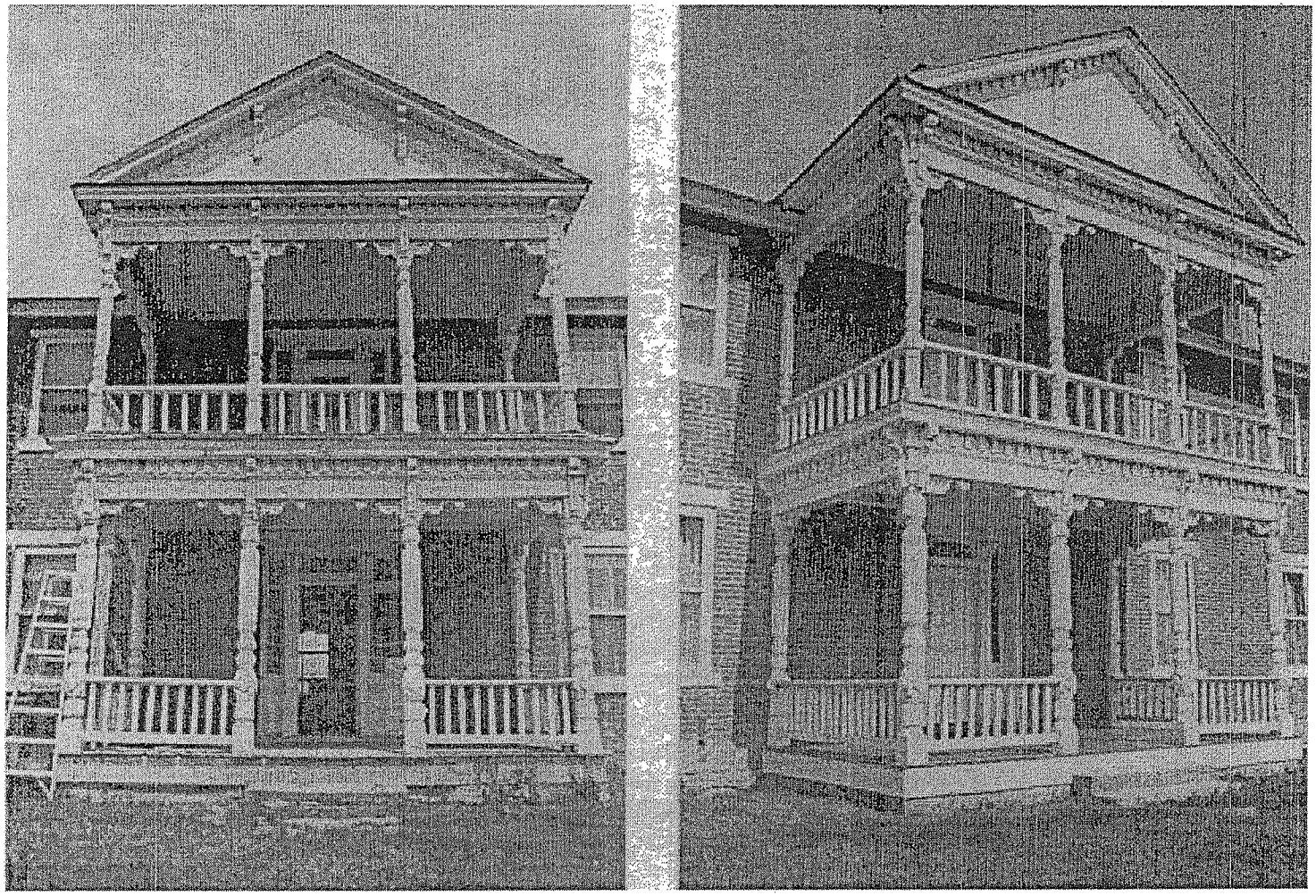
b

(a) An armory complex was rehabilitated for rental housing. (b) This view of the rear elevation shows the paired, nine-over-nine wood sash windows and high sills that characterized the building. (c) After inappropriate rehabilitation work, the same rear elevation is shown with new skylights added to the roof, prefabricated panels filling the former brick areas, and new wood decks and privacy fences. Because the work changed the historic character, the project did not meet the Standards.

Building Exterior

Entrances and Porches

Recommended	*Not Recommended*
Identifying, retaining, and preserving entrances and porches—and their functional and decorative features—that are important in defining the overall historic character of the building such as doors, fanlights, sidelights, pilaster, entablatures, columns, balustrades, and stairs.	Removing or radically changing entrances and porches which are important in defining the overall historic character of the building so that, as a result, the character is diminished.
	Stripping entrances and porches of historic material such as wood, cast iron, terra cotta tile, and brick.
	Removing an entrance or porch because the building has been re-oriented to accommodate a new use.
	Cutting new entrances on a primary elevation.
	Altering utilitarian or service entrances so they appear to be formal entrances by adding panelled doors, fanlights, and sidelights.
Protecting and maintaining the masonry, wood, and architectural metals that comprise entrances and porches through appropriate surface treatments such as cleaning, rust removal, limited paint removal, and re-application of protective coating systems.	Failing to provide adequate protection to materials on a cyclical basis so that deterioration of entrances and porches results.
Evaluating the overall condition of materials to determine whether more than protection and maintenance are required, that is, repairs to entrance and porch features will be necessary.	Failing to undertake adequate measures to assure the protection of historic entrances and porches.
Repairing entrances and porches by reinforcing the historic materials. Repair will also generally include the limited replacement in kind—or with compatible substitute material—of those extensively deteriorated or missing parts of repeated features where there are surviving prototypes such as balustrades, cornices, entablatures, columns, sidelights, and stairs.	Replacing an entire entrance or porch when the repair of materials and limited replacement of parts are appropriate.
	Using a substitute material for the replacement parts that does not convey the visual appearance of the surviving parts of the entrance and porch or that is physically or chemically incompatible.



In Rehabilitation, deteriorated features should be repaired, whenever possible, and replaced when the severity of the damage makes it necessary. Here, a two-story porch is seen prior to treatment (left). The floor boards are rotted out and the columns are in a state of collapse, supported only by crude, temporary shafts. Other components are in varying stages of decay. Appropriate work on the historic porch (right) included repairs to the porch rails; and total replacement of the extensively deteriorated columns and floor boards. Some dismantling of the porch was necessary.

Recommended	*Not Recommended*
Replacing in kind an entire entrance or porch that is too deteriorated to repair—if the form and detailing are still evident—using the physical evidence as a model to reproduce the feature. If using the same kind of material is not technically or economically feasible, then a compatible substitute material may be considered.	Removing an entrance or porch that is unrepairable and not replacing it; or replacing it with a new entrance or porch that does not convey the same visual appearance.

The following work is highlighted to indicate that it represents the particularly complex technical or design aspects of **Rehabilitation** *projects and should only be considered after the preservation concerns listed above have been addressed.*

Recommended	*Not Recommended*
Design for the Replacement of Missing Historic Features	
Designing and constructing a new entrance or porch when the historic entrance or porch is completely missing. It may be a restoration based on historical, pictorial, and physical documentation; or be a new design that is compatible with the historic character building.	Creating a false historical appearance because the replaced entrance or porch is based on insufficient historical, pictorial, and physical documentation. Introducing a new entrance or porch that is incompatible in size, scale, material, and color.
Alterations/Additions for the New Use	
Designing enclosures for historic porches on secondary elevations when required by the new use in a manner that preserves the historic character of the building. This can include using large sheets of glass and recessing the enclosure wall behind existing scrollwork, posts, and balustrades.	Enclosing porches in a manner that results in a diminution or loss of historic character by using materials such as wood, stucco, or masonry.
Designing and installing additional entrances or porches on secondary elevations when required for the new use in a manner that preserves the historic character of the buildings, i.e., limiting such alteration to non-character-defining elevations.	Installing secondary service entrances and porches that are incompatible in size and scale with the historic building or obscure, damage, or destroy character-defining features.

Building Exterior

Storefronts

Recommended

Identifying, retaining, and preserving storefronts—and their functional and decorative features—that are important in defining the overall historic character of the building such as display windows, signs, doors, transoms, kick plates, corner posts, and entablatures. The removal of inappropriate, non-historic cladding, false mansard roofs, and other later alterations can help reveal the historic character of a storefront.

Protecting and maintaining masonry, wood, and architectural metals which comprise storefronts through appropriate treatments such as cleaning, rust removal, limited paint removal, and reapplication of protective coating systems.

Protecting storefronts against arson and vandalism before work begins by boarding up windows and installing alarm systems that are keyed into local protection agencies.

Evaluating the existing condition of storefront materials to determine whether more than protection and maintenance are required, that is, if repairs to features will be necessary.

Not Recommended

Removing or radically changing storefronts—and their features—which are important in defining the overall historic character of the building so that, as a result, the character is diminished.

Changing the storefront so that it appears residential rather than commercial in character.

Removing historic material from the storefront to create a recessed arcade.

Introducing coach lanterns, mansard designs, wood shakes, nonoperable shutters, and small-paned windows if they cannot be documented historically.

Changing the location of a storefront's main entrance.

Failing to provide adequate protection of materials on a cyclical basis so that deterioration of storefront features results.

Permitting entry into the building through unsecured or broken windows and doors so that interior features and finishes are damaged by exposure to weather or vandalism.

Stripping storefronts of historic material such as wood, cast iron, terra cotta, carrara glass, and brick.

Failing to undertake adequate measures to assure the preservation of the historic storefront.

Recommended

Repairing storefronts by reinforcing the historic materials. Repairs will also generally include the limited replacement in kind—or with compatible substitute materials—of those extensively deteriorated or missing parts of storefronts where there are surviving prototypes such as transoms, kick plates, pilasters, or signs.

Replacing in kind an entire storefront that is too deteriorated to repair—if the overall form and detailing are still evident—using the physical evidence as a model. If using the same material is not technically or economically feasible, then compatible substitute materials may be considered.

Not Recommended

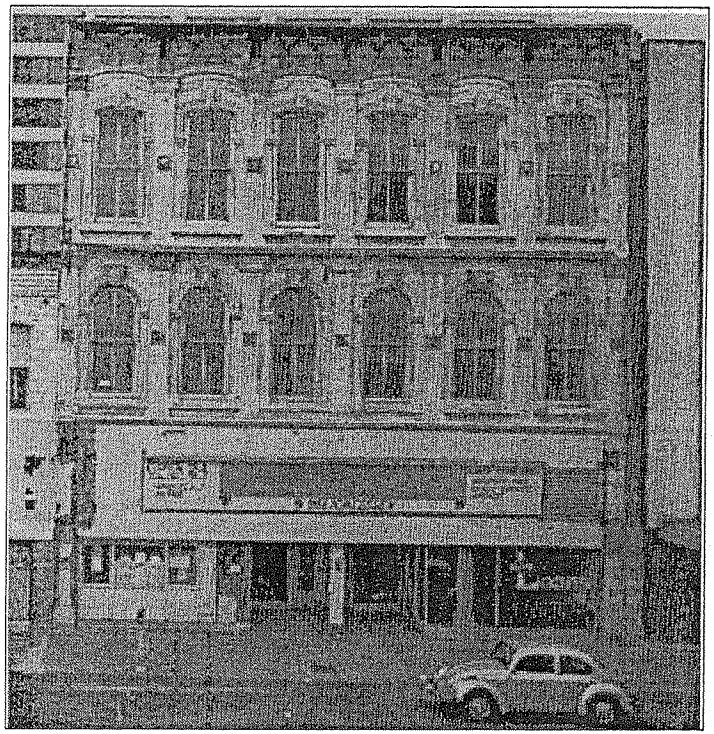
Replacing an entire storefront when repair of materials and limited replacement of its parts are appropriate.

Using substitute material for the replacement parts that does not convey the same visual appearance as the surviving parts of the storefront or that is physically or chemically incompatible.

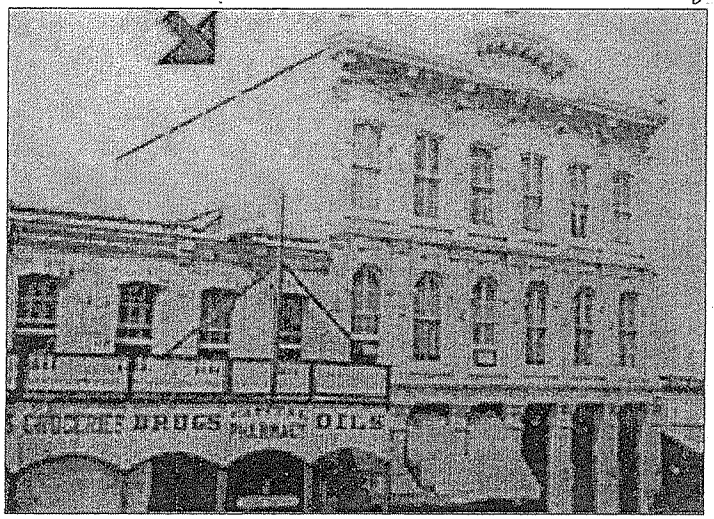
Removing a storefront that is unrepairable and not replacing it; or replacing it with a new storefront that does not convey the same visual appearance.

The following work is highlighted to indicate that it represents the particularly complex technical or design aspects of Rehabilitation *projects and should only be considered after the preservation concerns listed above have been addressed.*

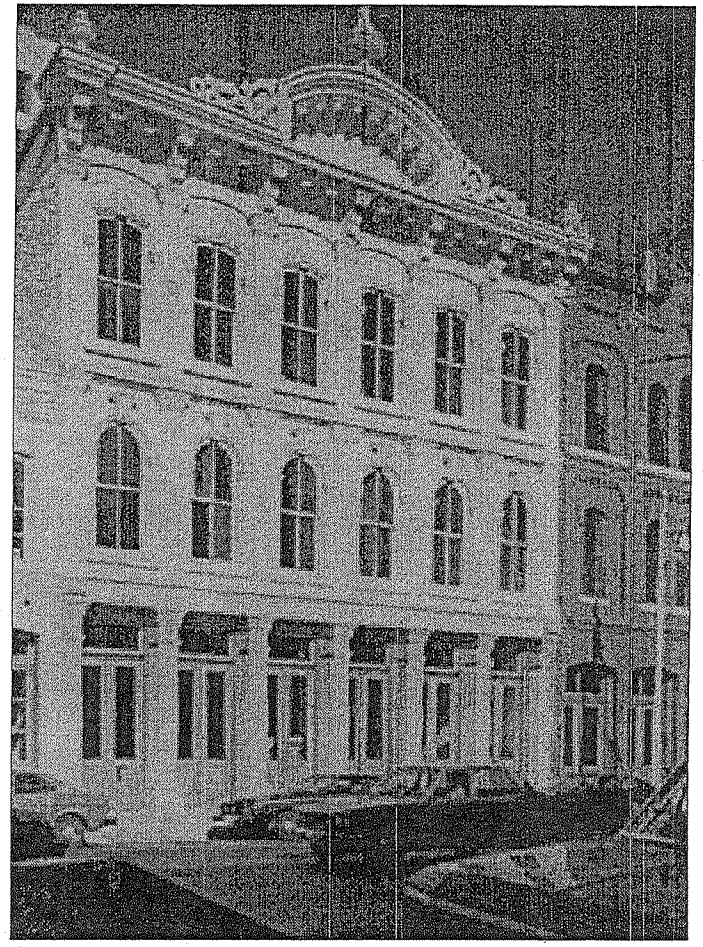
Recommended	*Not Recommended*
Design for the Replacement of Missing Historic Features	
Designing and constructing a new storefront when the historic storefront is completely missing. It may be an accurate restoration using historical, pictorial, and physical documentation; or be a new design that is compatible with the size, scale, material, and color of the historic building.	Creating a false historical appearance because the replaced storefront is based on insufficient historical, pictorial, and physical documentation. Introducing a new design that is incompatible in size, scale, material, and color. Using inappropriately scaled signs and logos or other types of signs that obscure, damage, or destroy remaining character-defining features of the historic building.



a



b



c

In the treatment, Rehabilitation, one option for replacing missing historic features is to use pictorial documentation and/or physical evidence to re-create the historic feature. (a) In this example, the ornamental cornice of an 1866 limestone building was missing; and the ground level storefront had been extensively altered. (b) and (c) Based on the availability of photographic and other documentation, the owners were able to accurately restore the cornice and storefront to their historic configuration. A substitute material, fiberglass, was used to fabricate the missing pressed metal cornice, an acceptable alternative in this project. All work met the Standards.

Building Interior

Structural Systems

Recommended

Identifying, retaining, and preserving structural systems—and individual features of systems—that are important in defining the overall historic character of the building, such as post and beam systems, trusses, summer beams, vigas, cast iron columns, above-grade stone foundation walls, or load-bearing brick or stone walls.

Protecting and maintaining the structural system by cleaning the roof gutters and downspouts; replacing roof flashing; keeping masonry, wood, and architectural metals in a sound condition; and ensuring that structural members are free from insect infestation.

Examining and evaluating the physical condition of the structural system and its individual features using non-destructive techniques such as X-ray photography.

Not Recommended

Removing, covering, or radically changing visible features of structural systems which are important in defining the overall historic character of the building so that, as a result, the character is diminished.

Putting a new use into the building which could overload the existing structural system; or installing equipment or mechanical systems which could damage the structure.

Demolishing a loadbearing masonry wall that could be augmented and retained, and replacing it with a new wall (i.e., brick or stone), using the historic masonry only as an exterior veneer.

Leaving known structural problems untreated such as deflection of beams, cracking and bowing of walls, or racking of structural members.

Utilizing treatments or products that accelerate the deterioration of structural material such as introducing urea-formaldehyde foam insulation into frame walls.

Failing to provide proper building maintenance so that deterioration of the structural system results. Causes of deterioration include subsurface ground movement, vegetation growing too close to foundation walls, improper grading, fungal rot, and poor interior ventilation that results in condensation.

Utilizing destructive probing techniques that will damage or destroy structural material.

Recommended

Repairing the structural system by augmenting or upgrading individual parts or features. For example, weakened structural members such as floor framing can be paired with a new member, braced, or otherwise supplemented and reinforced.

Replacing in kind—or with substitute material—those portions or features of the structural system that are either extensively deteriorated or are missing when there are surviving prototypes such as cast iron columns, roof rafters or trusses, or sections of loadbearing walls. Substitute material should convey the same form, design, and overall visual appearance as the historic feature; and, at a minimum, be equal to its loadbearing capabilities.

Not Recommended

Upgrading the building structurally in a manner that diminishes the historic character of the exterior, such as installing strapping channels or removing a decorative cornice; or damages interior features or spaces.

Replacing a structural member or other feature of the structural system when it could be augmented and retained.

Installing a visible replacement feature that does not convey the same visual appearance, e.g., replacing an exposed wood summer beam with a steel beam.

Using substitute material that does not equal the loadbearing capabilities of the historic material and design or is otherwise physically or chemically incompatible.

The following work is highlighted to indicate that it represents the particularly complex technical or design aspects of Rehabilitation *projects and should only be considered after the preservation concerns listed above have been addressed.*

Recommended	*Not Recommended*
Alterations/Additions for the New Use	
Limiting any new excavations adjacent to historic foundations to avoid undermining the structural stability of the building or adjacent historic buildings. Studies should be done to ascertain potential damage to archeological resources.	Carrying out excavations or regrading adjacent to or within a historic building which could cause the historic foundation to settle, shift, or fail; could have a similar effect on adjacent historic buildings; or could destroy significant archeological resources.
Correcting structural deficiencies in preparation for the new use in a manner that preserves the structural system and individual character-defining features.	Radically changing interior spaces or damaging or destroying features or finishes that are character-defining while trying to correct structural deficiencies in preparation for the new use.
Designing and installing new mechanical or electrical systems when required for the new use which minimize the number of cutouts or holes in structural members.	Installing new mechanical and electrical systems or equipment in a manner which results in numerous cuts, splices, or alterations to the structural members.
Adding a new floor when required for the new use if such an alteration does not damage or destroy the structural system or obscure, damage, or destroy character-defining spaces, features, or finishes.	Inserting a new floor when such a radical change damages a structural system or obscures or destroys interior spaces, features, or finishes.
	Inserting new floors or furred-down ceilings which cut across the glazed areas of windows so that the exterior form and appearance of the windows are radically changed.
Creating an atrium or a light well to provide natural light when required for the new use in a manner that assures the preservation of the structural system as well as character-defining interior spaces, features, and finishes.	Damaging the structural system or individual features; or radically changing, damaging, or destroying character-defining interior spaces, features, or finishes in order to create an atrium or a light well.

Building Interior

Spaces, Features, and Finishes

Recommended

Not Recommended

Interior Spaces

Identifying, retaining, and preserving a floor plan or interior spaces that are important in defining the overall historic character of the building. This includes the size, configuration, proportion, and relationship of rooms and corridors; the relationship of features to spaces; and the spaces themselves such as lobbies, reception halls, entrance halls, double parlors, theaters, auditoriums, and important industrial or commercial spaces.

Radically changing a floor plan or interior spaces—including individual rooms—which are important in defining the overall historic character of the building so that, as a result, the character is diminished.

Altering the floor plan by demolishing principal walls and partitions to create a new appearance.

Altering or destroying interior spaces by inserting floors, cutting through floors, lowering ceilings, or adding or removing walls.

Relocating an interior feature such as a staircase so that the historic relationship between features and spaces is altered.

Interior Features and Finishes

Identifying, retaining, and preserving interior features and finishes that are important in defining the overall historic character of the building, including columns, cornices, baseboards, fireplaces and mantels, panelling, light fixtures, hardware, and flooring; and wallpaper, plaster, paint, and finishes such as stencilling, marbling, and graining; and other decorative materials that accent interior features and provide color, texture, and patterning to walls, floors, and ceilings.

Removing or radically changing features and finishes which are important in defining the overall historic character of the building so that, as a result, the character is diminished.

Installing new decorative material that obscures or damages character-defining interior features or finishes.

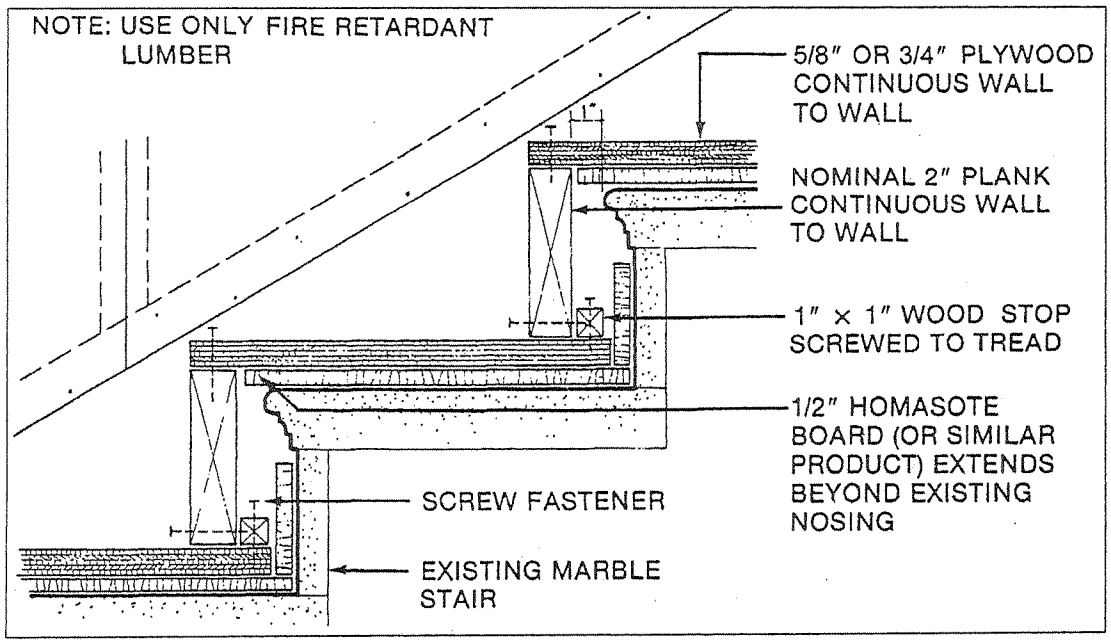
Removing paint, plaster, or other finishes from historically finished surfaces to create a new appearance (e.g., removing plaster to expose masonry surfaces such as brick walls or a chimney piece).

Applying paint, plaster, or other finishes to surfaces that have been historically unfinished to create a new appearance.

Stripping paint to bare wood rather than repairing or reapplying grained or marbled finishes to features such as doors and panelling.

Radically changing the type of finish or its color, such as painting a previously varnished wood feature.

Recommended	*Not Recommended*
Protecting and maintaining masonry, wood, and architectural metals which comprise interior features through appropriate surface treatments such as cleaning, rust removal, limited paint removal, and reapplication of protective coating systems.	Failing to provide adequate protection to materials on a cyclical basis so that deterioration of interior features results.
Protecting interior features and finishes against arson and vandalism before project work begins, erecting protective fencing, boarding-up windows, and installing fire alarm systems that are keyed to local protection agencies.	Permitting entry into historic buildings through unsecured or broken windows and doors so that the interior features and finishes are damaged by exposure to weather or vandalism. Stripping interiors of features such as woodwork, doors, windows, light fixtures, copper piping, radiators; or of decorative materials.
Protecting interior features such as a staircase, mantel, or decorative finishes and wall coverings against damage during project work by covering them with heavy canvas or plastic sheets.	Failing to provide proper protection of interior features and finishes during work so that they are gouged, scratched, dented, or otherwise damaged.



Historic features that characterize a building should always be protected from damage during rehabilitation work. The drawing shows how a resilient, temporary stair covering was applied over the existing marble staircase. Drawing: National Park Service staff, based on material originally prepared by Emery Roth and Sons, P.C.

Recommended	*Not Recommended*
Installing protective coverings in areas of heavy pedestrian traffic to protect historic features such as wall coverings, parquet flooring and panelling.	Failing to take new use patterns into consideration so that interior features and finishes are damaged.
Removing damaged or deteriorated paints and finishes to the next sound layer using the gentlest method possible, then repainting or refinishing using compatible paint or other coating systems.	Using destructive methods such as propane or butane torches or sandblasting to remove paint or other coatings. These methods can irreversibly damage the historic materials that comprise interior features.
Repainting with colors that are appropriate to the historic building.	Using new paint colors that are inappropriate to the historic building.
Limiting abrasive cleaning methods to certain industrial warehouse buildings where the interior masonry or plaster features do not have distinguishing design, detailing, tooling, or finishes; and where wood features are not finished, molded, beaded, or worked by hand. Abrasive cleaning should only be considered after other, gentler methods have been proven ineffective.	Changing the texture and patina of character-defining features through sandblasting or use of abrasive methods to remove paint, discoloration or plaster. This includes both exposed wood (including structural members) and masonry.
Evaluating the existing condition of materials to determine whether more than protection and maintenance are required, that is, if repairs to interior features and finishes will be necessary.	Failing to undertake adequate measures to assure the protection of interior features and finishes.
Repairing interior features and finishes by reinforcing the historic materials. Repair will also generally include the limited replacement in kind—or with compatible substitute material—of those extensively deteriorated or missing parts of repeated features when there are surviving prototypes such as stairs, balustrades, wood panelling, columns; or decorative wall coverings or ornamental tin or plaster ceilings.	Replacing an entire interior feature such as a staircase, panelled wall, parquet floor, or cornice; or finish such as a decorative wall covering or ceiling when repair of materials and limited replacement of such parts are appropriate.
	Using a substitute material for the replacement part that does not convey the visual appearance of the surviving parts or portions of the interior feature or finish or that is physically or chemically incompatible.

Recommended

Replacing in kind an entire interior feature or finish that is too deteriorated to repair—if the overall form and detailing are still evident—using the physical evidence as a model for reproduction. Examples could include wainscoting, a tin ceiling, or interior stairs. If using the same kind of material is not technically or economically feasible, then a compatible substitute material may be considered.

Not Recommended

Removing a character-defining feature or finish that is unrepairable and not replacing it; or replacing it with a new feature or finish that does not convey the same visual appearance.



a *b*

Rehabilitating historic dwelling units often includes some level of lead-paint hazard abatement. Whenever lead-base paint begins to peel, chip, craze, or otherwise comes loose (a), it should be removed in a manner that protects the worker as well as the immediate environment. In this example (b), the deteriorating lead-paint was removed throughout the apartment building and a compatible primer and finish paint applied. Photos: Sharon C. Park, AIA.

The following work is highlighted to indicate that it represents the particularly complex technical or design aspects of Rehabilitation *projects and should only be considered after the preservation concerns listed above have been addressed.*

Recommended	*Not Recommended*
Design for the Replacement of Missing Historic Features	
Designing and installing a new interior feature or finish if the historic feature or finish is completely missing. This could include missing partitions, stairs, elevators, lighting fixtures, and wall coverings; or even entire rooms if all historic spaces, features, and finishes are missing or have been destroyed by inappropriate "renovations." The design may be a restoration based on historical, pictorial, and physical documentation; or be a new design that is compatible with the historic character of the building, district, or neighborhood.	Creating a false historical appearance because the replaced feature is based on insufficient physical, historical, and pictorial documentation or on information derived from another building. Introducing a new interior feature or finish that is incompatible with the scale, design, materials, color, and texture of the surviving interior features and finishes.
Alterations/Additions for the New Use	
Accommodating service functions such as bathrooms, mechanical equipment, and office machines required by the building's new use in secondary spaces such as first floor service areas or on upper floors.	Dividing rooms, lowering ceilings, and damaging or obscuring character-defining features such as fireplaces, niches, stairways or alcoves, so that a new use can be accommodated in the building.
Reusing decorative material or features that have had to be removed during the rehabilitation work including wall and baseboard trim, door molding, panelled doors, and simple wainscoting; and relocating such material or features in areas appropriate to their historic placement.	Discarding historic material when it can be reused within the rehabilitation project or relocating it in historically inappropriate areas.
Installing permanent partitions in secondary spaces; removable partitions that do not destroy the sense of space should be installed when the new use requires the subdivision of character-defining interior space.	Installing permanent partitions that damage or obscure character-defining spaces, features, or finishes.
Enclosing an interior stairway where required by code so that its character is retained. In many cases, glazed fire-rated walls may be used.	Enclosing an interior stairway with fire-rated construction so that the stairwell space or any character-defining features are destroyed.

Recommended	*Not Recommended*
Placing new code-required stairways or elevators in secondary and service areas of the historic building.	Radically changing, damaging, or destroying character-defining spaces, features, or finishes when adding new code-required stairways and elevators.
Creating an atrium or a light well to provide natural light when required for the new use in a manner that preserves character-defining interior spaces, features, and finishes as well as the structural system.	Destroying character-defining interior spaces, features, or finishes; or damaging the structural system in order to create an atrium or light well.
Adding a new floor if required for the new use in a manner that preserves character-defining structural features, and interior spaces, features, and finishes.	Inserting a new floor within a building that alters or destroys the fenestration; radically changes a character-defining interior space; or obscures, damages, or destroys decorative detailing.

Building Interior

Mechanical Systems: Heating, Air Conditioning, Electrical, and Plumbing

Recommended	*Not Recommended*
Identifying, retaining, and preserving visible features of early mechanical systems that are important in defining the overall historic character of the building, such as radiators, vents, fans, grilles, plumbing fixtures, switchplates, and lights.	Removing or radically changing features of mechanical systems that are important in defining the overall historic character of the building so that, as a result, the character is diminished.
Protecting and maintaining mechanical, plumbing, and electrical systems and their features through cyclical cleaning and other appropriate measures.	Failing to provide adequate protection of materials on a cyclical basis so that deterioration of mechanical systems and their visible features results.
Preventing accelerated deterioration of mechanical systems by providing adequate ventilation of attics, crawlspaces, and cellars so that moisture problems are avoided.	Enclosing mechanical systems in areas that are not adequately ventilated so that deterioration of the systems results.
Improving the energy efficiency of existing mechanical systems to help reduce the need for elaborate new equipment. Consideration should be given to installing storm windows, insulating attic crawl space, or adding awnings, if appropriate.	Installing unnecessary air conditioning or climate control systems which can add excessive moisture to the building. This additional moisture can either condense inside, damaging interior surfaces, or pass through interior walls to the exterior, potentially damaging adjacent materials as it migrates.
Repairing mechanical systems by augmenting or upgrading system parts, such as installing new pipes and ducts; rewiring; or adding new compressors or boilers.	Replacing a mechanical system or its functional parts when it could be upgraded and retained.
Replacing in kind—or with compatible substitute material—those visible features of mechanical systems that are either extensively deteriorated or are prototypes such as ceiling fans, switchplates, radiators, grilles, or plumbing fixtures.	Installing a visible replacement feature that does not convey the same visual appearance.

The following work is highlighted to indicate that it represents the particularly complex technical or design aspects of Rehabilitation *projects and should only be considered after the preservation concerns listed above have been addressed.*

Recommended	*Not Recommended*
Alterations/Additions for the New Use	
Installing a completely new mechanical system if required for the new use so that it causes the least alteration possible to the building's floor plan, the exterior elevations, and the least damage to the historic building material.	Installing a new mechanical system so that character-defining structural or interior features are radically changed, damaged, or destroyed.
Providing adequate structural support for new mechanical equipment.	Failing to consider the weight and design of new mechanical equipment so that, as a result, historic structural members or finished surfaces are weakened or cracked.
Installing the vertical runs of ducts, pipes, and cables in closets, service rooms, and wall cavities.	Installing vertical runs of ducts, pipes, and cables in places where they will obscure character-defining features.
	Concealing mechanical equipment in walls or ceilings in a manner that requires the removal of historic building material.
	Installing a "dropped" acoustical ceiling to hide mechanical equipment when this destroys the proportions of character-defining interior spaces.
Installing air conditioning units if required by the new use in such a manner that historic features are not damaged or obscured and excessive moisture is not generated that will accelerate deterioration of historic materials.	Cutting through features such as masonry walls in order to install air conditioning units.
Installing heating/air conditioning units in the window frames in such a manner that the sash and frames are protected. Window installations should be considered only when all other viable heating/cooling systems would result in significant damage to historic materials.	Radically changing the appearance of the historic building or damaging or destroying windows by installing heating/air conditioning units in historic window frames.

Building Site

Recommended

Identifying, retaining, and preserving buildings and their features as well as features of the site that are important in defining its overall historic character. Site features may include circulation systems such as walks, paths, roads, or parking; vegetation such as trees, shrubs, fields, or herbaceous plant material; landforms such as terracing, berms or grading; furnishings such as lights, fences, or benches; decorative elements such as sculpture, statuary or monuments; water features including fountains, streams, pools, or lakes; and subsurface archeological features which are important in defining the history of the site.

Retaining the historic relationship between buildings and the landscape.

Protecting and maintaining buildings and the site by providing proper drainage to assure that water does not erode foundation walls; drain toward the building; or damage or erode the landscape.

Minimizing disturbance of terrain around buildings or elsewhere on the site, thus reducing the possibility of destroying or damaging important landscape features or archeological resources.

Not Recommended

Removing or radically changing buildings and their features or site features which are important in defining the overall historic character of the property so that, as a result, the character is diminished.

Removing or relocating buildings or landscape features, thus destroying the historic relationship between buildings and the landscape.

Removing or relocating historic buildings on a site or in a complex of related historic structures—such as a mill complex or farm—thus diminishing the historic character of the site or complex.

Moving buildings onto the site, thus creating a false historical appearance.

Radically changing the grade level of the site. For example, changing the grade adjacent to a building to permit development of a formerly below-grade area that would drastically change the historic relationship of the building to its site.

Failing to maintain adequate site drainage so that buildings and site features are damaged or destroyed; or alternatively, changing the site grading so that water no longer drains properly.

Introducing heavy machinery into areas where it may disturb or damage important landscape features or archeological resources.

Recommended	*Not Recommended*
Surveying and documenting areas where the terrain will be altered to determine the potential impact to important landscape features or archeological resources.	Failing to survey the building site prior to the beginning of rehabilitation work which results in damage to, or destruction of, important landscape features or archeological resources.
Protecting, e.g., preserving in place important archeological resources.	Leaving known archeological material unprotected so that it is damaged during rehabilitation work.
Planning and carrying out any necessary investigation using professional archeologists and modern archeological methods when preservation in place is not feasible.	Permitting unqualified personnel to perform data recovery on archeological resources so that improper methodology results in the loss of important archeological material.
Preserving important landscape features, including ongoing maintenance of historic plant material.	Allowing important landscape features to be lost or damaged due to a lack of maintenance.
Protecting the building and landscape features against arson and vandalism before rehabilitation work begins, i.e., erecting protective fencing and installing alarm systems that are keyed into local protection agencies.	Permitting the property to remain unprotected so that the building and landscape features or archeological resources are damaged or destroyed.
	Removing or destroying features from the building or site such as wood siding, iron fencing, masonry balustrades, or plant material.
Providing continued protection of historic building materials and plant features through appropriate cleaning, rust removal, limited paint removal, and re-application of protective coating systems; and pruning and vegetation management.	Failing to provide adequate protection of materials on a cyclical basis so that deterioration of building and site features results.
Evaluating the overall condition of the materials and features of the property to determine whether more than protection and maintenance are required, that is, if repairs to building and site features will be necessary.	Failing to undertake adequate measures to assure the protection of building and site features.

Recommended	*Not Recommended*
Repairing features of the building and site by reinforcing historic materials.	Replacing an entire feature of the building or site such as a fence, walkway, or driveway when repair of materials and limited compatible replacement of deteriorated or missing parts are appropriate. Using a substitute material for the replacement part that does not convey the visual appearance of the surviving parts of the building or site feature or that is physically or chemically incompatible.
Replacing in kind an entire feature of the building or site that is too deteriorated to repair if the overall form and detailing are still evident. Physical evidence from the deteriorated feature should be used as a model to guide the new work. This could include an entrance or porch, walkway, or fountain. If using the same kind of material is not technically or economically feasible, then a compatible substitute material may be considered.	Removing a feature of the building or site that is unrepairable and not replacing it; or replacing it with a new feature that does not convey the same visual appearance.
Replacing deteriorated or damaged landscape features in kind.	Adding conjectural landscape features to the site such as period reproduction lamps, fences, fountains, or vegetation that are historically inappropriate, thus creating a false sense of historic development.

The following work is highlighted to indicate that it represents the particularly complex technical or design aspects of Rehabilitation *project work and should only be considered after the preservation concerns listed above have been addressed.*

Recommended	*Not Recommended*
Design for the Replacement of Missing Historic Features	
Designing and constructing a new feature of a building or site when the historic feature is completely missing, such as an outbuilding, terrace, or driveway. It may be based on historical, pictorial, and physical documentation; or be a new design that is compatible with the historic character of the building and site.	Creating a false historical appearance because the replaced feature is based on insufficient historical, pictorial, and physical documentation. Introducing a new building or site feature that is out of scale or of an otherwise inappropriate design. Introducing a new landscape feature, including plant material, that is visually incompatible with the site, or that alters or destroys the historic site patterns or vistas.
Alterations/Additions for the New Use	
Designing new onsite parking, loading docks, or ramps when required by the new use so that they are as unobtrusive as possible and assure the preservation of the historic relationship between the building or buildings and the landscape. Designing new exterior additions to historic buildings or adjacent new construction which is compatible with the historic character of the site and which preserves the historic relationship between the building or buildings and the landscape.	Locating any new construction on the building site in a location which contains important landscape features or open space, for example removing a lawn and walkway and installing a parking lot. Placing parking facilities directly adjacent to historic buildings where automobiles may cause damage to the buildings or landscape features, or be intrusive to the building site. Introducing new construction onto the building site which is visually incompatible in terms of size, scale, design, materials, color, and texture; which destroys historic relationships on the site; or which damages or destroys important landscape features.
Removing non-significant buildings, additions, or site features which detract from the historic character of the site.	Removing a historic building in a complex of buildings; or removing a building feature, or a landscape feature which is important in defining the historic character of the site.

Setting (District/Neighborhood)

Recommended	*Not Recommended*
Identifying retaining, and preserving building and landscape features which are important in defining the historic character of the setting. Such features can include roads and streets, furnishings such as lights or benches, vegetation, gardens and yards, adjacent open space such as fields, parks, commons or woodlands, and important views or visual relationships.	Removing or radically changing those features of the setting which are important in defining the historic character.
Retaining the historic relationship between buildings and landscape features of the setting. For example, preserving the relationship between a town common and its adjacent historic houses, municipal buildings, historic roads, and landscape features.	Destroying the relationship between the buildings and landscape features within the setting by widening existing streets, changing landscape materials or constructing inappropriately located new streets or parking.
	Removing or relocating historic buildings or landscape features, thus destroying their historic relationship within the setting.
Protecting and maintaining historic building materials and plant features through appropriate cleaning, rust removal, limited paint removal, and reapplication of protective coating systems; and pruning and vegetation management.	Failing to provide adequate protection of materials on a cyclical basis which results in the deterioration of building and landscape features.
Protecting building and landscape features such as lighting or trees, against arson and vandalism before rehabilitation work begins by erecting protective fencing and installing alarm systems that are keyed into local protection agencies.	Permitting the building and setting to remain unprotected so that interior or exterior features are damaged.
	Stripping or removing features from buildings or the setting such as wood siding, iron fencing, terra cotta balusters, or plant material.
Evaluating the overall condition of the building and landscape features to determine whether more than protection and maintenance are required, that is, if repairs to features will be necessary.	Failing to undertake adequate measures to assure the protection of building and landscape features.

Recommended

Repairing features of the building and landscape by reinforcing the historic materials. Repair will also generally include the replacement in kind—or with a compatible substitute material—of those extensively deteriorated or missing parts of features when there are surviving prototypes such as porch balustrades or paving materials.

Replacing in kind an entire feature of the building or landscape that is too deteriorated to repair— when the overall form and detailing are still evident —using the physical evidence as a model to guide the new work. If using the same kind of material is not technically or economically feasible, then a compatible substitute material may be considered.

Not Recommended

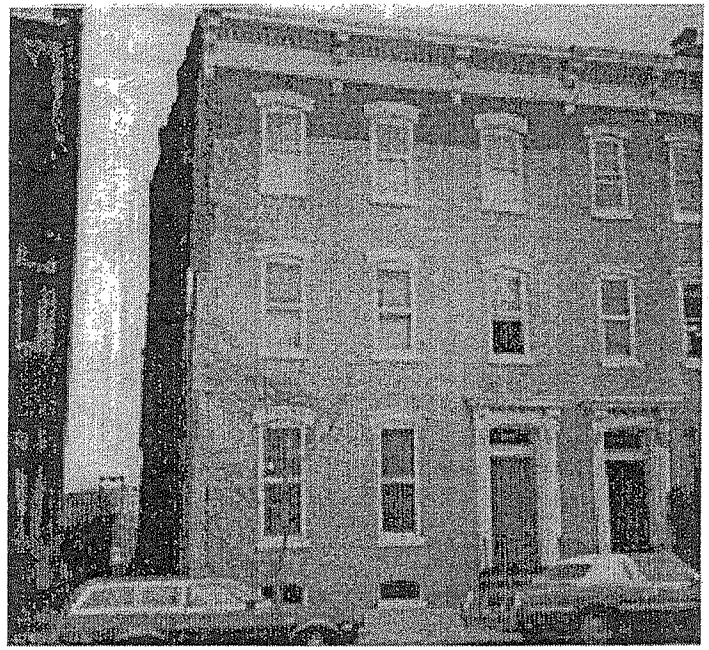
Replacing an entire feature of the building or landscape when repair of materials and limited replacement of deteriorated or missing parts are appropriate.

Using a substitute material for the replacement part that does not convey the visual appearance of the surviving parts of the building or landscape, or that is physically, chemically, or ecologically incompatible.

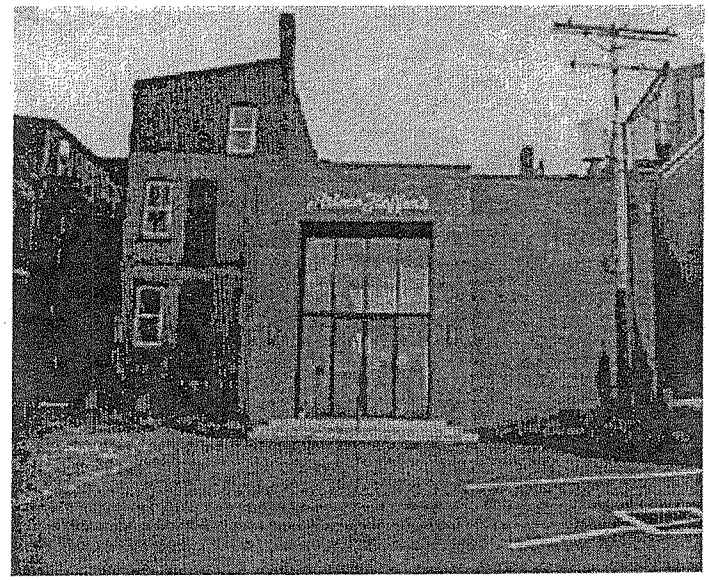
Removing a feature of the building or landscape that is unrepairable and not replacing it; or replacing it with a new feature that does not convey the same visual appearance.

The following work is highlighted to indicate that it represents the particularly complex technical or design aspects of Rehabilitation *projects and should only be considered after the preservation concerns listed above have been addressed.*

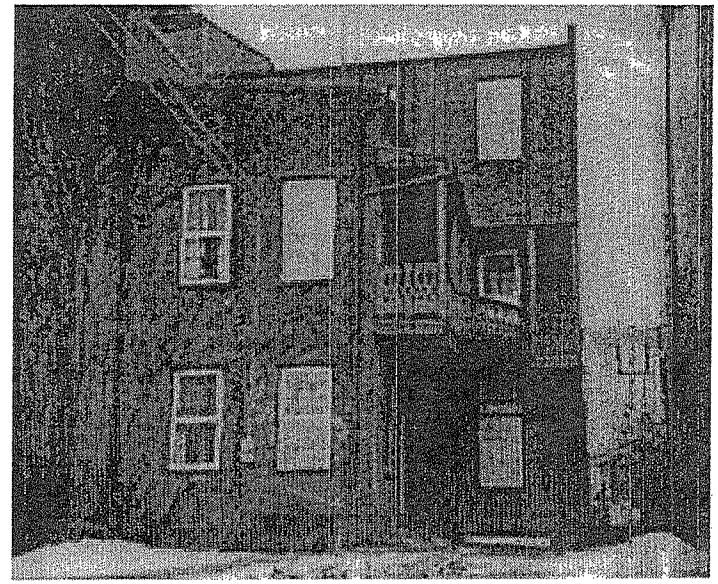
Recommended	*Not Recommended*
Design for the Replacement of Missing Historic Features	
Designing and constructing a new feature of the building or landscape when the historic feature is completely missing, such as row house steps, a porch, a streetlight, or terrace. It may be a restoration based on documentary or physical evidence; or be a new design that is compatible with the historic character of the setting.	Creating a false historical appearance because the replaced feature is based on insufficient documentary or physical evidence.
	Introducing a new building or landscape feature that is out of scale or otherwise inappropriate to the setting's historic character, e.g., replacing picket fencing with chain link fencing.
Alterations/Additions for the New Use	
Designing required new parking so that it is as unobtrusive as possible, thus minimizing the effect on the historic character of the setting. "Shared" parking should also be planned so that several businesses can utilize one parking area as opposed to introducing random, multiple lots.	Placing parking facilities directly adjacent to historic buildings which result in damage to historic landscape features, such as the removal of plant material, relocation of paths and walkways, or blocking of alleys.
Designing and constructing new additions to historic buildings when required by the new use. New work should be compatible with the historic character of the setting in terms of size, scale design, material, color, and texture.	Introducing new construction into historic districts that is visually incompatible or that destroys historic relationships within the setting.
Removing nonsignificant buildings, additions or landscape features which detract from the historic character of the setting.	Removing a historic building, building feature, or landscape feature that is important in defining the historic character of the setting.



a



c



b

If a rear elevation of a historic building is distinctive and highly visible in the neighborhood, altering it may not meet the Standards. (a and b) This 3-story brick rowhouse featured a second story gallery and brick kitchen wing characteristic of other residences in the district which backed onto a connecting roadway. (c) In the rehabilitation, the wing and gallery were demolished and a large addition constructed that severely impacted the building's historic form and character.

Although the work in these sections is quite often an important aspect of rehabilitation projects, it is usually not part of the overall process of preserving character-defining features (maintenance, repair, replacement); rather, such work is assessed for its potential negative impact on the building's historic character. For this reason, particular care must be taken not to obscure, radically change, damage, or destroy character-defining features in the process of rehabilitation work.

Energy Efficiency

Recommended	*Not Recommended*
Masonry/Wood/Architectural Metals	
Installing thermal insulation in attics and in unheated cellars and crawlspaces to increase the efficiency of the existing mechanical systems.	Applying thermal insulation with a high moisture content in wall cavities which may damage historic fabric.
Installing insulating material on the inside of masonry walls to increase energy efficiency where there is no character-defining interior molding around the windows or other interior architectural detailing.	Installing wall insulation without considering its effect on interior molding or other architectural detailing.
Windows	
Utilizing the inherent energy conserving features of a building by maintaining windows and louvered blinds in good operable condition for natural ventilation.	Removing historic shading devices rather than keeping them in an operable condition.
Improving thermal efficiency with weatherstripping, storm windows, caulking, interior shades, and if historically appropriate, blinds and awnings.	Replacing historic multi-paned sash with new thermal sash utilizing false muntins.
Installing interior storm windows with air-tight gaskets, ventilating holes, and/or removable clips to ensure proper maintenance and to avoid condensation damage to historic windows.	Installing interior storm windows that allow moisture to accumulate and damage the window.
Installing exterior storm windows which do not damage or obscure the windows and frames.	Installing new exterior storm windows which are inappropriate in size or color.
	Replacing windows or transoms with fixed thermal glazing or permitting windows and transoms to remain inoperable rather than utilizing them for their energy conserving potential.

Recommended	*Not Recommended*
Entrances and Porches	
Maintaining porches and double vestibule entrances so that they can retain heat or block the sun and provide natural ventilation.	Changing the historic appearance of the building by enclosing porches.
Interior Features	
Retaining historic interior shutters and transoms for their inherent energy conserving features.	Removing historic interior features which play an energy conserving role.
Mechanical Systems	
Improving energy efficiency of existing mechanical systems by installing insulation in attics and basements.	Replacing existing mechanical systems that could be repaired for continued use.
Building Site	
Retaining plant materials, trees, and landscape features which perform passive solar energy functions such as sun shading and wind breaks.	Removing plant materials, trees, and landscape features that perform passive solar energy functions.
Setting (District/Neighborhood)	
Maintaining those existing landscape features which moderate the effects of the climate on the setting such as deciduous trees, evergreen wind-blocks, and lakes or ponds.	Stripping the setting of landscape features and landforms so that effects of the wind, rain, and sun result in accelerated deterioration of the historic building.
New Additions to Historic Buildings	
Placing a new addition that may be necessary to increase energy efficiency on non-character-defining elevations.	Designing a new addition which obscures, damages, or destroys character-defining features.

New Additions to Historic Buildings

Recommended

Placing functions and services required for the new use in non-character-defining interior spaces rather than constructing a new addition.

Constructing a new addition so that there is the least possible loss of historic materials and so that character-defining features are not obscured, damaged, or destroyed.

Designing a new addition in a manner that makes clear what is historic and what is new.

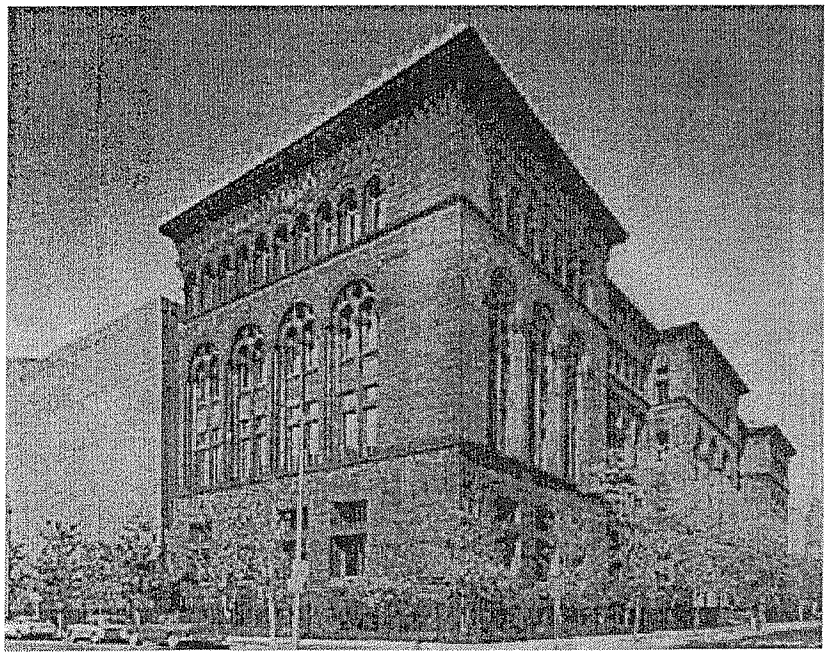
Not Recommended

Expanding the size of the historic building by constructing a new addition when the new use could be met by altering non-character-defining interior spaces.

Attaching a new addition so that the character-defining features of the historic building are obscured, damaged, or destroyed.

Duplicating the exact form, material, style, and detailing of the historic building in a new addition so that the new work appears to be part of the historic building.

Imitating a historic style or period of architecture in a new addition.



Rehabilitation, like Preservation, acknowledges a building's change over time; the retention and repair of existing historic materials and features is thus always recommended. However, unlike Preservation, the dual goal of Rehabilitation is to—respectfully—add to or alter a building in order to meet new use requirements. This downtown Chicago library was expanded in 1981 when additional space was required with light and humidity control for the rare book collection. The compatible 10-story wing was linked to the historic block on side and rear elevations. Its simple design is compatible with the historic form, features, and detailing; old and new are clearly differentiated. Photo: Dave Clifton.

Recommended

Considering the design for an attached exterior addition in terms of its relationship to the historic building as well as the historic district or neighborhood. Design for the new work may be contemporary or may reference design motifs from the historic building. In either case, it should always be clearly differentiated from the historic building and be compatible in terms of mass, materials, relationship of solids to voids, and color.

Placing a new addition on a non-character-defining elevation and limiting the size and scale in relationship to the historic building.

Designing a rooftop addition when required for the new use, that is set back from the wall plane and as inconspicuous as possible when viewed from the street.

Not Recommended

Designing and constructing new additions that result in the diminution or loss of the historic character of the resource, including its design, materials, workmanship, location, or setting.

Designing a new addition that obscures, damages, or destroys character-defining features of the historic building.

Constructing a rooftop addition so that the historic appearance of the building is radically changed.

Accessibility Considerations

Recommended

Identifying the historic building's character-defining spaces, features, and finishes so that accessibility code-required work will not result in their damage or loss.

Complying with barrier-free access requirements, in such a manner that character-defining spaces, features, and finishes are preserved.

Working with local disability groups, access specialists, and historic preservation specialists to determine the most appropriate solution to access problems.

Providing barrier-free access that promotes independence for the disabled person to the highest degree practicable, while preserving significant historic features.

Designing new or additional means of access that are compatible with the historic building and its setting.

Not Recommended

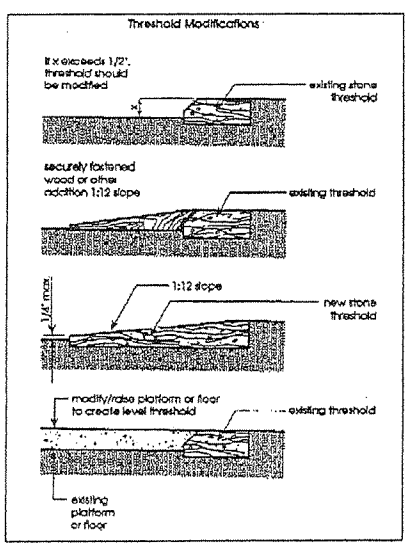
Undertaking code-required alterations before identifying those spaces, features, or finishes which are character-defining and must therefore be preserved.

Altering, damaging, or destroying character-defining features in attempting to comply with accessibility requirements.

Making changes to buildings without first seeking expert advice from access specialists and historic preservationists, to determine solutions.

Making access modifications that do not provide a reasonable balance between independent, safe access and preservation of historic features.

Designing new or additional means of access without considering the impact on the historic building and its setting.



Making a building accessible to the public is a requirement under the Americans with Disabilities Act of 1990, whatever the treatment. Full, partial, or alternative approaches to accessibility depends upon the historical significance of a building and the ability to make changes. In these examples, thresholds that exceed allowable heights were modified several ways to increase accessibility, without jeopardizing the historic character. Drawing: Uniform Federal Accessibility Standard (UFAS) Retrofit Manual.

Health and Safety Considerations

Recommended

Identifying the historic building's character-defining spaces, features, and finishes so that code-required work will not result in their damage or loss.

Complying with health and safety codes, including seismic code requirements, in such a manner that character-defining spaces, features, and finishes are preserved.

Removing toxic building materials only after thorough testing has been conducted and only after less invasive abatement methods have been shown to be inadequate.

Providing workers with appropriate personal protective equipment for hazards found in the worksite.

Working with local code officials to investigate systems, methods, or devices of equivalent or superior effectiveness and safety to those prescribed by code so that unnecessary alterations can be avoided.

Upgrading historic stairways and elevators to meet health and safety codes in a manner that assures their preservation, i.e., so that they are not damaged or obscured.

Installing sensitively designed fire suppression systems, such as sprinkler systems that result in retention of historic features and finishes.

Applying fire-retardant coatings, such as intumescent paints, which expand during fire to add thermal protection to steel.

Adding a new stairway or elevator to meet health and safety codes in a manner that preserves adjacent character-defining features and spaces.

Placing a code-required stairway or elevator that cannot be accommodated within the historic building in a new exterior addition. Such an addition should be on an inconspicuous elevation.

Not Recommended

Undertaking code-required alterations to a building or site before identifying those spaces, features, or finishes which are character-defining and must therefore be preserved.

Altering, damaging, or destroying character-defining spaces, features, and finishes while making modifications to a building or site to comply with safety codes.

Destroying historic interior features and finishes without careful testing and without considering less invasive abatement methods.

Removing unhealthful building materials without regard to personal and environmental safety.

Making changes to historic buildings without first exploring equivalent health and safety systems, methods, or devices that may be less damaging to historic spaces, features, and finishes.

Damaging or obscuring historic stairways and elevators or altering adjacent spaces in the process of doing work to meet code requirements.

Covering character-defining wood features with fire-resistant sheathing which results in altering their visual appearance.

Using fire-retardant coatings if they damage or obscure character-defining features.

Radically changing, damaging, or destroying character-defining spaces, features, or finishes when adding a new code-required stairway or elevator.

Constructing a new addition to accommodate code-required stairs and elevators on character-defining elevations highly visible from the street; or where it obscures, damages, or destroys character-defining features.

CityLife

Home | Local News | Classifieds | Archives

Friday, December 29, 2006

LOCAL NEWS
A&E
SHRAPNEL
SLINGS & ARROWS
NEWS OF THE WEIRD
SPECIAL SECTIONS
LETTERS
CALENDARS
CITYLIFEPICKS
777/666
MUSIC
FILM
CINELIST
HOROSCOPE
BOOKS & LIT
ART
STAGE
DINING OUT
CRAWL
EATS & DRINKS
SAVAGE LOVE
ARCHIVES
CONTACT US

SPONSORED LINKS

Eight uneasy pieces

The La Concha is sliced, diced and moved to a new home. Very carefully

by Tony Illia

PICTURE AN OVERSIZED ORANGE BEING PEELED INTO SEGMENTS -- but in this case, the orange is an architectural treasure. Such radical engineering is what saved the historic La Concha motel lobby.



Photo by Bill Hughes
Workers dismantle the La Concha lobby before its move to the Neon Museum.

Advertisement

Las Vegas has precious few cultural landmarks. Strip resorts often are razed and rebuilt before reaching puberty, which makes the rescue of the La Concha a small miracle. The clamshell-shaped building at 2955 Las Vegas Boulevard South escaped the wrecking ball last week, thanks, in part, to Lorenzo Doumani, its owner, who donated the iconic glass-and-concrete structure to the Neon Museum. His donation required the non-profit move it to a new location so he could build a new 654-foot-tall condo-hotel tower on the property.

The Neon Museum raised $500,000 to slice, dice and truck the 1,200-square-foot building 1.4 miles north. The undertaking, which took place from Dec. 18 to 22, marks the culmination of two years worth of planning and fundraising. The Las Vegas Commission for the Centennial, the City of Las Vegas, the Nevada Commission on Cultural Affairs and the Las Vegas Convention and Visitors Authority all kicked in to make it happen. The Friedmutter Group also donated its architectural services pro bono.

The museum plans to convert the 45-year-old structure into a new visitors' center at Las Vegas Boulevard and Foremaster Lane. The three-acre site, dubbed the Boneyard, currently holds an eclectic array of neon art -- both restored and raw. Currently, tours are only available by appointment, but that could soon change with the new facility's arrival.

"The building gives us a permanent home base with the offices and work space that it needs," says Dorothy Wright, a museum board member who oversaw the move. "It would have been destroyed otherwise."

The La Concha lobby is prime example of mid-century modern roadside architecture. It was designed Paul Revere Williams, a premier architect of his day, responsible for more than 3,000 buildings. His projects include the LAX International Airport Theme Building, a space-age symbol of Los Angeles, as well as the Shrine Auditorium. Additionally, Williams designed several celebrity homes

including those of Frank Sinatra, Lon Chaney Sr., Zsa Zsa Gabor, Anthony Quinn and Lucille Ball. He became the first African American member of the American Institute of Architects in 1923, and he was the first African American elected to the AIA College of Fellows in 1957.

The La Concha originally consisted of a two-story motel and swimming pool, which have since been demolished. Yet it's the lobby that's the eye-grabber. Built in 1961, the swooping structure is constructed from a thin reinforced concrete shell with intervening floor-to-ceiling glass window walls. The undulating shell cantilevers to create pockets of shade. It also gives the building a sense of dynamic movement like a wave washing ashore. But moving the famed structure was no easy task. The 28-foot-tall building was too big to transport in one piece. It would hit street lights, power lines and overpasses. So the Neon Museum hired problem-solver Mel Green. He's the guy who helped the city with the historic Post Office at 301 E. Stewart Ave. downtown.

"We had to cut the building in half in order to go under the freeway," said Green, a structural engineer from Torrance, Calif. "By doing that it gave us a maximum height of 14 feet."

The building was carefully mapped and cut into eight pieces. First, however, the glass and asbestos was removed. Next, Flagship Construction Co., the contractor, used a beefed-up chainsaw to break the building apart. Temporary metal supports were then welded into place to strengthen segments for transport. A 90-ton, 100-foot-long crane lifted pieces onto a flatbed truck. Each piece weighed roughly 25,000 pounds, about the size of a small Army tank, and measured 14 feet tall by 20 feet wide and 40 feet long. So it took careful coordination and planning to get it right. Due to its massive size, the truck could only travel on Las Vegas Boulevard between 1 a.m. and 5 a.m. And it required four pilot cars as chaperones. Yet the entire move came off without a hitch.

"Once the pieces came apart, it was pretty simple to pick and place them onto the truck," said Bryan Thompson, Flagship's project manager. "We started at the top with the roof segments first and moved our way down."

The pieces are being stored at the Boneyard until the museum can raise enough money to patch the building back together again. It hopes to start construction sometime in 2007. The revamped La Concha will have some modern upgrades including restrooms and UV windows. Plans also call for doubling the building size.

"We will faithfully reconstruct the original La Concha shape," said Suzette Couture, Friedmutter's senior designer. "But we are also creating a discrete addition out the back for public restrooms, offices and preservation areas."

The museum hopes to finish the building's repair work in 2008 to coincide with a $4.5 million neon city park across the street at Las Vegas Boulevard and McWilliams Avenue, adjacent to the Cashman Center.

For more information on the neon museum, visit the web site at: www.neonmuseum.org.

Tony Illia is a freelance writer. He can be reached at ***tonyillia@aol.com***.

Back to index Email this story Print this story

Call our Advertising Department at (702) 871-6780

Copyright © 2008, Las Vegas CityLife
Stephens Media, LLC

The La Concha Motel Lobby, which is listed on the City's Historic Register, was designed in 1961 by the renowned African-American architect Paul Revere Williams for the motel's owners, the Doumani family. The building l been praised as an excellent example of mid-century modern archictecture with its swooping shell-shape.

The Doumani family donated the building to the Neon Museum. The family delayed the La Concha's demolition until the Museum raised funds a year ago to cut the building in pieces and move it to the museum site.

For information contact Melanie Coffee at the Neon Museum office at 387-6366 or go to www.neonmuseum.org.

###

FOR IMMEDIATE RELEASE
December 12, 2006

HISTORIC LA CONCHA MOTEL TO BE RELOCATED
Landmark 1960's Building to Become New Home to Neon Museum Visitor' Center

One of the last historic buildings located on the Las Vegas Strip is set to be relocated. The landmark La Concha lobby, located at 2955 S. Las Vegas Boulevard, will be dismantled and transported to its new location at the Ne Boneyard where it will become a visitor's center, gallery and gift shop for th Neon Museum. The five day moving project will begin on December 18th a 8:00 am.

The moving team, consisting of the Neon Museum, Green and Associates, the Friedmutter Group architects, Flagship Construction and Construction Consultants, will cut the building into pieces, then move them individually t the Boneyard. The building will be reassembled in 2007.

La Concha Motel was built in 1961 by Paul Revere Williams, the country's acclaimed African-American architect. The building is considered a prime example of "mid-century modern style" and was an architectural and engineering marvel at the time it was constructed. With soaring arches anc thin-shelled poured concrete, the building exemplifies a style of design anc technology rarely seen today.

Williams is known as one of the foremost architects of southern California, producing and designing many well-known buildings during his almost 60 y career. He is credited with designing (either completely or in part) the Shrir Auditorium, the Beverly Hills Hotel, Saks Fifth Avenue (Beverly Hills) and t renovation of the Ambassador Hotel in Los Angeles. He was also the first African American to be named a Fellow of the prestigious American Institu

Architects.

Built for and owned by the Doumani family, La Concha was donated by the family to the Neon Museum in order to preserve this unique example of 19 style architecture. The land where La Concha currently resides will be used for the upcoming Majestic Resorts project.

Phase 1 of the relocation project, the moving of the building, will cost approximately $500,000. Funding for the moving project has been provided by the Las Vegas Commission for the Centennial, the City of Las Vegas and t Nevada Commission on Cultural Affairs, with the largest gift bestowed by t Las Vegas Convention and Visitor's Authority. Friedmutter is providing their services pro bono. The Neon Museum is receiving estimates and seeking donations for phase 2 of the project, the reassembly of the building at the permanent site.

"The La Concha building represents a special, nostalgic period of time in L Vegas' history," says Rossi Ralenkotter, president and chief executive offic of the Las Vegas Convention and Visitors Bureau. "Because of its significa both architecturally and historically, we felt it was important to preserve thi unique building. By relocating it to the Neon Museum, we believe both residents and visitors alike will enjoy the opportunity to experience classic Vegas once again."

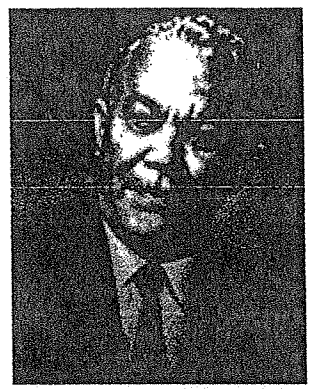
The opportunity to save La Concha was a turning point for the museum, according to Dorothy Wright, member of the board of directors for the Neo Museum and project manager for the move. "The building would have bee destroyed had it not been for the support of our community and local businesses," she says. "Through the generosity of the Southern Nevada community, we have been able to save this piece of history and demonstrate our commitment to historic preservation. We are thrilled to have this beauti building as our new 'home base' for the Neon Museum and look forward to reconstructing the facility in 2007."

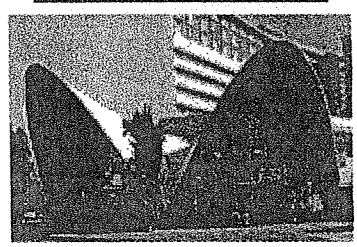
The Neon Museum is a 501 (c) 3 nonprofit organization dedicated to preserving the cultural heritage of Las Vegas through the collection, restoration and preservation of the city's most iconic signs and artifacts. Established in 1996, the Neon Museum features classic neon signs from th 1940's to today. The collection is displayed as public art throughout the downtown area, with many pieces located along the Fremont Street Experience. Additional signs are housed inside the Neon Boneyard. The Boneyard is available for group tours by appointment only (www.neonmuseum.org). Donations to the Neon Museum are also accepte through the website.

For more information on the moving of La Concha, please contact Debi Puccinelli at 702/469-6273.

Las Vegas, Nevada (Official City of Las Vegas Text Site)

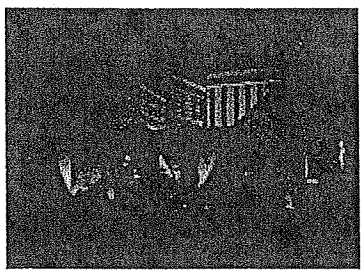
La Concha Lobby

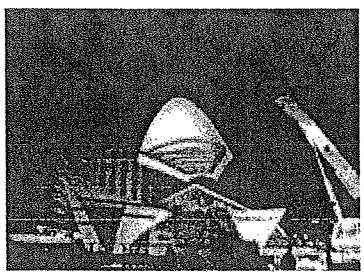


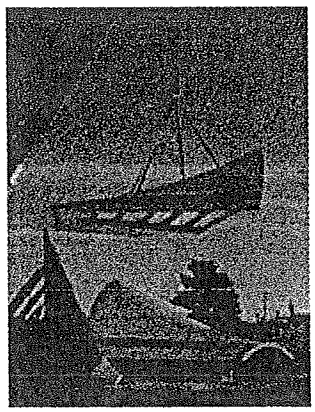


The La Concha Motel was originally constructed in 1961 on the Las Vegas "Strip," just south of the existing Riviera Hotel and Casino. The motel property included the free-form concrete shell lobby, and a rectangular two-story motel building attached to the rear of the lobby. The motel building was demolished in 2004 to make way for a new high-rise development, as yet to be built. It was designed by internationally known African-American architect Paul R. Williams (1894-1980), one of the foremost architects of southern California. He produced an incredible number of buildings in his career that spanned almost 60 years. Williams designed more than 2,000 private residences and many major civic and commercial buildings in southern California and elsewhere.

La Concha Lobby Nomination Report







Contact Information

731 South Fourth Street
Las Vegas, Nevada 89101
Phone: (702) 229-6301
Phone: (702) 474-7463

Related Links
Planning and Development Department Home Page

Historic Preservation Commission

Historic Locations Brochures

Historic Preservation Links

Historic Preservation Newsletters

Historic Las Vegas Reports

Maps of Historic Locations

.....

^ External Link

.....

© 2007 City of Las Vegas | Privacy, Security, Acceptable Use Policies | About This Web Site | Contact Us

PRESERVATION DIRECTORY.COM

Museums & Historic Structures

Categories: History Museums & Cultural Centers — Search

Hide Advanced Search Options

State/Province: Nevada
(or) Region: All regions
Keyword:

History Museums & Cultural Centers in Nevada

Boulder City Hoover Dam Museum
1305 Arizona St
Boulder City NV 89005

Burlesque Hall of Fame
PO Box 1437
Las Vegas NV 89125
Website: Visit the website...

Carson Valley Museum & Cultural Center
1477 US Highway 395 N
Douglas County Historical Society
Gardnerville NV 89410
Phone: 775-782-2555
Website: Visit the website...

Carson Valley Museum & Cultural Center
1477 US Highway 395 N
Douglas County Historical Society
Gardnerville NV 89410
Phone: 775-782-2555
Website: Visit the website...

Carson Valley Museum & Cultural Center
1477 US Highway 395 N
Gardnerville NV 89410

Clark County Heritage Museum
1850 S Boulder Hwy
Henderson NV 89015

Don Laughlin's Classic Car Collection
1650 S Casino Dr
Laughlin NV 89029

Historic Fourth Ward School Museum
537 South C Street
Virginia City NV 89440
Contact: Barbara Mackey
Phone: 775-847-0975
Fax: 775-847-1011
Email: Send an email...
Website: Visit the website...

Neon Museum
731 S 4th St
Las Vegas NV 89101

Nevada Northern Railway Museum
1100 Avenue A
Ely NV 89301

Nevada State Museum

Nevada State Museum and Historical Society

600 North Carson Street
Carson City NV 89701
Phone: 775-687-4810
Fax: 775-687-4168
Website: Visit the website...

Nevada State Railroad Museum
2180 S Carson St
Carson City NV 89701
Phone: 775-687-6953
Fax: 775-687-8294
Website: Visit the website...

Way It Was Museum
PO Box 158
Virginia City NV 89440

700 Twin Lakes Drive
Las Vegas NV 89107
Phone: 702-486-5205
Fax: 702-486-5172
Website: Visit the website...

Sparks Heritage Museum
820 Victorian Ave
Sparks NV 89431

Western Folklife Center
501 Railroad St
Elko NV 89801

© Copyright 2008 - PreservationDirectory.com | website by Stolutions

KUMMER KAEMPFER
ATTORNEYS AT LAW
LAS VEGAS OFFICE

MARK E. FERRARIO
mferrario@kkbrf.com
702.693.4208

KUMMER KAEMPFER BONNER
RENSHAW & FERRARIO

LAS VEGAS OFFICE
3800 Howard Hughes Parkway
Seventh Floor
Las Vegas, NV 89169
Tel: 702.792.7000
Fax: 702.796.7181

RENO OFFICE
5585 Kietzke Lane
Reno, NV 89511
Tel: 775.852.3900
Fax: 775.852.3982

CARSON CITY OFFICE
510 W. Fourth Street
Carson City, NV 89703
Tel: 775.884.8300
Fax: 775.882.0257

November 5, 2008

Via Fax (702) 464-2578 and Regular Mail
Kathleen C. Rainey
Manager of Purchasing and Contracts
City of Las Vegas
400 Stewart Avenue
Las Vegas, Nevada 89101

Re: **Bid Protest of APCO Construction**
Project: Las Vegas Museum Phase 3 – Rehabilitation
Bid No. 08.15341.04-LED
Our Client/Successful Bidder: Flagship Construction Company, LLC

Dear Ms. Rainey,

Flagship is confused by the content of your October 30, 2008 letter. It appears the city is changing the rules mid-game. My clients experience was fully vetted and Flagship was informed by Lloyd Davis that the City was recommending my client for the award of the Las Vegas Museum Project after review of my clients' historical experience.

We request a copy of the meeting minutes from the Mandatory Pre-Bid Meeting held on September 4, 2008 at 3:00 PM. It is our belief that these meeting minutes will show the discussion regarding the requirements of historical experience on this project as articulated by the city representative Mr. Davis. It is my understanding that there was a lengthy discussion regarding how the City would handle a low bidder if the contractor did not have the historical experience. Mr. Davis said that the historical experience requirement in the documents is "subjective" and the City could choose price over experience. He made it clear everyone should bid whether they had the historical experience or not. There was further conversation regarding the requirement for the contractor to have a conservator superintendent experienced in rehabilitation. He felt that this was an important factor.

The statements made at the Mandatory Pre-Bid Meeting did what you now say you want to do. In short all bidders know the rules when the bids were placed and there is no reason to refrain from awarding the contract to Flagship.

We understand the owner's right to reject all bids but the owner has put Flagship in an unfair position by publishing the names of the subcontractors that Flagship included in its proposal. We request that the City re- think its position regarding this matter in light of the comments made during the Pre-bid meeting and that you proceed to award the contract to Flagship to avoid further proceedings.

KUMMER KAEMPFER

So as not to further delay this matter I would request a response by this Friday. Thank you for your anticipated cooperation.

Sincerely,

KUMMER KAEMPFER BONNER RENSHAW & FERRARIO

Mark E. Ferrario

MEF/vll

MERITAS
LAW FIRMS WORLDWIDE

FAX

Kummer Kaempfer Bonner Renshaw & Ferrario
Seventh Floor
3800 Howard Hughes Parkway
Las Vegas, NV 89169
Phone: (702) 792-7000
Fax: (702) 796-7181

Date: 11/5/08

No. of Pages: 3
(Including cover sheet)

TO:	Fax No:	Phone No:
Kathleen C. Rainey	464-2578	

FROM:	Client/Matter No:
Mark E. Ferrario	14439.14

Regarding:

Bid Protest of APCO Construction

Message:

Please see the attached letter.

THE FOLLOWING PAGES ARE A CONFIDENTIAL ATTORNEY-CLIENT COMMUNICATION INTENDED ONLY FOR THE PERSON NAMED ABOVE. IF YOU ARE NOT THE PERSON NAMED ABOVE, OR THE EMPLOYEE OR AGENT RESPONSIBLE FOR DELIVERY OF THE FOLLOWING INFORMATION, YOU ARE HEREBY NOTIFIED THAT ANY DISSEMINATION, DISTRIBUTION OR COPYING OF THIS COMMUNICATION IS STRICTLY PROHIBITED. IF YOU HAVE RECEIVED THIS COMMUNICATION IN ERROR, PLEASE NOTIFY US IMMEDIATELY BY TELEPHONE AND RETURN THE ORIGINAL MESSAGE TO US BY MAIL. WE WILL GLADLY REIMBURSE YOUR POSTAGE EXPENSE. THANK YOU.

* * * COMMUNICATION RESULT REPORT (NOV. 5. 2008 2:52PM) * * *

FAX HEADER:

TRANSMITTED/STORED : NOV. 5. 2008 2:50PM

FILE	MODE	OPTION	ADDRESS	RESULT	PAGE
419	MEMORY TX		5680#14439#14#4642578	OK	3/3

REASON FOR ERROR
E-1) HANG UP OR LINE FAIL
E-2) BUSY
E-3) NO ANSWER
E-4) NO FACSIMILE CONNECTION

MERITAS
LAW FIRMS WORLDWIDE

FAX

Kummer Kaempfer Bonner Renshaw & Ferrario
Seventh Floor
3800 Howard Hughes Parkway
Las Vegas, NV 89169
Phone: (702) 792-7000
Fax: (702) 796-7181

Date: 11/5/08

No. of Pages: 3
(Including cover sheet)

TO: Kathleen C. Rainey
Fax No: 464-2578
Phone No:

FROM: Mark E. Ferrario
Client/Matter No: 14439.14

Regarding:
Bid Protest of APCO Construction

Message:
Please see the attached letter. □

THE FOLLOWING PAGES ARE A CONFIDENTIAL ATTORNEY-CLIENT COMMUNICATION INTENDED ONLY FOR THE PERSON NAMED ABOVE. IF YOU ARE NOT THE PERSON NAMED ABOVE, OR THE EMPLOYEE OR AGENT RESPONSIBLE FOR DELIVERY OF THE FOLLOWING INFORMATION, YOU ARE HEREBY NOTIFIED THAT ANY DISSEMINATION, DISTRIBUTION OR COPYING OF THIS COMMUNICATION IS STRICTLY PROHIBITED. IF YOU HAVE RECEIVED THIS COMMUNICATION IN ERROR, PLEASE NOTIFY US IMMEDIATELY BY TELEPHONE AND RETURN THE ORIGINAL MESSAGE TO US BY MAIL. WE WILL GLADLY REIMBURSE YOUR POSTAGE EXPENSE. THANK YOU.

LAS VEGAS CITY COUNCIL

OSCAR B. GOODMAN
MAYOR

GARY REESE
MAYOR PRO TEM

LARRY BROWN
STEVE WOLFSON
LOIS TARKANIAN
STEVEN D. ROSS
RICKI Y. BARLOW

DOUGLAS A. SELBY
CITY MANAGER

VIA FACSIMILE (702) 796-7181

November 14, 2008

Mark E. Ferrario, Esq.
Kummer Kaempfer Bonner Renshaw & Ferrario
3800 Howard Hughes Parkway, 7th Floor
Las Vegas, Nevada 89169

Re: Bid No. 08.15341.04-LED
Las Vegas Museum Phase 3 Rehabilitation

Dear Mr. Ferrario;

Attached are the minutes from the Mandatory pre-bid meeting held on September 4, 2008 per your request on November 5, 2008.

As previously indicated to you, the City has invoked its right to reject all bidders and intends to re-bid the project. This action is in the best interest of the City; and as stated in prior correspondence, a new bid will be issued that revises the invitation to bid and the technical specifications.

Very Truly Yours,

Kathleen C. Rainey, Manager
Purchasing and Contracts

KR/bh

Enclosures

cc: Jorge Cervantes
Lloyd Davis
John Ridilla
Bob Sylvain

CITY OF LAS VEGAS
400 STEWART AVENUE
LAS VEGAS, NEVADA 89101

VOICE 702.229.6011
TTY 702.386.9108
www.lasvegasnevada.gov

Lloyd Davis: Oh, I'm sorry, you hit play. Good afternoon everybody. I just turned the recorder on We do record these pre-bid meetings that way any questions asked I have a record of them we can go back and listen to them to make ah to get the addendums correct. My name is Lloyd Davis I'm a contract specialist for the City of Las Vegas, we're here for the Mandatory Pre Bid on Bid Number 081534104 which is the Las Vegas Museum Phase Three Rehabilitation.
Now this is a mandatory Pre-Bid *and* Site Visit. Now it's mandatory for the General Contractors, Subs you're more than welcome, you know, if you want to leave in the middle of the of the ah meeting you can do that and it won't hurt, it won't hurt ya as far as being able to bid because you're the sub contactor. General Contractors you must be here from the start to the finish if there's two representatives here at least one has to be here for the entire meeting. When we get over to the site visit I will take a roll call because to ensure that you've attended both meetings.
Now, I will officially close the meeting in a few minutes, I give time for people to get parked and get over here and then when I officially close it then I will take up the sign-in sheet and make sure that no one signs after me. There's two, two seats over here gentlemen. But the ah I'm going to get, get rid of some of the administrative stuff here while we're waiting to close it and that would be introductions so...

Dianne Collins: Oh ah, Dianne Collins City of Las Vegas Purchasing and Contracts.

Sam Tolman: Sam Tolman Architectural Project Manager for the project, for the City.

LD: Sir...

Attendee: Oh, Matt with ah Martin and Harris

Attendee: Seth Maurer, Core

Attendee: Ed Howard, Cobblestone

Attendee: Anthony Wallace, APCO Construction

Attendee: (indistinct)....APCO Construction

Attendee: Steve Brook, Jaynes Corporation

Attendee: Jeff Rensomon, Jaynes Corporation

Attendee: Martin Makinson, Jaynes Corporation

Attendee: Sherman Isensee with Complex Builders

Attendee: Nancy Briseno, Whiting Turner

Attendee: Michael Keller, O'Conner Construction Management

Attendee: Bart Spjute, J & S Mechanical

Attendee: I'm Erin Umberger. I'm with Westlake Reed Leskosky, I'm the Project Architect.

Attendee: I'm Robert Chattel. I'm with Chattel Architecture Planning and Preservation. I'm the consulting historic preservation architect.

Tressa Fernandez: Tressa Fernandez, City of Las Vegas Purchasing and Contracts

Attendee: Ken Shoemaker, John Jory

Attendee: Fred Kuhn, John Jory

Attendee: Doug Burchfield, John Jory

Attendee: Steve Torres, APCO Construction

Attendee: Chris Nelson, Penta

Attendee: Aaron Forde, Penta

Attendee: Pierre Uedel, Flagship

Attendee: Justin Zeh, Whiting-Turner

Attendee: Mark Sauer from Mark Sauer Construction

Attendee: Ryan Snyder with Whiting Turner

Attendee: Bob Jeffries, Rafael Construction

Attendee: Laura Jeffries, Rafael Construction

Attendee: Jim (indistinct), Morgen & Oswood

Attendee: Thad Lawrence(?), Burke & Associates

Attendee: Brandon Smith, Burke & Associates

Attendee: Chris Lane, Richardson Construction

Attendee: Wade Lewis, Project Development

Attendee: Donald Mackay, Walker Specialty Construction

Attendee: Matthew Weinberger, Kitchell Construction

Attendee: Bill with Walker Specialty Construction

Attendee: Dave McKlurg, with C.I. Contractors

Attendee: Eric Singman, City of Las Vegas

LD: All right let see there's one seat there...for the gentleman there. Let me get, lets see if I can get a couple more chairs.

Sam: While you're standing John, introduce yourself.

John O'Connell: John O'Connell City of Las Vegas

LD: Ok... Now we've got the sign-in sheet here. All right ah, I'm going to be going through ah through this package here. I'm not ah gonna, gonna be reading every word, I'm not going to cover every page or paragraph...there's a chair coming in for you right now...ah, I'm just going to highlight a few areas. If I skip over a paragraph that you looked at and you wanted to have questions on just ah stop me and we'll discuss that paragraph. Ah if I'm going a little too fast or if I don't speak up if you don't understand me you can stop me and ask me again what I said and ah once I go through my section then we'll we'll ah turn it over to ah our public works department and they'll go over the specifications and then we'll open it up for questions and answers. And again ah we'll we'll after we get done with the stuff in here we'll go across the street to the ah, there is a, you opened it up for parking over there?

ST: Yeah, they can drive over there and park on the west side.

LD: Ok and we'll discuss that right before we leave. Ah, lets see...and we're starting to run out of chairs (background talk)...Oh there's one right here... just gotta make sure we get the sign in sheet over there too, yeah, cause the sign in sheets coming around, it's already been around the table.

All right, this project consists of the rehabilitation of a, of a 1933 historical building. Ah you all know it's the post office, the old post office over here. It's going to be done in compliance with the United States Secretary of Interior's standard for ah historical ah rehabilitation. The work includes but not, not limited to some demolition and removal of hazardous materials, some ah remodeling and some historical rehab and infrastructure, ah, for interactive museum ah tenant improvements. Ah, the existing building is cast in place concrete ah basement

walls, there's some columns ah floor, columns ah columns from floor to roof. Ah lets see here ah there's some and I had a misspelling here didn't I, ah Sam...

ST: Ok, let me read the way that's supposed to read.

Lloyd: Ah yeah, cause I misspelled something...

ST: The building is cast in place concrete basement walls, columns, floors and roof. While the above grade floors ah above grade, ah above the grade floor the walls are multi-white brick with terra cotta and sandstone veneers.

LD: Yeah that 'with' is the wrong word. It's 'white'.

ST: White... I said with, it's supposed to be white.

LD: Yeah all right ah and ah the existing interior walls are hollow ah clay tile and plaster. The rehab also includes some interior plaster, some finishes to, ah include installing, reinstalling existing materials salvaged during prior demolitions that we that we have ah on, in the, ah store. Ah, the project is partially funded by federal funds and is subject to federal provisions contained in this document. It's not prevailing, it's not Davis Bacon though. All right, it's straight Nevada ah prevailing wages. Ok there's no, there's no Davis Bacon in it, however there are some federal provisions which are very minor. There's a ah lobbyist ah certification you have to have to fill out and a debarment certification you have to fill out. All right (cough) excuse me, ah there's a PWP number assigned because of the prevailing wage provision. The estimated value of this project is 15 million to 21 million. The Bid Opening at the present time is scheduled for September 25th. Ok, the Bid Opening will be held in this room here at 1:30. It's open to the public you're more than welcome to come and hear the bids received. We do not make any determinations at that Bid Opening. All we do is read the bids. I acknowledge, I do not review, I acknowledge the forms that were submitted. All right, I don't make any determinations, so don't expect me to right away jump up and say that so and so's got the job, you know, all right. Ah, after we get done and we go back and ah review them. Now uh, we need some more chairs... Here, ok, I was gonna say I'll give up one chair here (background "Oh that's all right, I'm good") No I don't mind standing. Ah, where was I? Oh. Ok the Bid Opening. It's held in this room here, however your bids are turned into the City Clerk's Office which is next door in the ah main tower on the on the first floor. Now this is only for the General Contractors. Sub contractors you need to contact the General Contractors and talk to them about your bids, ok? Cause I'm saying that because I have had sub contractors turn in bids by mistake to us, all right. We only take it from the General Contractors. All right General Contractors you need to turn it into the City Clerk's Office they time-stamp them. If it's time-stamped at 1:31, it will not be considered. So don't come running in here with them, make sure you get it over to them. All right, any questions after today need to be sent in writing, all right. My fax number's on the, on the cover sheet here and we want your questions in by September 12th. We're on a very tight, ah, timeline here. We do not anticipate extending the Bid Opening, so get that, get that out of your head right now about calling me up and asking me to extend it, all right? We do not anticipate extending the Bid Opening at all costs, all right? Because, we are on a tight, ah, funding issues. We've gotta get this thing awarded; we gotta get the work started. All right? So, *please*, review the specs, the plans and get your questions in as soon as possible so we can get an addendum out, all right? All right it is now 3:10; I'm closing this meeting to any further General Contractors so, the General Contractors in here are the ones who will be bidding on this project. Any other General Contractors coming in would not be allowed to bid on this project; they can come in and listen, this is open, this is an open meeting so I cannot refuse anybody entrance into this meeting but they would not be able to (indistinct). The sign in sheet. Please make sure it gets around. I need to keep an eye on it, do not separate those pages I need to make sure that all 5 pages are kept together so I can get 'em back up here. All right, is she bringing in another chair? No? All right, all right.

Attendee: He's with me.

LD: He's with you? Ok.

Attendee: He's with me.

Attendee: He just got disqualified.

Unknown: Yeah, right.

LD: And now, again, I want to repeat though that the, that the General Contractors, you know if you have more than one representative here, at least one of you have to stay here, here and go to the site visit. All right, and I will take a roll call at the site visit before we continue on when we get there. All right. I have had that happen where some, someone here didn't go to the roll call, I crossed their name off, you know? I gotta lot of witnesses here.

ST: Those who came in when we got started make sure you get your name on that list.

LD: Oh yeah, I'll, I'll double check that before we, ah, before I (indistinct). Ok. Ok, bid documents are available from our front counter out here for a non-refundable fee of $250.00. If you don't want to take it with you to this, there's 3 books and 2 plans, if you don't want to carry it with you we're gonna charge you $20.00 for mailing, all right? I just want to throw that in there. Most people take it with them but just in case. All right, the ah, on page one at the very top is my phone number and fax number and the date for the ah questions to be turned in, all right. *Do not call* our consultants, do not call the Public Works people, do not call our the engineers, the architects, anybody, and ask questions. *All questions must come through me.* Period.. And this is for the consultants and the architects, if you get a phone call, *please*, refer them back to me. Reason: I want to know everything that's coming in so I can make sure that everybody out there gets the same information. I don't want Company A having the information that Company B doesn't have. All right? I don't work that way. Please make sure it all gets into us, all right...Uh...

Attendee: She's also with me...

LD: Ok

(Background chatter)

DC: Small army there.

LD: Do you want a chair?

Attendee: No, I'm fine.

LD: Ok it's going to be a few minutes. Ok, all right. The next couple of pages, definitions, I'm not going to go through those definitions, you all can take the time and read through them. Ah we already talked, ah, we did ah, if an Addendum is issued we'll ah, there's a place on the Proposal page for you to acknowledge that, I'll get into that in a moment. What I want to cover is the Bid Opening, like I said the Bid Opening will be held in here on September 25th, it's gotta be turned into the City Clerk's Office. Make sure it's in a sealed envelope. The outside is clearly marked as a bid, put your company name, bid date and time, and the bid number. The City Clerk is the official ah timekeepers and record keepers. They have to make a log of those bids. If any of the information is missing on the outside, they are going to open your bid and pull it out and retrieve that information. I don't want them to open your bid, I wanna open it. I'm a selfish person. All right? Make sure the outside is clearly marked. All right. Ok, the next thing I want to talk about here is the submittal requirements. We've reduced some of your submittal requirements at the bid time, to give you more time to concentrate on filling out your bid. All right? We've got it back in line with what NRS requires at the Bid Opening. Now all that you can submit every document that we ask for at the Bid Opening but there's time frames where you can wait

if you want to. All right? *But*, the items that we'll, that I will be looking for will be your bid proposal pages which I'll go into detail in a moment on. All right, Bid Security. Bid Security will be a form of a cashiers check, certified check, money order or bid bond. Now, for the three apparent Low Bidders, we will hold those bid bonds until, that bid security, until we make an award, we get a signed contract. So if you use a money order, cashiers check or certified check the City will hold that in our safe until we have a signed contract. Even though you might not be the Low Bidder, if you're one of the three we will hold your security until we get a signed contact. So just keep that in mind if you use those other forms, that your money's goinna be tied up for you know 30-60 days. I've had that happen, I've had someone call in and crying for their check and I said that I've gotta hold it. Any question on that?

Ok the other submittal is your 5% Subcontractor List. That is required with your bid, that's in the NRS statute. And I'll cover that in more detail in a moment, all right. The next submittal is your 1% Subcontractor List. You will have two hours at the completion of the Bid Opening to submit that. Unless you put it in with your bid. Excuse me, if you, if you wait, the three apparent Low Bidders will have will have will have two hours after the Bid Opening, It has to be turned in at the City Clerk's Office. All submittals, even the daily ones, the next ones I'll be talking about, everything has to be turned in to the City Clerk's Office. They cannot be *faxed*. It has to be handed to them, they time stamp 'em and then they bring them over to us. Now I just want to make that clear, they cannot be *faxed*, all right? Ok, uh, that's the last submittal as far as on on the Bid Opening day is the 1% and you'll have two hours after the Bid Opening. That two hours is, is statute, we cannot waive that. We rejected a bid not too long ago, it's getting longer now it's been about 6 months; the Low Bidder lost the bid because their subcontractor 1% list came in at 2 hours and 10 minutes. And they were Low Bidder. We *cannot waive that*. All right? Now, the rest of these submittals are informational documents, they not required by NRS, but they are required by the City of Las Vegas. All right? You will have one business day to submit these documents. Again, you can submit 'em with your bid if you want to. They have to be turned into the City Clerk's Office they can't be faxed in. And they are the Certificate of Eligibility, Evidence of Good Faith Effort, Schedule of Values, Superintendents proj, ah, Resume, List of Completed Projects, and the Federal Certifications, which is that lobbyist and the ah debarment certs. All right? You'll have one business day to submit those; again you can submit them with your bid.

Now, to the left on the left margin of some of the paragraphs, there's a box, like on the Supplier List here, there's a box out to the left of the margin. It's empty, that means that that does not apply, we're not asking for a Supplier List. And you'll see it in some other areas. If there's an X in the box, which you will see also, throughout this document, that proj, er uh, paragraph *does* apply to this project, i.e. the Federal Certification requirements has a box and it's X'd, all right. Any question on any of that information?

Ok the other two ah submittals here will be after Bid Opening and ah when we're getting ready to award which will be the Owner-Contractor Agreement and your Bonds and the Insurance. The only thing I want to point out here is it changed a little while ago but if you haven't bid with us in the last 6 months you might not have noticed. The ah requirement is now three business days to get your bonds and insurance into the City, and your signed contract, used to be 5 business days. We changed it to 3 business days and guess what? We've been getting them in 3 business days, so 5 business days was too long. All right. Now there has been a change which is going to help you all, it's going to lower your cost also, I was going to cover it later but I might as well cover it here. There's been a ruling by the Nevada courts, there's a provision in ah, I don't know which provision it is, 624 or something, NRS, where the City was ah, where the State was requiring bonds to be countersigned by an agent of ah Nevada resident. If you had, like if your bonding company was in Arizona then they had to send it to a Nevada ah resident license and get it and then they charged you another fee for that. That's been taken out. The Bonds do not have to be countersigned. That's a cost-savings to you which the City will recognize in their bids. Now, so, so it does not have to be countersigned by a Nevada resident. They have to be licensed, you know, whatever the law requires they have to be licensed if you know, to be able to sell you a bond for Nevada, but they don't have to be a Nevada resident, ah agent. So, you all figure that out. Your bonding companies know what I'm talking about, and I, you all probably do, too. All right. Ok, any question on any of that?

All right, ah withdrawal of bid, there's two ah two areas here I wanted to talk about real quick because I've had an instance where it's happened, so. Prior to Bid Opening, if the City Clerk still has your bid you can just walk over there and ask to withdraw your bid and they'll hand it back to you. Now in here our document says post Bid Opening which means after bid opening, you have to submit a written request to the to the Purchasing manager, a request to withdraw your bid and there's a whole bunch of stuff here, you gotta say why you want it withdrawn and all that. Now, let me exp, let give a definition of in here about post Bid Opening. Once the City Clerk has brought it over to me and give it, put it in my hands, and if you're sitting right here, I can't give you back your bid, you can't withdraw it here. Once I get it I need to open it as the public opening, and read it. So I can't, I had to have it, I had a bidder come in and they're sitting here and they said oh I want to withdraw my bid. It's after the Bid Opening time, the Bid Opening time is 1:30, I get it about 1:35, so I have to open it so if you want to withdraw your bid you need to do it before the Clerks office, while the Clerk has it. All right any questions on that? I'm just saying that cause I have had that happen, I've had it happen.
Licensing just make sure you're properly licensed to do the work ah that you're bidding on, make sure and check your subcontractors and make sure they're properly licensed. We do pull a copy of your license and that's both ah your contractors license and your City license, the City business license, make sure it's up to date. We verify all that. We verify it on the low, the Low Bidder and your subs. We, we don't verify the City license on your subs, just you're, just the contractors license, but give us time they might change that too. Any questions on any of that?

Ok, ah Award Criteria. Award's gonna be made to the lowest responsive, responsible or best bidder for the total amount of the base bid. There's no alternative, ah alternate additives on this.

Attendee: I think there is, Lloyd.

ST: No, there aren't.

LD: Nope, no.

Attendee(s): "Yes", "There is", "There's three of them showing in the bid documents", "Wait a minute"

LD: There's an addendum coming out, there's nothing on the Bid Schedule.

ST: That's great, you guys looked at the plans.

LD: I love that! I'm impressed.

Attendee: Thank you, Sam.

ST: Most people come here before they pick 'em up.

LD: Yeah, most people come and pick 'em up here, or afterwards. But ah, yeah I guess we're aware of that and we're doing an addendum to make the corrections, so it's either going to be taken out of the plans or will be added to the Bid Schedule, I don't know, they haven't told me. So, wait for the addendum, but thank you.

OK the next couple of pages talks about the lowest responsive and responsible bidder criteria, what we look at. There's a lot of sub paragraphs here, A through N on one of them, A through Q on the other. I'm not going to ah, go over all of those you can read through them, I do want to highlight the one here on C which is your experience.

Ok, this is very important. Whether the Bidder has experience in Historic Rehabilitation having successfully completed *one project* during the past ten years, that has conformed to the U.S. Secretary of the Interior Standards of Rehabilitation. All right, so the General Contractor, that's the criteria we're going to be looking at.

Attendee: How are you determining that, 'cause there's nothing in the submission of the bid for that?

LD: Yes, there is, right back here, under your Attachment 6, List of Completed Projects. You'll tell us what that is and we'll verify it.

Attendee: But what if the low responsive bidder doesn't have one, are you gonna throw 'em out?

LD: Well, we evaluate it.

Attendee: So, then, its subjective criteria.

LD: All I'm saying is uh, these are items that it says right here, the Owner *may* take in consideration, including but not limited to the criteria listed below, Ok.

Attendee(s): "OK" (indistinct)

LD: Ah, there's another area on here that was added which is called whether the Bidder is listed on the Federal Debarment List. We do, we do pull, that one's not waiverable, if you're on the Debarment List you ain't getting the award, ok? The Federal or the State one.

Attendee: Now going, going back to the historic part of it, can a GC qualify if a major subcontractor is executing the, ah, the restoration portion of the work?

LD: That's ah, ah that's a consideration, that's part of our evaluation.

Attendee: All right.

LD: And if we need to we can clarify in an Addendum on that. We can, I have seen now again anything said here does not change the Bid Specs unless it's on the Addendum, ok. I'm just trying to give you a reference of other projects I've had where we've had something like that, not the historical, but a particular criteria that a bidder had to meet. We have changed it to say that the firm performing the work, you know, we've separated out certain work, ah like ah, what is it, CIPP, we've separated it out. Go ahead, John.

John O'Conner: Common sense would dictate that if you're doing electrical-mechanical, ah, you'd ah, put in modern equipment. Anything that has to do with the restoration of the building related to historical preservation that's what we're looking for. It's a common sense approach to it.

LD: But, but no it's a good question though, and like I said we've had some where ah someone's putting in a bridge but the General Contractors never put a bridge in, but that's the majority of the work that their subcontractor had done that and we, we look at that. You know, so. Yes?

Attendee: I believe in the Summary of Work there was a description of two ah prequalified historical renovation contractors, subcontractors one of which is not licensed in Nevada.

LD: I don't know about that.

Attendee: One is and one is not.

LD: Do you have, do you have a reference on that?

Attendee: Maybe you would be able to ah, to ah adend (sic) the Bid Form to have the contractor state what renovation contractor we're using?

LD: Well we're ah, they have to list them if it's over 5;-1% which is 50,000 dollars and this is a ah 21 million dollar project (interrupted) so, ah

Unknown: The restoration work is... (indistinct)

Unknown: They need to be licensed, so we... (indistinct).

LD: Yeah, well ah, they have to be licensed...What?

ST?: I'd just like to mention, um, if you've seen something in the specs that's a problem you email it, or fax it in writing to Lloyd and it'll be addressed by an Addendum to all parties. I don't want everybody sitting here thinking we're gonna be ah...

LD: Well ah but we, but we do take the questions now too, ah you know we gotta record of them, so...

ST: But if you can give us a reference now we can get working on it.

LD: Yeah...

Attendee: It's in the summary of work, it was, there were two subcontractors that were the renovation contractors that were listed, I believe one was called Greenville out of ah, ah New York, and they have a Nevada license, and the other one was a contractor from California...

Unknown: Griswold?

Attendee: Griswold... who, I could not find a license on them.

ST?: Those are conservators...renovators. Renovator contractors their specified scope of work that they we to do, in the summary of work, so...

Unknown: Ok, thank you.

Attendee: Yes sir.

LD: But, yeah if somebody's listed and their not, and their not licensed, they can't do the work, so. We'll definitely want to correct that, if that's, if we specified that they will be doing the work, it's ah I've never seen this specified actually who you have to subcontract with. So, that would be a, that would be a first but, ah, I've seen a lot of firsts here at the City. Ah, any other questions on that? Ok. Ah anyway take a look at the responsive, responsible those are the items we look at when we look at your bid. Again when we, when I open the bids I'm not gonna set here, even if you know, if someone left out their 5%, I'm not gonna reject em right here at the Bid Opening, ok? I'm gonna go back and look, I might have missed it in the all the forms, you know, I've had General contractors jump on the table and say they didn't have that, you going to throw em out? We don't make any decisions at the Bid Opening. All right, I got it.

Unknown: Thank you.

LD: Ok uh, substitution of subcontractors, the only thing I want to say about that is uh, NRS specifies what you can, what's allowable is for you to ah come in with a substitution of your subcontractors once we make an award, and we'll cover those issues on a case by case basis in accordance with the NRS. Bid protest, if anybody wants to protest the City's recommended award you must do so in writing, the res, it's in the statutes, and the time frames and we also have a copy attached here in the resolutions it tells you the time frames and what you have to do and what you have to submit, there's a protest security required in the amount of 25% of

your bid to a maximum of $250,000 to ah accompany that protest. And if you don't follow the, the the time frame there that the City doesn't have to hear your protest.
Page 14 goes back over the submittal requirements and when those documents are required and the time frames required again. If you don't want to worry about it you can take and put everything in the package at the same time and submit it and I will acknowledge that I have those forms. Ok the Bid Proposal pages, the first ones just general information about your company, point of contact, phone numbers, addresses, license both your City and your contractor's license. Take your time there, please; we pull a copy of your license. I've had some that you know there's changes in businesses and you might get a new license but you've been using the same license number for 20 years, and you automatically put it down and I pull it up and it says suspended or withdrawn by, or you know, or cancelled by owner or whatever, voluntarily surrendered and I'm like 'whoa' you know, and I gotta call you and find out what you're new license number is, just take your time. That's why we reduced the amount of paperwork you have to submit with your bids so you can take your time in filling these documents out. Make sure and acknowledge any addendums, now this is important, if an addendum is not acknowledged I had one just the other day that didn't acknowledge an addendum. If it's a cost item, a material change or something that's going to affect your cost, and you don't acknowledge it, I have no way of knowing that you've got that cost in your bid. And we're going to, going to possibly reject your bid. Now if I issued an addendum which we have done, if I issued an addendum changing the bid opening date and that's the only thing on that addendum, and you don't acknowledge that addendum but on the new bid opening day you turn your bid in, its kind of obvious you got the addendum. Ya know, cause you came in and submitted your bid. But the best thing, make sure you acknowledge all the addendums. It's your responsibility to ensure that you have all the addendums. We always send out a fax to you that there's an addendum available for you to pick up. We're not going to call you and babysit, we're gonna send you a fax and we get an acknowledgement that that fax went through. Now if it got misrouted in your office we don't have any control over that, but we have acknowledgement that it went through and to your office. That hey, there's, addendum number three is available for you to pick up. If you acknowledge one and two and you say you never got 3 we got, (indistinct) it's gonna be hard to argue if we got notification that we sent you the notice that it was there.
Best thing, give us a call, check the, check our website, you know, make sure that you know... Bid opens at 1:30, 11 o'clock, check the website, see if there's any addendums that you got all the addendums, or call us, "is there any addendum on that", "nope, ok". Make sure you sign the bid. There's an informational document down at the bottom here, and it says for informational purposes only. We're trying to gather information on our data base. We're updating our database so please take your time if you would and fill this out, it's talking about the Minority Business Enterprise. Again, we're trying to ate our database in the computers to get a listing of our minority businesses so this would help us update that listing. OK, bid schedule, lump sum, all right. We're not asking you to write it out in words any longer, just the figures. Now, take your time. If you make an error, all right, *please, please*, do not try overwriting that number. Like if you put a six on there and you meant for it to be an eight, don't try to darken that six into an eight, or if it was an eight and you meant it to be a six or vice versa. I'm going to sit up here and I'm going to read the number I see, all right. If you make an error, draw a line through it, put your initials on it and re-write it. That's all you gotta do, please.

Attendee: Indistinct question

LD: Huh, I'm almost done. Next is a sample of our bid bond. 5% Subcontractor List, this is due with your bid. Description of work, name of subcontractor. That's the only two docs, items you gotta put on there. Who it is and what they're doing. NRS does not, does not require you to give us their license number on the 5%, ok. Who it is and what they're doing. Again, please take your time writing in your subcontractor's name. We go in and pull a contractor's license. If you put abbreviation on there and that's not the way it applies on their license, we're not going to find them, we're gonna have to call you up, you know.
Good Faith Effort. This documentation here, this is showing us what you did to get a minority business enterprise as a subcontractor or supplier on this project to work with you, all right. Now, please fill it out, submit the documentation, you have one business day.
Schedule of Values. Make sure you fill this out completely. My only comment here is when you get done writing in the schedule of values and you total it up, you got it down here, total line items, you need to go back and

check just to make sure that it matches the lump sum that you wrote down there. It's a good cross check for you, all right. I've had 'em different. You got one business day to turn that in.
List of Completed Projects. There's only one sheet in here because we're asking for one project, all right. One project that conforms to the U.S. Secretary of Interior Standards of for Habilitation similar to the work required by the City, you know. And I, we've made note of your question concerning if, if you're gonna use a subcontractor to do that portion of the work. We'll take that and maybe we'll add some wording to the addendum item, I don't know, we'll talk about it, internally. If you don't see anything on the addendum, this is the form, all right.
Ok, uh, the Supplier List here should say 'not required' across it because we're not asking for a supplier list, so, that was my error. We'll issue a new one, so there's no confusion with the addendum saying 'not required', ok. It's an oops.
One Percent Subcontractor List. The only difference between the 1% and the 5%, on the 1%, by statute, you have to tell us their license number. This one here, you'll have two hours to complete and turn it into the City Clerk's office or you can turn it in with your bid, it's up to you. Again, that two hours in non-waiverable, make sure you get it in there. I hate to see you lose it just because of a piece of paper. It's happened, all right.
All right, theres only a few more things I need to cover here. The Owner-Contractor Agreement. The only thing I want to cover here, this is what will be signed by the parties on the contract, the City and the contractor. But there's two pieces of information on here that' very vital to your filling out your bid. And I've had phone calls on this so I want to bring it out that this is where the information's at. Completion. You will have four hundred and seventy five calendar days to complete this project once we issue a notice to proceed. Oh good, no one's jumping up, OK. Four hundred and seventy five calendar days after we issue notice to proceed. If you do not complete it in that four hundred seventy five calendar days and we have not authorized any time extensions, Liquidated Damages, five thousand dollars per day. There's also some liquidated damages in uh, 017000 of the technical specs concerning other issues during the, during the project. I'm not going to get into those, they're minor, 500 dollars, I think, isn't Sam? Something. Yeah, take a look at that, it's in it's in the technical specs.
OK, now we'll get into the General, uh General Conditions. Again, there's only a couple of things here I want to cover. The items I want to cover in here relate to your costs. I just want to point them out because I know it's going to affect your cost. One of them is your superintendent. Your superintendent, the general contractor, must be on the jobsite at all time that work is being performed. If none of your workforce is there, and you have your subcontractors out there working, you as a general contractor must be represented by a superintendent. Our contract is with the general contractor, not the sub. We don't' go to the sub, we go to the general. So, I'm telling you that cause that's a cost factor. If you're gonna have to work out there, if you're gonna be out there for four hundred and seventy five calendar days, if you think it's gonna take every one of those days, someone's gonna be on the job site, your superintendent's gonna be out there for four hundred and seventy five calendar days. That's a cost you. Just want to let you know. Yeah?

ST: Uh, did I miss the fact that we uh, gonna require the superintendent have experience. Is that in here somewhere?

Attendee: No, it wasn't in there.

ST: Your superintendent will be required to have experience in the Secretary of Interior standards of rehabilitation.

LD: Let me, you know, you're right Sam, I think it is in there. Uh let me backtrack, thank you Sam. Uh, yeah, ITB seven-oh-five, superintendent project resume. The superintendant has to have experience in historical rehabilitation projects conforming to the U.S. Secretary of Interior standards for historic rehabilitation. This gets back to something you were talking about because and. and I think we talked about this and we're gonna talk about tit some more because of what you brought up. If you have a subcontractor that is performing the historical rehabilitation portion, his superintendant has to have the experience, is that what we were talking about or we were talking about the superintendant?

ST: The general contractor superintendant.

LD: OK, OK. That will cover him supervising, being a superintendant over your subcontractor doing the work, cause the superintendant has to have the experience too, all right. So your general, as a general contractor, the superintendant has to have experience in uh, projects that have conformed to the Secretary of Interiors standards for historic rehabilitation. Any question on that? Yeah?

Attendee: When is that due?

LD: When is that due?

Attendee: That superintendant resume or whatever you have to have.

LD: One business day, you have one business day to turn that in.

Attendee: After the bid opening?

LD: Yeah. And that uh, we did that, you know, so we can assure that we have somebody out there over the job that has the experience to know what's going on out there, all right. OK, thank you Sam.
All right now, back to uh, the other item that's gonna constantly, you're gonna need to figure in some cost on. Required Bonds, Performance Bond, Labor and Material Bonds and Guarantee Bond. 100% of the contract amount, *and* your superintendant or your subcontractors. You have a subcontractor, one percent or fifty thousand dollars. They must have bonds also between you, the sub and the general, not to the City. We require your subcontractor that have a contract with you over fifty thousand dollars to get bonds. Now *please*, I ask this every time and it doesn't work, please general contractors, when you get your bids from your subcontractors, please verify that they can get bonds for that subcontract. I've got one on my desk right now where two contracts for the general contractors coming to me asking for a substitution of their subcontractor because they can't get bonds. Now that is authorized by NRS, that's one of the areas that you can request a substitution of subcontractor. We don't like it, you don't like it, your subs don't like it. Asking for substitutions. So please, when I read those subcontractor's lists that at the bid opening, we like that to be the ones that we're gonna see out there on the job.

Attendee: Subs are required to have a guaranty bond as well, correct?

LD: Uh, no, yes, yeah, labor material, performance and guaranty bond for their portion of the work. Now, for your subcontractors in here, the project is four hundred and seventy five calendar days for the general contractor. We're requiring the subcontractors to be bonded for the time that they're going to be on the jobsite. If they're not gonna be on the jobsite until the last hundred days of the job, that's when they need to go out there and get their bonds. We're not requiring the subcontractors to tie up their bonding for four hundred and seventy five days for a hundred thousand dollar subcontract. That might hurt them in getting other jobs. We're not, we're not, we're not wanting to hurt the subcontractors in that manner, so your, your bond has to be in effect when you set foot on that job, ok and then of course, it's done when you're done but uh. So if you don't have, if you're not gonna work until halfway through the job than that's when your bond will go into effect. Any question on that? And again, uh, our bond forms here, on the left side has that countersignature block. That does not have to be filled out any longer, all right.
OK, insurance requirements, general liability, auto liability, one million per occurrence, two million aggregate. Excuse me, and I notice we've got some hazardous, is there hazardous, there's hazardous material in this right? All right, I omitted to check the box here and this is gonna be something that costs you. Is there asbestos in this?

ST: Yes.

LD: OK, you're gonna be required to have asbestos liability insurance. That will be on the addendum. I know, it's, it's not checked. The box isn't checked on here. That will be required. Asbestos liability insurance. See what happens, Sam when you make me rush this thing out? That's two errors I made. I've already made all the errors I can make this year.

ST: OK, I take responsibility for it.

LD: Thank you, thank you, tell my boss would you? All right. Ok, uh, prevailing wages, again, ah, even though this has federal requirements, there's no Davis-Bacon, its straight, uh, Nevada statute, uh, Nevada rev, uh, wage rates. I just want to bring that up and just make sure, you know, the generals, make sure you pass that on to your subs that there is, it is a prevailing wage job and we get into it real deep at the pre-construction meeting cause the general contractor's responsible for, to make sure that the payroll's are all correct and everybody's classified properly, everybody's not a laborer out there. There are other classifications besides laborer. Uh, and we usually don't here about it until after the job's done and then there's penalties and fines and everything else for erroneous ah reports and I've got one on my desk that I just finished up. The contractor owes some money to the workers and he owes the City some penalties so. Again, we'll get into it real heavy with the general contractor.
Uh, special requirements, the special requirements are the uh, federal conditions that apply to this project. They're listed in here as Attachment 16. Make sure you read through 'em. There are some certifications but there's also some other requirements in there, 'er clauses and things that are, that you need to abide by. Ok, uh, sample bond forms are in here, the resolution for protest is in here.
Attachment 14, it's your responsibility to determine if it's applicable or not. It's a uh, regulatory construction project notification form and I think it's uh, any project over X amount of dollars and so many stories and I don't know if it's new construction, you gotta read the regulations on it but the forms are right in here. It's not our responsibility; it's your responsibility to submit it to, to the recording officials. I can't, let's see uh, industrial relations, OSHA.
Attachment 16 is the federal conditions, read through those. The last couple pages has the, uh, certifications that gotta be filled out. There's actually only one, one signature required because this form covers both the lobbyist and your debarment. You just check-mark up and sign it and submit it. You have one business day to get it in.
And that brings us to the technical specs and is there any questions on my part? I know it's getting a little warm in here, you know, I've tried to rush through it.

Attendee: The uh, award date.

LD: Award date, uh, I can give you an estimate, you know.

Attendee: Yes, that works.

LD: We're opening bids on September 25th. We're looking at October 15th Council, I believe is what we talked about, Sam isn't it? October 15th Council. So that would be the award date, October 15th, with you starting within uh...

Attendee: Ten days?

LD: Yeah, a few days after that, hopefully the 1st of November, you know and we're gonna ask you to well, hit the ground running. We wanna pay you some money right away so we want you to do a lot of work, right away, so we can get you some money, so, so we use up that grant money, that federal money you know, burnin' a hole in our pocket.

Attendee: I'm sure the PM knows how to front load it.

LD: What's that?

Attendee: I'm sure the PMs know how to front load it, so you'll be all right on that.

LD: Well, I ain't, I ain't, I ain't getting into that I'm just saying we're gonna ask you to hit the, hit the ground running. We wanna spend, we wanna spend some...

Attendee: Are we still recording?

Laughter

LD: We're still recording, I know, I've made some comments on these recorders I wish I hadn't too, oh any way, Sam I don't know if you want to cover, cover the spec stuff here and then do the walkthrough cause, because...

ST: Yeah, we'll just take a minute, we don't want to spend a lot of time. The drawings are pretty well self explanatory.

LD: Oh, I'm sorry, I'm sorry. Sign-in sheet.

Attendee: Right behind you.

LD: OK. You didn't sign-in yet?

ST: While he's pulling that out there, uh, a couple things...

LD: Any, any other general contractors that haven't signed in? Last chance cause I'm gonna take it, I'm gonna close it, I'm gonna copy it, seal it.

DC: I'll copy it for you.

LD: Put it in a safe you know and all that stuff. I'm sorry, go ahead. It's late in the day, I'm getting slap happy.

ST: Uh, there's a couple of issues. We have some reference documents and we'll be telling you where they're at. They're available at the FTP site. One of them, if you notice, there's a set of existing drawings going around. We were very fortunate when we got this building from the uh, Federal Parks Department, we found a full set of blueprints, real old blueprints, in the basement in a flat file with a lot of correspondence.

LD: Are we making, are we gonna issue them as an addendum?

ST: Uh, they are, they will be available on our FTP site and we'll give you that information on how you obtain those drawings on the FTP site. And there's also some other reference material on that site.

Attendee: Yeah, there's a series of drawings that are available that show the relative historical sepricates of each of the spaces in the building.

LD: And those are available, we're gonna tell them how to...

LD: And those are available, we're gonna, gonna tell them how to...

ST: Yeah, yeah.

LD: That's, that's gonna be on the addendum?

ST: Yes.

Attendee: Is that gonna be a PDF that we can download?

ST: Yeah, they're all PDFs, you can download whatever you want.

Attendee: I think it's TIFs, TIFs.

ST: Or TIFs, one of the two, they're openable, they're graphic files so you can open them. Um, something is, is going to be shown is when we get over there, just east of the building, there's a park area that is fenced. That park is going away and that's gonna be your staging area. Um, there are some storage trailers behind the post office. They have the historical materials that are gonna move from the old building and a lot of those materials, uh, you will be putting back in the building and those are the materials that don't have to be tempered. We also have tempered storage where a lot of the uh, the wood material, the paneling, etcetera that is gonna come back in the building is stored, which is within ten miles from here. Uh...

Attendee: Did you mention the inventory?

ST: Yes, uh we have, we're also gonna provide you with, um, inventory. But we're gonna allow you to come into architectural services and look at the inventory catalogs of all that material. Its several volumes. It's all been cataloged by a, uh, conservator so it's very well organized. Uh, we've got the staging area. Um, there's another issue. The previous contractor that was doing work here, um, because we're allowing you to use *our* meter that's in existence for power. He's tied into that and there's a lot of equipment over there and distribution equipment and lights that are in place. You're gonna be allowed to use those, uh, so don't charge us for them. When you're done, they're yours. But uh, there's, you'll see. It's pretty good equipment and will be very useful during the construction stage.
That's all I had right to begin with. If there's, does anyone have any questions on the documents, as far as what's real important if anybody's looked at them.

Attendee: Between the civils and architectural site and electricals, the architectural site has all the off-siting by others but the civils and electrical don't.

ST: Yeah but that's already in the addendum. You haven't seen it yet. There was a reason for that called the Las Vegas Valley Water District. We had to do it that way to get credit but we won't get into that. You never had any problems with that. We went to their competitor but they wouldn't provide us water. Uh, Robert you or Erin have anything you'd like to say here. I, I'd just as soon get over there to the building.

LD: It's open?

ST: You can park on the Westside of the building.

LD: All right, uh, uh, all right, OK, now we're going in the front door?

ST: You'll come in on the dock. There are two driveways on the west of the building, you can park there, come around to the back, and there's a door open, you can come in and...

LT: OK, cause I wanna, I wanna meet in one area and I'll, I'll stress it again but when we get over there, let's uh, think back to when you was in school on a, on a field trip, please. Let's stay together. I don't want people running all over the place because if a question is asked, for clarification over there, there's a possibility, you know, it might be something that we're not gonna issue an addendum on but you can hear, I want everybody to hear everything. I want everybody to stay together please. All right and, uh, I'll have the sign in sheets and you all get a copy of the sign in sheet when we get over there and I'll have it with me so I can, I'll do a little roll call and uh, you'll see when I get into the bid opening that I will be checking that sheet with the bids I get.

ST: Lloyd, we have to meet on the dock, cause there's light in the building, it's a little dark.

LD: OK, just tell, you just tell me where to meet.

ST: Can you all meet on the dock on the north side of the building?

LD: OK, we'll see you all over there.

==END OF RECORDING==

PRE-BID CONFERENCE TRANSCRIPT

oyd Davis: All right, good morning everybody. I've turned the recorder on, we do record these uh pre-bid sessions that way we get a record of the questions asked and we go back and listen to them. Um I'm going to go ahead and start on some of this stuff while you're all still signing in. Cause we're going to do introductions and that's going to take a few minutes since we've got a couple people in here. My name is Lloyd Davis I'm a Contract Specialist for the City of Las Vegas and we're here for a mandatory pre-bid for bid number 081534104 uh revised, and the reason its revised is that we did bid this out one time and we had to make some revisions to the plans and specifications and some of the uh qualifications and criteria cause there were some misunderstandings on the original ones, so we went and cleaned it up and we had to reissue it. Uh as I stated this is a mandatory pre-bid, and its mandatory for the general contractors. Subcontractors, it's good that you're here that way you get, you get on record here and the general contractors will have your name and phone numbers so they can contact you for pricing but the ah main thing is for the general contractors to make sure you get signed in. I will be closing this uh meeting here in a few minutes where ah any general contractors coming in won't be able to bid on, it but I'll give it a couple more minutes to get, to get over here cause we did move from our old office over to here.

Uh the first thing uh so we can get a kind of a count of who's here ah actually with the number of people here it probably wouldn't be a good idea to do introductions. Uh, we'll just ah, you'll get a copy of the sign in sheet when we get this all over. So it's definitely uh important that you get signed in especially the general contractors. What I'm going go do is go through the bid documents here. I'm not going to go through every page, every paragraph. You all are pretty familiar with our bidding documents. I'm going to highlight a few areas that need to be covered and then I'll answer any questions if I go over a paragraph that you know that you had a question on, you can stop me at that point and I'll cover that one in more detail. If I cover a paragraph uh not in enough detail for you, you can stop me and I'll go into more detail so you can ask questions about it. Once I get done then I'll have our Public Works individuals go through the, ah the special ovisions or specifications that they want to cover, and then we'll have a, ah kind of a question and answers. o at the end of this the building will be available, it is not mandatory for a site visit ah but it is available for individuals to go over and take a take a walk through, with our Public Works people. If you don't do it today then you can call back and make arrangements to go through it at a later time. I know the last time we had contractors that went through it two or three times. You know cause you'll have general contractors bring different subs in that don't attend this meeting.

So this meeting here is mandatory. The sign in sheet will be used at the, at the Bid Opening to verify that the general contractor was at this meeting. And in order to be counted for this meeting you don't, you don't only have to sign in but you have to stay here. All right? You can't sign in and run. If there's two individuals from one company here, at least one of you have to stay here for the main, ah for the full meeting. Uh if you don't mind I'm going to stand right here. Okay this project consists of the rehabilitation of the, ah, the old Post Office. It's, it's being turned into a museum and it's over here on 300, I believe it's 300, ah Stewart. These bifocals don't quite work at the right distance here.

Uh, now this building is on the, on the historical register and the work that's being done in it needs to conform to the uh United States Secretary of the Interior's standards for historical rehabilitation. Uh, it includes some ah remodeling, some, some rehab and infrastructure within the, ah, for improvements for the tenants. Once we get it opened up here there's going to be some tenants in there with different displays. That's not part of this but we're getting it ready for them. It does have Federal funds on it. And one big issue here is, award of this project is contingent upon funding through the sale of redevelopment bonds. The monetary range of this project is 15 million to 21 million dollars. It is a prevailing wage job. There's a PWP number that was assigned by the Labor Commissioner's office for this project. And as I stated this is a mandatory pre-bid for the general contractors. The Bid Opening is scheduled for February 5th at 1:30. It is open to the public and is going to be held in this room here. However, the bids must turned into the City Clerks office which is over at the main tower on the first floor. This is for the general contractors. We do not take the bids from the subs. So please, bcontractors, you need to contact the general sub, uh the general contractors to get your bids to them. All it? I have had some subcontractors turn their bids in and I opened them up here and of course we could tell by the amount of the bid that it was a subcontractor. So please, subcontractors make sure you get a hold of the general contractors. All right?

As I stated, the bids need to be turned in to the City Clerk's office which is on the first floor of City Hall, over in the main tower. They will time stamp them and bring them over here. Any questions after today need to be

ked in. We're requesting that ah, your questions be turned in by January 20th. Please make sure you get them faxed into us by the 20th. That way we can get an addendum out and we won't affect the Bid Opening. We don't want to change the Bid Opening date we want to get it open on the 5th of February so we can get it into Council and get this thing moving. Okay lets see, okay you guys still haven't signed in, right? Have you signed in? Let's see there's a seat over here. All right it's 10 after 10; this meeting is now closed for any other general contractors. Any general contractors that come in now would not be able to sign in or, or ah bid on this project. And once the last, once the last gentleman gets signed in I will take the uh, take the sign in sheet up here. All right.

Okay, as I stated your, your bids must be turned in to the City Clerk's office. Make sure it's in a sealed envelope. Make sure the outside is clearly marked as a bid. You need to put your company name, the bid date and time, and the bid number. The City Clerk has the log that they gotta log in all the bids in. And that's the information they need for that log. If any of that information is missing they're going to open up the bid and retrieve it, and we prefer that the bids come over here unopened. So please make sure that you follow those directions and have it clearly marked on the outside. Okay, any question on any of that? **(7:07)**

Attendee: Does the better buy America act apply to this project because it has Federal funds?

LD: Uh, I'll have to look into the uh...We got the Federal certifications that apply in here. I haven't looked through it for that there.

Attendee: All right.

LD: Are you a general contractor? No? Oh you're a sub? Okay. All right, uh, now we're on the cover is the documents that must be submitted. There's ah, 3 different time frames on submission of documents on to this project. One is uh, at the Bid Opening there's certain documents that have to be included. Then you'll have a 2 hour window for another document, and then you have 1 business day and I'm gonna cover each one of those in detail. Um, at the Bid Opening, you have to submit your bid proposal pages, which we'll go over too, in, in more detail. Your Bid Security, which can be in the form of a bid bond, uh cashier's check, certified check or money order, for 5% of your bid amount. And the other document is your 5% Subcontractor List. All right? Those documents must be at the Bid Opening. When I open the bids up those are the documents I'll be looking for. Now the other documents you'll have different time frames but you can submit everything with your bid and you won't have to worry about those timeframes. The, the just letting you know that there are different time frames. The next one will be your 1% Subcontractor List. You would have 2 hours, the 3 apparent low bidders, will have 2 hours after completion of the Bid Opening to submit that. It cannot be faxed; none of the documents can be faxed. They all have to be hand carried and turned into the City Clerk's office. They time stamp them and bring them over here. All right.

The uh, the like I said the 1% you have 2 hours, and that 2 hours is very important. It is statute, I cannot waive it. We've had to reject a low bidder a few months ago because their 1% List came in at 2 hours and 10 minutes or something like that. If it's past the 2 hour mark, your bid will be rejected. It's a statute requirement and we cannot waive it. The same with your 5% Subcontractor List. That has to be turned in with the Bid. It is a statute requirement I cannot waive that. Now, if, this is a pretty large project, but, if you do not have a subcontractor that meets that criteria, um I would suggest you still turn the form in and mark 'none' on it. And that way there's no question. Wait a minute. General contractors, has everybody signed in?

Attendee: Are you going to be distributing a copy of the list?

LD: Yes, you'll get a copy of it. Are you a general?

Attendee: I haven't signed in yet.

LD: Fine, but you were here. Anybody else? Okay, I know the government, some of the government groups haven't signed in but I want I want to make sure the general contractors get signed in.

Okay, the, the next set of documents that you have to submit are informational documents that we use to evaluate your bid. You will have 1 business day to submit those. Again they have to be turned in to the City Clerk's office if you do not submit them with your bid. And this is the 3 apparent low bidders who submit these.

Woman in background: Sir, may I help you?

LD: The first one is ah...can you go ahead and shut that door, please? Uh, the first one here is the Certificate of Eligibility. And that's the 5% preference for ah, Nevada contractors. You know how you go to the, ah State Contractors Board and get that? If you, if you're eligible for it. We have had some here lately that had it come into play and the ah, the apparent low bidder at the Bid Opening did not have one and then the award went to the next bidder because of that preference. Are you a general contractor, sir? **(11:21)**

Attendee: I'm actually a sub.

LD: Okay, okay go ahead and sign in, would you pass? Okay uh, the next document after the, ah Certificate of Eligibility is the, ah, Evidence of Good Faith Effort. That there is used to ah evaluate ah what you did as a general contractor to go out and get minority business enterprises as subcontractors and suppliers to your firm on this project. Uh, we, we evaluate that, and you either fail, get a standard or a excellent rating on it. At the end of the project there's a contractor evaluation done on your performance and that is one of the criteria that we evaluate.
Schedule of Values, you have 1 business day to submit that. Name of your ah, name and resume of your superintendent and your project ah manager. You need to submit those documents, you have 1 business day. List of Completed Projects form, you have 1 business day. And I'm going to go into these individual forms in more detail when we get to them in the back here.
Ah, there's, there's another form here that's, that's made specifically for this project and it's called the uh, the Specialty Work Qualifications form. And I'll get into details on that, but that's basically to cover your historical rehabilitation. If a general contractor's not doing it, you can have a, if you have a, subcontractor doing that work, you have to submit their, their qualifications for that type of work, and we'll go over those type of forms when in a moment here. And then there's some Federal certification forms that have to be submitted. Mainly it's a lobbyist form and a debarment. And you have 1 business day to submit those. The other documents to be submitted will be once we make an award you'll have a, ah, the ah, the Owner-Contractor Agreement and your Bonds and Insurance. You'll have 3 business days to submit those forms, sign the contract and get us your, your bonds and insurance. We used to, we used to give you 5, we moved it to 3 business days. We have not had a problem that, uh, all the general contractors have been able to step up to the plate and get those things into us within that 3 business days. Which we appreciate, that gets us started on the project that much sooner.
Okay, withdrawal of your bids. There's two areas here, there's one prior to Bid Opening and one after Bid Opening. Prior to Bid Opening, all you need to do is go back over to the City Clerk's office, provide them with whatever identification they need and they'll hand you back your, your bid, withdraw it. Now, after ah, after I have received the bids over here, we call, even though I have not maybe, opened your particular bid, once I receive it, then it falls into the ah post Bid Opening, if you want to withdraw. I had a bidder one time setting in here, I got to the bid and they asked to withdraw it. Once I have it, the City Clerk has turned it over to us, it's been logged in, I have to open it, and read it. If you want to withdraw your bid, once it's come over here, you must do so in writing to the Purchasing manager, outlining your reasons for your withdrawal. It explains it in paragraph 902 in here that there's some criteria you have to put in that request, explaining why you're gonna, why you're asking to withdraw your bid. Any question on that?
Okay, licensing. Uh, make sure that you're licensed to ah, perform the work that you're bidding on. We do not verify that you have the proper license, what we verify is if you are licensed. And that license is valid and there's no ah, penalties or assessments, fines or anything like that. We evaluate that. We do not evaluate if you, if you're supposed to have a B license and you've got an A license, or if you have an A license, supposed to have a B license. You all know what licenses you're authorized to, what projects you're authorized to bid on, and ah you all kind of self watch that anyway, and you'll let me know or put a protest in if somebody's got the wrong license. So, all we do is we verify that you're license is valid and up to date. Also you must have a

siness license, a City business license. We do, we do verify that. If you do not have one as you, it has a phone number in here and procedures for you to ah request one from our Business Licensing on our 3rd floor. Okay, award. Awards going to be made to the lowest responsive, responsible or best bidder, for the total amount. Now, for determination of lowest responsive, responsible bidder, those are covered on pages 8, 9 and 10 of the package. I'm only going to cover a couple of those items, you can read all of the other the ah criteria in here, but the main one here is whether the bidder has experience in restitution of historic buildings, having successfully completed 1 project, during the last 10 years, according to the U.S. Secretary of the Interior's standard for the treatment of historic properties. Also, uh, the bidder's designated superintendent has experience in historical buildings, successfully performed superintendent responsibilities for 1 project in the last 10 years, according to the U.S. Secretary of the Interior's standard for the treatment of historic properties. Any question on that? One project in... **(17:08)**

Attendee: Is that mandatory?

LD: That is the criteria that we're using to determine the responsibility.

Attendee: For the General Contractor?

LD: For the general contractor...

Attendee: Not for the subs, right?

LD: There is some provisions in here for the subcontractors, their specialty work. And there's, there's ah some forms in here we're going to get to them in a minute.

tendee: Does that alleviate the General Contractor, though?

LD: I'm sorry?

Attendee: The subcontractor's forms of, of responsibility and proper projects, that does not alleviate the super, the general contractor's responsibility for the same?

LD: No, it does, in certain areas. In certain areas, and we'll cover those forms here in a moment, all right. This is one of the changes that we made from the past project.

Attendee: It's not how the bid form reads, but...

LD: Well, and that's what we're here for, if there's, if there's something that needs to be clarified, then we need to bring it up here, and we will get it clarified in an addendum because we want to make sure that everybody understands what we're looking for. **(18:03)**

Attendee: So are, are you saying that if the subcontractors have a superintendent that meets the qualifications...

LD: No, no the General Contractor's superintendent must meet the qualification.

Attendee: And the General Contractor must.

): The General Contractor must have completed a project ah, well I guess I can skip over these forms.

Attendee: Excuse me, sir, the value of this work you said is 15-21 million dollars.

LD: Right.

Attendee: Say they do a thousand dollar renovation that meets the standard, the U.S. Secretary standards criteria, and then suddenly you're going to award him a 15-21 million dollar job. Is that applicable? What, what, what value of work does this general contractor have to prove that he has done?

LD: Well, uh...

Attendee: Because, you understand? You, you could renovate a, a, an outhouse, which is under (indistinct) and then you want them to do a, this job...21, 15 to 21 million dollars.

LD: Well, go ahead...

Sam Tolman: Its projects of similar scope.

Attendee: Projects of similar scope. Okay.

LD: Well, if, if we have to clarify that we will...

Attendee: I think so...**(19:25)**

LD: Cause here's a, alright, Attachment 6, which is the list of completed projects, all right, this is the form that they'll be using to verify the contractor's responsibility. Very first one 'does the bidder or its superintendent'. See, if the superintendent has the experience, that will meet for the General Contractor. All right? 'Does the Bidder or its Superintendent have experience in restoration of historic buildings completed in accordance with U. S. Secretary of the Interior?' You say yes or no. All right? If the Bidder has the experience, then they will complete Form B, of Attachment 6. If the Superintendent has the experience, then they would complete Form A for the Bidder, and Form C for the Superintendent. All right? If neither the Bidder nor the Superintendent has the required experience, then you need to go back to that 1302 concerning the determination of responsibility which basically says 'you gotta have one or the other'. All right? If, if the General Contractor doesn't, has not done a project but he has a Superintendent that has super, has superintendent experience for that size, that type of project, then that will qualify the General Contractor. All right? **(20:45)**
Now, in order to get the work done, there's a special, there's certain jobs that we're requiring specialty work. Specifically. And those are forms uh, those are Attachment 7. All right. And it's masonry rehab. All right. We need the qualifications on your subcontractor, unless, unless you're doing the work yourself, but if you're doing it yourself we still need the same information, showing that you've performed ah, masonry rehab in accordance with spec, ah, the ah, section 040120 which outlines what we're looking for. There's 3 of them in here, there's 1 for masonry rehab, ornamental pay, ah, plaster, and painting, all right? Three forms in here that have to be submitted for your specialty contractor. Or yourself if you're going to perform that work, but you have to still provide these forms. So basically you're going to have a form for either the General Contractor or your Superintendent, and then you're going to have 1 for those 3 specialty works and you'll have 1 business day to get those in. All right, yes? **(22:06)**

Attendee: John Gonzales with Delessio Contracting. I run the painting division there. Um, so as, as a painting subcontractor that we're bidding to the generals, uh you want my experience on historical painting...

LD: Right.

JG: ...all my past experience running a...

No. One project, here's, here's what this says: list at least, at least 1 project successfully completed, similar in type or scope as the work specified, in the past 10 years. And then there's got a place in here for you to put the project name, address, point of contact, description, when it was completed, we will go through and

rify these references. And that's for the 3 specialty contractors and then there's also forms in there for the Superintendent or the General Contractor.

Attendee: But there's no requirement for a specialty contractor for any of the wood trim, doors, windows, ah ticket counters, judges, the judges, all that, just, anyone can do that work?

LD: Right, that's the way we've got it.

Attendee: And, what happens if ultimately 1 of those 3 subcontractors is determined not to be qualified?

LD: Under NRS we can, we, we require you to substitute. Yeah, we won't throw your bid out because NRS, NRS states that if the owner... you're shaking your head no.

Attendee: We're not allowed a substitution

LD: Read 338, 338 allows a substitution of a subcontractor if the Awarding Owner rejects or says that the contractor's not qualified. At no increase in cost.

Attendee: I think NRS says you pay the difference.

LD: Well, you might, well. Okay, I don't want to quote this here on tape but ah, 338, NRS. And that's what we will go by, whatever is in NRS. Now we have had, and you're right, we've had subcon, er general contractors come in and ask for a substitution of subcontractors because they can't get bonding, which, we're kind of jumping around here but, any, any subcontract that you have that has a contracted value of 50,000 dollars or more, will be required to be bonded. That bond will be between the subcontractor and the general contractor. However the City will ask for evidence of that bonding. In that instance you, you would have to get a substitution and there is no increase in that instance. But you're right, if we, if the Owner says that you need to change out your sub then we are required to pay the difference.
Ah, but I think if ah we might go to Legal and get verification on that if its, if its something that, that you know I don't want to get into legal stuff but if we're telling you that they have to meet certain criteria and there's someone that doesn't meet that criteria, you know, there might be an argument there that, for you know not paying, so I don't know. This is being recorded and I don't know, so we would go to legal on that type of situation.
Now, since we're talking about the subcontractors and the bonding, I'm requesting, please, general contractors, when you get your bids for your subcontractors, please verify with them that they can get the required bonds. You know and we and, you don't like it and we don't like it asking for substitutions. The subs don't like it. Make sure their aware of that requirement. Don't blindside them with it. Please make sure it verifies. It makes it easier on everybody. Any questions on any of this stuff I've covered so far? Ye[redacted]

Attendee: How much of the monies are Federal funds?

LD: I'm not sure. I'm not sure how much, it's not 100%.

Attendee: And with Federal funds, does that 5% bidders preference still apply?

LD: Yes. On this one it does and so does the ah, and there's no Davis-Bacon on this. It's a straight ah, Prevailing Wages. The particular funds that we have do not stipulate that we have to have the Davis-Bacon or anything about the preference. All right, each grant that we get, Federal grant, has different ah criteria for it and review those before we put them out and get, get clarification. But it was a good question. Yes?

Attendee: Do you receive any State fundings that require any kind of LIED certification or ah LIED accreditation of this project?

Ah, I think we are going for LIED on this, aren't we?

Sam Tolman: This project will be LIED Silver.

Attendee: Silver?

ST: Yes.

Attendee: Okay

ST: But there's no State requirement. We're requiring it. It's a, ah City requirement.

Attendee: A couple years back the uh State said that anything funded by the State would have to get the (indistinct). I was just questioning...

ST: Yeah, good question.

LD: Yup. All right let me go back here now on page 14 all those documents I was talking about, ah submittal and when they had to be submitted, ah page 14 of the uh bidding document shows each form and when it has to be submitted, like with you bid, or 2 hours later and so forth.
Okay I'm going to jump back up here to Attachment 1, I'm going to go over the different Attachments and Forms and what, what you need to submit and then what needs to go on them.
Okay, the first one here on the bid proposal pages this is just general information about your company, address, phone number, point of contact, business license number, your contractor's license number. And uh, ake sure that you put down your most current uh, State Contractors license number. Sometimes companies ll get a new one and they're so used to putting the old one down there they'll throw that old one on there and I'll go on and verify it and it's suspended or wasn't renewed or something and you know then we start making phone calls and find out what's going on. Just take your time, make sure you get the right numbers in there.
Any addendums that are issued, on the next page you would acknowledge those addendums. Make sure you do acknowledge the addendums, if we had an addendum and you don't acknowledge it, it could result in a rejection of your bid. Depending on the nature of the addendum. Now if the addendum, like the Bid Opening right now is February the 5th. If we issue Addendum 1 and change the Bid Opening to February 10th, and you show up on February 10th but you didn't acknowledge the first addendum, I kind of know that you got it because you're there on the 10th rather than on the 5th, you know. So, its kind of, it is subjective as far as on the ah, addendums if it's, if it would cause rejection but the safe bet is. Now we do not, we do not call everybody up on your addendums. We will fax either the addendum to you, or fax a notification that there's an addendum for you to pick up, depending on the nature of the addendum. If the addendum has plans with it you're going to have to come and pick it up. We would take that fax and we get a verification that the fax went through to the fax number that you provided us, and that's it. You're responsible to make sure that you have all the addendums that have been issued.
My advice, couple days before the Bid Opening, call our main number, check our website, we do post on the website that addendums have been issued, but we don't post the actual addendums on the website. Also for some of your subcontractors, do not rely on the Bid Depository or the Notebook or any of that for the plans and specifications. If you can't get them from the General Contractor then you come in here and purchase them from us. We're not liable for anything that they mistakenly post, or print, in error. We're not responsible for anything that they have down there. And it happens, I had a contractor that got rejected not to long ago cause they didn't get one of the addendums, and the Notebook told them 'oh that addendum just changed the Bid Opening date'. But that addendum added some specs and plans and they lost the job. We're not responsible what the Notebook does so, please, verify everything through our office. And while I'm talking about that, all estions need to be routed through me. Do not call, you'll, you'll have a list here of our consultants and everything, do not call the consultants; do not call the Project Manager. All inquiries must come through me.
Right now I've got, they're pretty good about referring everybody to me, but ah, please just give me a call. My phone number, I'm the first one that signed in. My phone number, my fax number, my email address is on the

ry top line of this sign in sheet, and you'll all get a copy of it. So there's no excuse for not being able to get a ..old of me. **(30:46)**

Attendee: Do you want me to pass these out?

LD: Yeah, go ahead you can pass them out. All right, now also on this second page is where you sign it and there's a little checklist of things that should be included with the Bid Proposal at the Bid Opening which is your Bid Schedule, your Bid Bond and your uh, 5% Subcontractor List. Please make sure you sign your bid. Okay the next page on the Bid Proposal page is the Lump Sum Amount. Awards gonna be made for the total, total amount here. Now, if, after you write down your amount, you say 'you know what, I need, I need to give the government a little bit more discount, and I want to change that amount', all right. Don't try writing over the amount, just draw a line through it, rewrite it and initial it. Make sure you do it this way, draw a line through it, don't try writing over it, Okay? Don't take that 8 and try to darken it and make it a 6 for us, all right? Cause I'm gonna read, I have to sit up here and try to decipher it and I don't know if that's a 6 or an 8 or a 9 or what. So, if you make a mistake, or you want to give us another discount, draw a line through it and initial it. All right, and just rewrite it.

Okay Sample Bid Bond. 5% Subcontractor List under NRS statute the only thing you have to give us on this here is type of work and who it is. We're not asking for license numbers, you don't have to go and verify that right now. Just give us description of work and who it is on the 5%. Now when you say who it is, please write that clearly for us. We go into the computer and we type in what you put and try to pull up their license. If you abbreviate their name and that's not the way it appears on their license, we're not going to be able to find them and we're going to have to call you up, and ask you who it is, all right. Also please mark down if their status if they're a minority business enterprise.

Good Faith Effort. You'll have 1 business day to turn this in and all documents that go with it. You can turn it in h your bid but you don't have to you can wait the 1 day to get it turned in but 3 apparent low bidders are quired to turn it in. Now, also while I'm on that subject on these submittals, the 3 apparent low bidders. If you are 1 of the 3 apparent low bidders, just because you're number 3 you might feel, well I'm not going to get the job, so I'm not going to turn the form in. Don't take that attitude, please if you're at the Bid Opening, if I announce you as 1 of the 3 low bidders make sure you turn all your documents in, on time. Because you don't know what we're going to do with the first, the first and second one might get thrown out, and you might end up being the low bidder. You don't know. Make sure you turn those forms in. I've had that happen where the, the third one didn't turn their documents in, you know, so.

Okay, schedule of values, you'll have 1 business day. The only thing I want to say about this, is, when you total up this schedule of values, and it says total of line items, make sure that number there matches your lump sum bid. I know it sounds elementary, but I've had it happen where they didn't match and it just gives us a clue that you either left something out of there, or you added something that shouldn't have. They need to r[redacted] penny.

All right Attachment 6 we kind of already went over these, Ah, this is a list of completed projects f[redacted] is the Bidder's experience, Form B is ah Bidder experience performing work in accordance with the [redacted] let me explain this a little bit more. Right the first form, if the general contractor is going to use a superintendent as their qualifications for the Secretary of the Interior's work, then you have to turn in a form on the superintendent, and you'd have to turn in Form A which shows it's your company has completed a project similar in scope. That doesn't necessarily mean it's a historical, but it's similar in scope, all right, to show that the company's qualified to perform the work. Now, as far as the Secretary of the Interior work, then your superintendent you're using them as the qualification for that. Is that clear? That way we're, you know, so to answer your question, basically, you know if the general contractor hasn't done a job of this scope, then they might not qualify as the general contractor. All right, and then their superintendent has to do the Secretary of the Interior work. Now, so that would be forms A and C if the contractor's not going to be the qualifying person the Secretary standard. Form B is for the, is the general contractor, if you're going to, to do it under you as , for the Secretary of Interior work, then you would do Form B. If, if after all this is done, and you go back to your office and start looking at it and you've got questions then just give me a call, all right. **(35:53)**

All right, Attachment 7 we talked about this, this is the specialty work qualification form for the 3 areas.

ttachment 8 is the 1% Subcontractor List. You will have 2 business, uh, 2 hours to, 2 hours to get this turned ı after completion of the Bid Opening. Again, that 2 hours is statute, so if it comes in at 2 hours and 10 minutes or 2 hours and 1 minute, your bid will be rejected. Nothing I can do about it. No waiver on that.
All right, Attachment 9 is the Owner Contractor Agreement and then the General Conditions, there's only a couple of items I want to go through in this area, that I want to cover some areas that will affect your cost. The first one here is uh, completion, you will have 475 calendar days to complete this project. If you do not complete it within that 475 calendar days and no time extension has been granted, liquidated damages of 2,000 dollars per calendar day will be assessed.
All right, uh, in the General Conditions there's a few areas here I want to cover cause they, again they fill in areas that will affect your costs when you're filling this out. I want to point them out to you. The first one here is your superintendent, project manager. Your superintendent will be required to be on the job site at any time work is being performed. Even as a general contractor, if you have none of your workforce out there, but you have a subcontractor in there, like the masonry work subcontractor in there doing some work, and none of your workers are there your subcontractor still has to be there, or your, your superintendent, still has to be on the job. So we've got 475 calendar days allotted for this job, so if when you're doing your take-offs and everything, if you have a strong feeling that you're going to have somebody on that jobsite all 475 days, then you need to calculate that your superintendent's going to be there then that whole time, too. All right, I just want to point that out.
Ok, bonding. Of course the standard bonds that we need: performance bond, labor and material bond, guarantee bond, 100% of your contract amount. And as I stated earlier, if you're a subcontractor, any subcontractor that has a subcontract valued at 50,000 dollars or more, will be required to be bonded.
Insurance requirements. We've changed one of our insurance requirements here very recently, and I, and some of you might not have bid on it since we've changed it. Builder's risk, we do not require the general contractor to carry builder's risk any longer. The City will self-insure that the builder's risk, we will get our own verage on it. However, our builder's risk policy has a 10,000 dollar deductible. The general contractor has r occurrence. The, uh the General Contractor will be responsible for that 10,000 deductible with, if the City nas to use their builder's risk insurance. Now, I don't know how all that works, I'm not an insurance person, I'm not an attorney, my suggestion I make at all these pre-bids on that subject is to get a hold of your risk management individuals, show them this clause, show them what you're responsible for, and they will let you know what you need to do to cover that 10,000 dollars. All right, any questions on that?

Attendee: Lloyd, I think that includes theft and vandalism, too. I mean that 10, 000 dollar deductible.

LD: Well, it's just it's whatever's under the builder's risk. It, it's outlined in here. Theft is, theft would probably go under general liability.

Attendee: That wouldn't be builder's...

LD: Builder's risk covers uh, fire testing, well vandalism, mischievous, mischievous, collapse, water damage and so forth. Like I said, my suggestion to you is to get a hold of your risk management, show them this and then they'll let you know what you need to do on that. All right, uh general liability, 5 million per occurrence, 10 million aggregate for this project. Then you have of course, ah, automobile liability and ah workman's comp. We also, we add the one here for this particular project, number E which is pollution and environmental liability insurance. And it's 1 million per occurrence, Again, I would take these, these pages here and get with your risk management and see what you need to do. Because you will be responsible to cover, to have the proper insurance ah coverage.

Attendee: Lloyd?

: Yes?

Attendee: The floater insurance isn't checked so that's not uh, a uh not a requirement on this project?

): Yes, right, the floater, yeah. We're not providing any, any material, any equipment that needs to be covered. Yeah, thanks for bringing that up. I, uh, there are some boxes out to the left hand corner of some of the paragraphs. If those boxes are empty, then that paragraph does not apply to this project. We've tried to uh, cut down on having to rewrite and everything so we're, we've put everything that we feel we needed on any type of project and put little boxes out there and we check them if they, it they apply. So you're right, that one does not apply.**(41:45)**

Uh, breach of contract and remedies, Section 10, uh I'm not going to go through those. You're all pretty familiar with that. You know the City has a right to terminate a contract for, for non-performance and uh we also have, ah, termination rights for convenience of the government, and suspension of work for the convenience of the government. I haven't seen those enacted but they, there's always that possibility.

Certified payrolls, uh prevailing wages, as I stated earlier this is a prevailing wage job, and you need to make sure that your subcontractors are aware of this.

We usually don't get any complaints until after the project is completed. I've got 2 on my desk right now that I'm going through. There are penalties and fines associated with erroneous ah reports as far as trying to pay everybody as a laborer when they should be an electrician or an operator, engineer depending on what work they were doing. Uh, overtime. Also, there's penalties and fines if you do not submit your payrolls on time. They're, they're due by the 15th of the month. I can't, normally we don't get anything until after the project's complete or at least until that subcontractor's work is done and then they start coming in. I'll get into it in real big detail at the pre-construction meeting with the, the awarded contractor but ah, you need to keep good daily records of what's going on. And we do assess penalties and fines, I, I just collected ah, a couple thousand dollars just last week on, from a contractor for some penalties. Any question on any of that?

Ok, if you'll notice, ah, you don't need to turn to it, but on page 57 it shows what I was talking about with those boxes. You know there's two paragraphs there, one with the box empty and one with it ex'd in. The ex'd in is a special requirement under, because this has Federal funds there are 2 forms that need to be turned in, and you'll have 1 business day to turn those in, and that's your debarment and your lobbyist. Please make sure you get those turned in.

All right, I'm just about out of wind here. The rest of these attachments are, are samples of bond forms, protest, there's a, Attachment 13 has the, has the resolution in here that was passed by City Council on, on submission of protest. Uh, it's also in statute now. There's criteria you have to follow, there's so many business days you have to submit your protest within after the Bid Opening. There's a protest security required which is 25% of your bid, up to a maximum of 250,000 dollars. That can be in the form of a cashier's check, certified check, money order or protest ah, bond. They now have protest bonds that you can get from your sureties. If there is a protest, ah, filed on a project award will not be made until that protest is resolved. **(45:04)**

Attachment 14 is ah, I believe that's an OSHA requirement there. We put this form in just for your information, it's your responsibility as a general contractor to check to see if it's applicable. I'll get letters every once in a while from OSHA and I forward them on to the general contractor if you have to fill that out. There's the criteria for it, we don't make the determination but we make, we put the form in here for your, kind of to alert you that there's a possibility it might be required. Any questions on any of the front-end parts of it? Yes?

Attendee: Um, permits and QAA. Responsibility of the owner or contractor?

LD: Uh, they'll get into that with the specification here in a moment. Anything on the front end?

Attendee: Yeah, uh real early on you mentioned that the project is contingent on sale or resale of development bonds.

LD: Right.

Attendee: What's the feeling uh of the success of that and time line?

LD: I believe it's going to be, uh, we're, we're, we've got good vibes that it's going to happen. How's that? Ah, we're hoping...

Unknown: We're hoping at the end of January, start of February.

LD: That's why we're having the Bid Opening February 5th, we're hoping that it will be done before that time frame. Now once we open the bids, and we get the funding then of course the project will have to go to Council for, for award of the project, uh, hopefully sometime in February. But, ah...

Attendee: So for bidding purposes, it's not really an issue?

LD: Right.

Attendee: Okay, thanks.

LD: Yes. If we find, if we find an issue before Bid Opening where we're not going to do it, there, then there's a good possibility they just would cancel the Bid so you don't go through everything. That's why we set it in February, we're hoping to know something by the end of January. But we didn't' want to delay the bidding process until we found out because that delays the start of it and some of those funds, a lot of times when we get some of the funding, we do have some funding, and some of it has time frames where we have to get certain work done by certain time frames or we have to ask for extensions. So by us bidding now, in anticipation of selling the remaining bonds that we need to fund the project, we're that much closer, closer to getting started and fulfilling our obligations under the grants to spend the money by a certain time frame. So, that's why we're doing it without total funding right now. As far as getting, getting everything started. Did that answer your question? Anything else, on that area? All right, Sam?

ST: Okay, I'm Sam Tolman, Tolman. You can sit down. I'm the Project Manager for the City, working through , Pat Dues, who is the Project Manager, I'm just an assistant.

Unknown: Architectural Project Manager.

ST: Architectural Project Manager, Okay, that just came from an engineer, so uh, let me give you a few things. There is something on the plans that's going, we're going to have an addendum to cover that. But because of the way we had to provide these plans in a hurry. But there is a project, the Stewart Street project that's going to cover all off site work. Your plans do show on and off site. Off site will not be your responsibility. That will be covered by addendum.
The power is provided by the owner, it's already out there. And on that note, and this is all in the, in the specs but I wanted to point these things out, um, we have on site and you can see it when you go over there, we have, we are tied into the existing meter. And we have a, ah power throughout the building with ah, with temporary lights, transformers on each floor. That particular equipment you're welcome to use, but that will be turned over to the owner at the end of the job.
Um, after this meeting, we're, you're welcome to come over to the building and tour it if you'd like. Some of you have already been but you're welcome to come back again. You can park at the building after you leave here so you don't have to pay the meter maid out here. Meter maid's are really quick at giving tickets, too, and I have no power over that.
Um, but we'll be there today right after the meeting. The Post Office is just here on Stewart, come in the west driveway and you can park behind the building. Otherwise, for other times, you can view by appointment with myself or Erik Singman. Where'd he go?

Attendee: He just left.

ST: Okay. Uh, on, on the sheet you've got our names and numbers, our email.

LD: Now, let me, let me inject here. Uh, for site visits and stuff you don't have to call me, Okay. I said that all questions have got to come to me but you don't need to call me every time you want to make a site visit. Go ahead and call them direct, make, they can set it up get you out there.

Attendee: What's the names again for?

ST: Sam Tolman, and Erik Singman.

Attendee: Hey Sam, verify the power, the power onsite now... (indistinct)

ST: Okay, you'll see Nevada Power is bringing new power to the building. Right now it's the power that existed in the original building and, you can use it as your temporary power but there will be a switch over for utilities.

Attendee: Sam, are you going to require us to sub meter that?

ST: No.

Attendee: So it's free of charge for the temporary power?

ST: We're, we're paying for the temporary power off the existing meter, and um...

Attendee: And water, is that correct, Sam?

ST: And anything with the water. Now at some point, uh, you'll be bringing new, a new water meter, a new detector check, and ah, bring new water into the site. So you need to coordinate that with the utilities but the present meter, uh, you're not going to have to sub meter that. You're welcome to use it. Um, is there anything else on the utilities?

Attendee: Yeah, Sam, if they're having to bring in new services for the DDCA and stuff will they need to coordinate that either with the Stewart rehab or they do the permanent patches themselves? On the off site?

ST: They will do nothing off site. The Stewart Street project will bring the stuffs for sewer. By the way the Stewart Street project is replacing the sewer and all the way from Main Street clear down to Maryland Parkway. And the second phase, the first phase is in process, the second phase is in front of us. And uh...

Attendee: So they're going to do all the stuff? They don't have to do anything, in front of the curb?

ST: No

Attendee: Everything back of the curb?

ST: Everything's back of the, back of the property line. **(52:16)**

Attendee: So sewer and water'll be tied into that Stewart Street project? So, whenever the project is done and, no offense on how the City works, but that Stewart Street project from Maryland isn't complete, our tie-ins, don't have to worry about ours...

ST: Right now...

Attendee: You know bringing permanent sewer connections and water connections...

ST: Right now, right now the Stewart Street project looks like it will probably be out in, in March.

Attendee: Phase 1 is an in progress, Phase 2 is going to be out in March, done by October. Since this is a 450 day project, we're probably starting in March or April, uh they're going to beat you.

: Yep.

Attendee: Otherwise we're just going to be...

ST: Yep, you'd have a longer time frame for that so I think we'll be fine. Okay. This is important. You have the plans we have submitted. If you have any old plans from the last bid, chuck them. There were the existing plans, for the new plans that we have provided you for bid sets, they've gone back through the Building Department, uh, and they are actual, actually the building permit's set. So when you go pull your permit, which is ready, your set from the Building Department will be exactly like your bid set. The City has a policy now that on building projects, we do not put them on the street until we have a building permit ready. Then we Xerox the building permit plans, and by the way note there are some, some stamps on the back of the drawings cause the Building plan checkers always do that, I don't know why, but they're in your set. So that's why you will see a sheet without a number and it's the back of a sheet. Um, the differences you're probably wondering, between the previous bid sets and these bid sets. These bid sets include all the addenda items that were submitted before. The only item I'm aware of right now that wasn't in the plans is the off site, the situation with the off sites being (indistinct).

Attendee: Do those plans include any of the prior RFIs from the prior bid?

ST: Yes.

Attendee: If they were answered by addendum?

ST: Well, some things that came in too late, that weren't answered by addendum we've got in there, too. We ed to cover everything. We try to think of what we can. Um, the architect's here, he can address that, you ow, he, he's pretty expert he doesn't make many mistakes, so he probably has covered everything.

Attendee: Thanks a lot. Setting me up for failure.

ST: Okay so that's basically where we're at, uh, we have historical materials, that have come out of that building in the last, uh, the last construction project, and even prior to that. They include things such as um, some historical materials that will be brought back into the building. And they also include like the courtroom furniture they include, uh, uh inventory of materials that will be used probably in the next phase which will be the uh, ah tenant improvement phase for the exhibits and all that. On site there are 4 mobile-minis, we have keys to them, and there is stored the materials that didn't have to be conditioned. We have another facility, City facility, that has conditioned type of material, such as you know would trim and things like that. And then there's another facility, well there's a couple of facilities, they're all within about 10 miles, and uh, some of that information and material will be coming back into the building during your phase of the work, as well as future phases. Anything else you want to say on that? **(56:27)**

Attendee: Is it spelled out in the plans?

ST: There really is substantial inventory. What's that?

Attendee: Is it spelled out in the plans or specifications? Is that information given to us in the plan specifications as to what we're going to be required to bring back.

ST: That's called out.

endee: Okay, how about the location of where it's at?

ST: I don't know if it calls out, it's on site its on ah, the other location, maybe we should, it's all within 10 miles...

Architect: Yeah, all of that, all of the climatized materials are at the West Service Yard, up off of Cheyenne and Summerlin.

ST: Some of, some of the uh materials are on ah, it's actually on Ronemus and, it's Ronemus and Cheyenne, just west of, or east of Buffalo, in our West Service Center. There are some in storage over towards Henderson, uh, and some at Pulitz.

Attendee: Towards Henderson?

ST: Okay Global Storage. Pulitz has, Pulitz Storage has some, too. That's going to be more of a logistics thing. Okay, now, I mentioned the permits are available and if you looked at the specs the Owner pays for and it's already been paid for, the basic building permits, ah when I say permits is when they first issue the permits ah sometimes it's a building permit, sometimes it may be you know, trash enclosure, etc. Whatever was issued by them the owner pays for. Anything beyond that, any sub permits or anything else you need uh, will be your responsibility. And it will be pretty easy to see what it is because you've already got a list of what's there. Ah, the building is, the building has gone through quite a bit of ah work and it is in a partial stage of completion. We've had a lot of grants that we received and we've had to pay those grants out in a certain time frame, for the certain amount of money we've had, like four or five construction projects that have gone over there including demolition, including rehabilitation of the ah, exterior windows, etc. So when you go over there if you haven't been there, ah nothing is really complete but a lot of stuff's been done. There's still hazmat materials that have to be taken care of, uh there's still more demolition, uh and the building really is in a situation where it's, it's, it's handy for you to really see, cause you can get into the walls and everything else.

Architect(?) : So everything like all the duct work's been taken out. Any exposed plumbing. Anything of surface one, all the ah ceilings and things that were put in at a earlier or later date. Ah, they demoed ah walls that are going to get the, ah demoed the plaster on the walls that are going to get shear walls, the perimeter of the building, ah so we can see how it's built, we can see what's ah, what's there. All the historic finishes have been protected with plywood, um so you won't be able to see everything because of that. The stairway and things like that have all been protected with plywood and we expect that you'll maintain that protection as long as you need it until you get to work out there in that particular area. The floors have been protected, the terrazzo floors, that sort of thing.

Attendee: We can't hear that.

Attendee: Has all the abatement been completed, or is it still...

Unknown: No, that's what I was pointing out...

ST: There's, there's still a lot of the, a good share of the, of the, ah asbestos abatement has been completed but you will be getting into some of it still, such as the mastic under the hardwood floor. Ah, the lead paint on the existing plaster, uh you'll be getting into that a little bit, so you'll have some of this going on. Ninyo and Moore, ah is a local ah, I guess you'd call them environmental engineer, and they will continue the, ah, monitoring of, of areas that you have to get into. So, ah...

Attendee: The third party testing is the City's paying for it.

ST: The City is paying for the third party testing for our portion, but look at the specs real careful because there's, there's some stuff you have to take care of. You have to monitor the air, etc. And I'm not going to try to into it in detail but look at that real closely. I don't want to make a blanket statement that's incorrect. Anything else on that?
Ah, this is LIED Silver we're shooting for, so you need to make sure that, you take care of your ah demolition materials and ah everything else required for LIED Silver. Ah that comes from, no the State started going LIED

en they pulled back, but the City Council has a resolution that all City buildings and remodelings will be LIED Silver.

Unknown: We have all the documentation from the um, second, the big demo phase that we did, of all the certificates for the recycled materials, where it went and all that stuff that's required. And then ah, inventories of all the materials um, that were done and it's in a box in my office this big and you, you have copies.

Unknown: I do have copies, yeah.

Attendee: You're, you're actually going to ah pursue certification, you're not...

ST: Pardon me?

Attendee: Most, most public entities that, that have done LIED projects build to a, a particular LIED standard, but don't necessarily go through the certification process.

ST: We will be going through the full LIED Silver certification. And by the way, ah this is Bob Mailer, he's the, the project director for WRL, ah...

Unknown: Westlake.

ST: Westlake, Reed, Leskosky, the architect. And this is Robert Chattell, he's our historical architect, and he's not old but he's still our historical architectural consultant. He doesn't like me to do that.

tendee: And who, who's going to pay the certification fee, is that something the City will bear or is that to be cluded?

Unknown: We've already uh, uh done the first initial (indistinct)

ST: And we are, we are paying for the commissioning, which is part of all that. We have contracts for that.

Unknown: We are, we are processing the paperwork, um so, you'll be providing us the information.

Attendee: This will be like LIED NC?

Unknown: Yes.

ST: And I'll get you in just a second. This is probably a vital time to, to introduce ah Justin Peterson and our field reps. He's one of, he's the manager. This is Justin Peterson, this is Rusty Coleman and this is Carson West, and they, during the process are going to be watching to make sure that the contractor, try to (indistinct) the contractor and keeps up all his LIED requirements because documentation and tracking, and it's very important. Yes.

Unknown: The checklist is in place for LIED, correct.

ST: It's in the spec.

Unknown: It is in the process, yes.

endee: Now we're not expected to design for that is, we're, for the LIED requirements, correct?

ST: No that's what that checklist is already in there. And, and we're shooting to try to get it certified as we go through. As you know that goes long beyond the construction by the time you get it all certified. Yes?

Attendee: The security fencing that's around the building at the present time...

ST: Okay the security fencing around the building, the City has a P.O. for that, when you start work, you're going to be taking that over from Tiberti's fence and paying for it from there on in and that's all in the spec. There is a, you'll notice when you get over there, there used to be a park on this side, um and it's no longer there, and that area is going to be used for staging. Some of the staging will be Stewart Street project when it gets down this way, and ah it's something you can use for staging, too. You may or may not have to. I'm done, thank you.

LD: Okay, any of you got any other questions?

Attendee: Is the info on the FTP site, there's something on the cover sheet about a folder, I didn't see it, looking on the FTP yesterday, though, as builts...

LD: Oh.

ST: The information that was on the FTP site last, last time, our dear IT guys deleted it, so we'll set up a new FTP site and let you know where to get some of that information. Or you know what, you can get it from our office. Hmm?

Attendee: They must know our IT guys.

Unknown: Yeah, I tell you, computer guys.

LD: Anything else? Yes?

Attendee: Yeah, the three assessments from Griswold Associates about the conservatory assessment, the historic paint inventory and the uh, the conservation report, they said to request those. Anybody? I need those.

ST: Uh, I'm not sure what that, the uh, I haven't been through every piece of the spec, but uh, we will put everything we can on the, FTP site.

Attendee: Okay

ST: Which will be existing photographs, like we did before, probably the Griswold's report, uh.

Attendee: Yeah, there's three reports it says to ask for, I mean, it kind of gives you a, obviously as a finish contractor and obviously a painting contractor then, I definitely have to have that. Okay.

LD: Okay, anything else? All right, thank you all very much. Good luck. **(01:06:46)**

- End of recording -

LAS VEGAS CITY COUNCIL

OSCAR B. GOODMAN
MAYOR

GARY REESE
MAYOR PRO TEM

LARRY BROWN
STEVE WOLFSON
LOIS TARKANIAN
STEVEN D. ROSS
RICKI Y. BARLOW

DOUGLAS A. SELBY
CITY MANAGER

October 27, 2008

Flagship Construction Co., LLC
Ms. Nancy Paolino
4052 Dean Martin Drive
Las Vegas, NV 89103

Re: Bid No. 08.15341.04-LED, Las Vegas Museum Phase 3 Rehabilitation

Dear Ms. Paolino:

The City of Las Vegas has made a determination after the evaluation of all bids received for the subject project that it is necessary to revise the invitation to bid and the technical specifications. Therefore, pursuant to ITB 15 "Bid Irregularities" it is in the best interest of the City to reject all bids. The City will advertise for a new bid proposal in the near future.

Sincerely,

Lloyd E. Davis
Contracts Specialist

cc: Sam Tolman
File

\tm

CITY OF LAS VEGAS
TEWART AVENUE
AS, NEVADA 89101

VOICE 702.229.6011
TTY 702.386.9108
www.lasvegasnevada.gov

KUMMER KAEMPFER

KUMMER KAEMPFER BONNER RENSHAW & FERRARIO

ATTORNEYS AT LAW

LAS VEGAS OFFICE

WILLIAM J. WRAY
wwray@kkbrf.com
702.693.4254

LAS VEGAS OFFICE
3800 Howard Hughes Parkway
Seventh Floor
Las Vegas, NV 89169
Tel: 702.792.7000
Fax: 702.796.7181

RENO OFFICE
8886 Kietzke Lane
Reno, NV 89511
Tel: 775.852.3800
Fax: 775.852.3982

CARSON CITY OFFICE
510 W. Fourth Street
Carson City, NV 89703
Tel: 775.884.8300
Fax: 775.882.0257

October 27, 2008

Via Fax (702) 464-2578 and Regular Mail
Ms. Kathleen C. Rainey
Manager of Purchasing and Contracts
City of Las Vegas
400 Stewart Avenue
Las Vegas, Nevada 89101

Re: DEMAND FOR CITY OF LAS VEGAS TO ACT IN ACCORDANCE WITH LAW
Bid Protest of APCO Construction
Project: Las Vegas Museum Phase 3 – Rehabilitation
Bid No. 08.15341.04-LED
Our Client/Successful Bidder: Flagship Construction Company, LLC

Dear Ms. Rainey:

As you know from previous communications, our office represents Flagship Construction Company ("Flagship") in connection with the above-referenced bid dispute. We appreciate you speaking with Mr. Ferrario and me this afternoon by telephone regarding your letter, dated today, October 27, 2008, wherein the City of Las Vegas (the "City") purports to reject all bids in connection with the subject Project pursuant to Instruction to Bidders ("ITB"), Section 15. This letter is in follow-up thereto.

Your letter of today was confusing to us and our client. We thought that the City's determination to reject all bids and re-bid the project must have been based on the APCO Bid Protest. We were prepared to advise the City this afternoon by letter that such determination was in error. Even if APCO's allegations were true, that would not invalidate Flagship's bid or render it non-responsive or non-responsible. If the City determined that a listed subcontractor is not properly licensed or qualified (as APCO claims), then the City must allow Flagship to make the substitution of any such subcontractor, subject to the City's oversight and approval. We understand now, however, based upon our telephone call today that the City agrees with Flagship's position with respect to APCO's Bid Protest, and that the City's action set forth in your letter of today was not in any way based upon the APCO Bid Protest.

You indicated that the City made its determination to reject all bids and re-bid the Project based upon a finding of irregularities in the Bid Proposal documents. You stated that the City determined that there were irregularities in the Bid Proposal documents because none of the bidding contractors (particularly the lowest three bidders) fully and materially complied with the bid criteria. Accordingly, you made a determination that Flagship, as well as the next lowest two

KUMMER KAEMPFER

bidders' bids were non-responsive and non-responsible.

Flagship respectfully demands that you immediately provide the undersigned with any and all reasons, justifications and findings made by the City whereby the City determined that Flagship's bid failed to materially satisfy any established bid criteria set forth in the Bid Proposal and specifications, and identify your authority for such finding. Please provide such information no later than 5:00 PM, Tuesday, October 28, 2008.

We do not believe that there is any basis for rejecting the bids under ITB 15, as set forth in your letter. The City is reminded that this is a public works, competitive bid project and is governed by NRS Chapter 338 and the ITB. Please be reminded that pursuant to NRS 338.1385(5) and ITB 12.01, the City is obliged to award the contract to "the lowest responsive and responsible bidder." Flagship is the lowest responsive and responsible bidder. The City does not have discretion to reject all bids where there was a qualified, responsive, responsible bidder. Flagship maintains that it was the lowest responsive responsible bidder and is entitled to the contract award. Flagship is prepared to pursue such action as may be necessary to protect its interests in this regard.

It should be noted that it is prejudicial to Flagship, who was the lowest bidder, for the City to now cancel all bids and re-bid the Project. All the bids have now been opened and are subject to comparative review. Flagship's list of subcontractors is subject to review by competitors and potential competitors. Flagship would be at a disadvantage in any re-bid process.

Again, please provide the information requested herein above no later 5:00 PM on Tuesday, October 28, 2008. Please do not hesitate to contact Mark Ferrario if you have any questions.

Very truly yours,

KUMMER KAEMPFER BONNER
RENSHAW & FERRARIO

William J. Wray, Esq.

WJW/rh
Enclosure as stated.
cc: Nancy Paolino (via fax)

MERITAS
LAW FIRMS WORLDWIDE

FAX

Kummer Kaempfer Bonner Renshaw & Ferrario
Seventh Floor
3800 Howard Hughes Parkway
Las Vegas, NV 89169
Phone: (702) 792-7000
Fax: (702) 796-7181

Date: 10/27/08

No. of Pages: 3
(Including cover sheet)

TO:	Fax No:	Phone No:
Kathleen C. Rainey, Manager of Purchasing and Contractors, City of Las Vegas	702-464-2578	
cc: Nancy Paolino, Flagship Construction Co.	702-739-1724	

FROM:	Client/Matter No:
S. Renee Hoban, Legal Assistant to William J. Wray, Esq.	14439-00003

Regarding:

Response to Bid Protest of APCO Construction; Project: Las Vegas Museum Phase 3 - Rehabilitation; Bid No. 08.15341.04-LED; Our Client/Successful Bidder: Flagship Construction Company, LLC

Message:

Please see the attached letter William J. Wray, Esq., of today's date.

THE FOLLOWING PAGES ARE A CONFIDENTIAL ATTORNEY-CLIENT COMMUNICATION INTENDED ONLY FOR THE ERSON NAMED ABOVE. IF YOU ARE NOT THE PERSON NAMED ABOVE, OR THE EMPLOYEE OR AGENT RESPONSIBLE FOR DELIVERY OF THE FOLLOWING INFORMATION, YOU ARE HEREBY NOTIFIED THAT ANY DISSEMINATION, DISTRIBUTION OR COPYING OF THIS COMMUNICATION IS STRICTLY PROHIBITED. IF YOU HAVE RECEIVED THIS COMMUNICATION IN ERROR, PLEASE NOTIFY US IMMEDIATELY BY TELEPHONE AND RETURN THE ORIGINAL MESSAGE TO US BY MAIL. WE WILL GLADLY REIMBURSE YOUR POSTAGE EXPENSE. THANK YOU.

LAS VEGAS CITY COUNCIL

OSCAR B. GOODMAN
MAYOR

GARY REESE
MAYOR PRO TEM

LARRY BROWN
STEVE WOLFSON
LOIS TARKANIAN
STEVEN D. ROSS
RICKI Y. BARLOW

DOUGLAS A. SELBY
CITY MANAGER

VIA FACSIMILE

October 30, 2008

Mr. William J. Wray, Esq.
Kummer Kaempfer Bonner Renshaw & Ferrario
3800 Howard Hughes Parkway, 7th Floor
Las Vegas, NV 89169

RE: Las Vegas Museum Phase 3 – Rehabilitation
Bid No. 08.15341.04-LED

Dear Mr. Wray:

This letter is in response to your request for the reasons, justifications and findings made by the City in the determination that Flagship's bid failed to materially satisfy established bid criteria set forth in the Bid Proposal and specifications for the subject project.

Based on the following findings, Flagship was determined by the City as a non-responsible bidder. This determination was made by the Manager of Purchasing & Contracts who is the City Council's Authorized Representative for such matters after consultation from the City Attorney's Office.

ITB 13.02(c) sets forth the bidder's experience requirement in historical rehabilitation. The requirement states the bidder shall have successfully completed one (1) project during the ten (10) years immediately preceding the date of submission of the Bid Proposal conforming with the US Secretary of the Interior Standards for Rehabilitation similar to the Work required by the Owner.

Flagship declared its La Concha project as evidence of meeting the experience requirement. The City had determined the Secretary of the Interior Standards for Rehabilitation were not applicable to this project and also determined the scope of the La Concha project is not comparable to the scope of the LV Museum project.

ITB 13.03(i) states that failure to provide the name of the Superintendent and submit Superintendent Project Resume as required by ITB 7.05 is subject for consideration in determining if a bidder is non-responsive and responsible. ITB 7.05 sets forth the requirement stating the Superintendent must have experience in historic rehabilitation projects conforming to the US Secretary of the Interior Standards for Historic Rehabilitation. Such person must be acceptable to the Owner.

Flagship was responsive in the timely submittal of a superintendent resume; however, the submission of Ray Butler as the Superintendent was non-responsible to the requirements to ITB 7.05 due to his project experience not including projects conforming to the Secretary of the Interior Standards for Rehabilitation.

Technical Specifications, Section 1.6 Conservator, Paragraph A sets forth the requirement that a qualified Conservator specializing in the preservation and rehabilitation of historic landmark structures shall perform 1) Masonry rehabilitation, 2) Plaster rehabilitation and restoration, and 3) Ornamental painting. Please note that Section 1.6, Paragraph B was deleted by Addendum #2.

CITY OF LAS VEGAS
400 STEWART AVENUE
LAS VEGAS, NEVADA 89101

VOICE 702.229.6011
TTY 702.386.9108
www.lasvegasnevada.gov

Flagship submitted Evergreene Painting Studios, Inc. as the Conservator to perform plaster and painting. Kitson Specialty Contracting, Inc. was submitted as the contractor for masonry rehabilitation. The technical specifications state a requirement for the Conservator to perform specific trades, which include masonry, plastering, and painting, and the Conservator named by Flagship was not licensed to perform masonry or plastering. Therefore, the submission of Evergreene as the Conservator was deemed non-responsible to the requirements of the Bid.

The City has every right to reject all bidders, pursuant to ITB 15. That provision states "The Owner reserves the right to waive any formality or irregularity in any submitted Bid Proposal, or to reject any or all of the submitted Bid Proposals. That provision further states "In the case of the rejection of all of the Bid Proposals, the Owner reserves the right to advertise for new Bid Proposals, proceed to do the Work itself or take no further action, whichever is in the best interest of the Owner.

It has been deemed in the best interest of the City to reject all bids and proceed with the issuance of a new Bid Proposal. The City is considering revisions to the ITB and Technical Specifications which are less restrictive and may enable Flagship's experience to qualify for this project.

Very truly yours,

Kathleen C. Rainey, Manager
Purchasing & Contracts

cc: Jorge Cervantes
Lloyd Davis
John Ridilla
Bob Sylvain

FLAGSHIP CONSTRUCTION CO., LLC.
4052 Dean Martin Drive
Las Vegas, Nevada 89103
Phone (702) 739-1722 Fax (702) 739-1724
Nevada License # 52358

FAX

To:	Lloyd Davis	**From:**	Nancy Paolino
Co:	City of Las Vegas Purchasing & Contracts		
Fax:	702-384-9964	**Pages:**	3 including cover
Phone:	702-229-6231	**Date:**	10-15-2008
Re:	Las Vegas museum Bid No. 08.15341.04-LED	**CC:**	William Wray, KKBRF 702-796-7181

__ **Urgent** _X_ **For Review** __ **For Comment** __ **Please Reply** __ **Please Recycle**

- **Comments:**

Please see the attached bid breakdown for Evergreene Painting Studios, Inc.

Transaction Report

Send

Transaction(s) completed

No.	TX Date/Time	Destination	Duration	P.#	Result	Mode
700	OCT-15	15:42 3849964	0°00'22"	003	OK	N ECM

FLAGSHIP CONSTRUCTION CO., LLC.
4052 Dean Martin Drive
Las Vegas, Nevada 89103
Phone (702) 739-1722 Fax (702) 739-1724
Nevada License # 52358

FAX

To: Lloyd Davis **From:** Nancy Paolino

Co: City of Las Vegas

Purchasing & Contracts

Fax: 702-384-9964 **Pages:** 3 including cover

Phone: 702-229-6231 **Date:** 10-15-2008

Re: Las Vegas museum **CC:** William Wray, KKBRF

Bid No. 08.15341.04-LED 702-796-7181

__ Urgent _X_ For Review __ For Comment __ Please Reply __ Please Recycle

• **Comments:**

Please see the attached bid breakdown for Evergreene Painting Studios, Inc.

FLAGSHIP CONSTRUCTION Co., LLC
A NATIONAL CONSTRUCTION ENTERPRISES COMPANY

October 15, 2008

Lloyd Davis
Purchasing & Contracts
City of Las Vegas
400 Stewart Avenue
Las Vegas, NV 89101

RE: Las Vegas Museum

Dear Mr. Davis:

Per your request, please find the attached breakdown for the bid provided by Evergreene Painting Studios, Inc.

Please do not hesitate to contact me if you have any additional questions.

Sincerely,

Nancy Paolino

Nancy Paolino
Vice President

cc: William Wray, KKBRF

EXHIBIT "D"
PAGE 2

Las Vegas Museum
Schedule of Values per Addemdum #2

Scope of Work by Mark Sauer Construction, Inc.

REVISED 9/25/08

Line Item	Line Item Description	Base Bid	Description of What is included MSC
1.0	General Requirements	$179,467.00	
1.4	Bonding and Insurance	$16,800.00	
~~4.0~~	~~Masonry~~	~~$0.00~~	~~Exterior Masonry Restoration~~
6.0	Wood and Plastics	$464,908.00	Doors, hardware, Windows, All Wood Trim
9.0	Finishes	$203,368.00	Judge's Desk / Ticket Counter / Mail Boxes / Directory Boards / Safe
13.0	Special Construction	$270,476.00	Conservator's Interior Plaster
32.0	Exterior Improvements	$64,318.00	Conservator's Work On Canopy
	Total	$1,199,337.00	

This schedule does not reflect the actual line item values for MSC. This is provided for the BID FORM PURPOSE ONLY

[Rev. 1/16/2009 1:58:16 PM]

TITLE 28 - PUBLIC WORKS AND PLANNING

CHAPTER 338 - PUBLIC WORKS

GENERAL PROVISIONS

NRS 338.010 Definitions.
NRS 338.011 Applicability: Contracts related to normal operation and normal maintenance; contracts related to emergency.
NRS 338.0115 Inapplicability of this chapter and chapters 332 and 339 of NRS to certain projects constructed by private developers.
NRS 338.012 Regulations of Labor Commissioner.

EMPLOYMENT

GENERAL PROVISIONS

NRS 338.013 Inclusion of identifying number from Labor Commissioner in advertisement for bids; reports by public bodies and contractors to Labor Commissioner.
NRS 338.015 Enforcement by Labor Commissioner and Attorney General.
NRS 338.016 Civil action to recover damages resulting from commission of offense.
NRS 338.017 Temporary disqualification of contractor after imposition of administrative penalty; notification of State Contractors' Board.
NRS 338.018 Applicability to certain contracts for construction work of Nevada System of Higher Education.

WAGES

NRS 338.020 Hourly and daily rate of wages must not be less than prevailing wage in county; rate must be included in contract and posted on-site; payment of overtime; wages paid in accordance with jurisdictional classes recognized in locality.
NRS 338.030 Procedure for determination of prevailing wage in county.
NRS 338.035 Discharge of part of obligation of contractor or subcontractor engaged on public work to pay wages by making certain contributions in name of workman.
NRS 338.040 Workmen deemed to be employed on public works.
NRS 338.050 Contractual relationships: Applicability of NRS 338.010 to 338.090, inclusive.
NRS 338.060 Forfeitures when workmen paid less than designated rates or willfully reported in inaccurate or incomplete manner or not reported to public body; forfeiture clause in contracts; regulation establishing sliding scale for penalties; recovery of investigative costs and attorney's fees; waiver or reduction of penalty.
NRS 338.070 Investigations of violations by public bodies; withholding of certain sums by public bodies and contractors; maintenance and inspection of records regarding employees; penalty for noncompliance.
NRS 338.075 Applicability to certain contracts for construction work of Nevada System of Higher Education.
NRS 338.080 Exemptions.
NRS 338.090 Penalties.

EMPLOYMENT PRACTICES

NRS 338.125 Fair employment practices: Contents of contracts concerning public works; breach of contract.
NRS 338.130 Preferential employment in construction of public works.
NRS 338.135 Rental or lease of trucks or truck and trailer combinations by contractors or subcontractors: Hourly rate for vehicle and services of driver.

PROCEDURES FOR AWARDING CONTRACTS

LIMITATIONS ON GENERAL APPLICABILITY OF PROVISIONS

NRS 338.1373 Option of local governments to comply with alternative procedures; inapplicability of certain provisions to contracts awarded by Department of Transportation.

QUALIFICATION OF BIDDERS; QUALIFICATION OF SUBCONTRACTORS ON STATE PUBLIC WORKS

NRS 338.1375 State Public Works Board: Acceptance of bids from qualified bidders only; adoption and use of criteria for qualification of bidders.
NRS 338.1376 Qualification of subcontractors on contracts awarded by State Public Works Board required; methods of qualification; disqualification; appeal.

NRS 338.1377 Local governments: Adoption of criteria for qualification of bidders.
NRS 338.1378 Advertisement required before local government may accept applications for qualification of bidders.
NRS 338.1379 Submission of application to qualify as bidder; investigation of applicant; determination; notice; period of qualification; use of criteria; confidentiality of certain financial information concerning applicant.
NRS 338.1381 Procedure upon appeal of denial of application to qualify as bidder or disqualification of subcontractor.
NRS 338.1382 Alternative procedure for qualification of bidders by local government.

ADVERTISING; ACCEPTANCE OF BIDS; AWARD OF CONTRACT

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.]
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 May 1, 2013.]
NRS 338.1386 State or local government to award contract for smaller public work to contractor or perform public work itself.
NRS 338.13862 Requirements for awarding contract for smaller public work to contractor.
NRS 338.13864 Attestation required before State or local government may perform certain smaller public works itself.
NRS 338.1389 Contract for public work for which estimated cost exceeds $250,000 must be awarded to contractor who submits best bid; certain bids deemed best bid; eligibility to receive preference in bidding; issuance of certificate of eligibility by State Contractors' Board; regulations; fees; sanctions; objections.
NRS 338.13895 Award of contract to unlicensed or improperly licensed contractor prohibited; replacement of unacceptable subcontractor before contract is awarded; rescission of award of contract to unlicensed or improperly licensed contractor before commencement of work.
NRS 338.139 Awarding of contract to specialty contractor: Conditions.

ADDITIONAL PROCEDURES, CONDITIONS AND LIMITATIONS RELATING TO CONTRACTS

GENERAL PROVISIONS

NRS 338.140 Requirements and limitations relating to drafting of specifications for bids; documents generated by bidder in preparation or determination of prices included in bid.
NRS 338.141 Bids to include certain information concerning subcontractors; when bids deemed not responsive with respect to subcontractors; requirements for substitution of named subcontractors.
NRS 338.142 Notice of protest of award of contract: Period for filing; contents; posting and disposition of bond or security; stay of action; immunity of public body from liability to bidder.

ALTERNATIVE PROCEDURES FOR LOCAL GOVERNMENTS

NRS 338.143 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 local government may commence public work itself; exemptions. [Effective through April 30, 2013.]
NRS 338.143 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 local government may commence public work itself; exemptions. [Effective May 1, 2013.]
NRS 338.1435 Constructability review required before advertising for bids.
NRS 338.1442 Local government to award contract for smaller public work to contractor or perform public work itself.
NRS 338.1444 Requirements for awarding contract for smaller public work to contractor.
NRS 338.1446 Attestation required before local government may perform certain smaller public works itself.
NRS 338.147 Contract for public work for which estimated cost exceeds $250,000 must be awarded to contractor who submits best bid; certain bids deemed best bid; eligibility to receive preference in bidding; issuance of certificate of eligibility by State Contractors' Board; regulations; fees; sanctions; objections.
NRS 338.1475 Award of contract to unlicensed or improperly licensed contractor prohibited; replacement of unacceptable subcontractor before contract is awarded; rescission of award of contract to unlicensed or improperly licensed contractor before commencement of work.
NRS 338.148 Awarding of contract to specialty contractor: Conditions.

PROVISIONS REQUIRED IN CONTRACTS

NRS 338.150 Provisions requiring arbitration of disputes; use of alternate dispute resolution methods before arbitration not prohibited.

NRS 338.153 Provision requiring persons who provide labor, equipment, materials, supplies or services for public work to comply with all applicable state and local laws.
NRS 338.155 Provisions relating to design professional who is not member of design-build team.

CONTRACTS FOR TRANSPORTATION FACILITIES

NRS 338.161 "Transportation facility" defined.
NRS 338.162 Alternative methods of authorization.
NRS 338.163 Submission of request to public body; contents of request.
NRS 338.164 Request for submission of proposals by public body.
NRS 338.166 Approval of request or proposal: Determination of public purpose; staff reports; copy of request or proposal to be furnished to affected governmental entities; fee; approval contingent on entering agreement with public body; establishment of date for development of or commencement of construction of transportation facility.
NRS 338.167 Contract for transportation services.
NRS 338.168 Federal, state or local assistance.

CONTRACTS INVOLVING CONSTRUCTION MANAGERS AT RISK

NRS 338.169 Public body authorized to construct public work by selecting and entering into contracts with construction manager at risk.
NRS 338.1691 Qualifications for construction manager at risk.
NRS 338.1692 Advertising for statements of qualifications for construction manager at risk; contents of request; requirements for statement of qualifications.
NRS 338.1693 Ranking of statements of qualifications; selection of finalists; availability to public of rankings of applicants; minimum number of qualified applicants required.
NRS 338.1694 Final proposals: Requests; requirements.
NRS 338.1695 Ranking of applicants based on final proposals and interviews; negotiations with certain applicants for contract for preconstruction services; availability to applicants and public of certain information.
NRS 338.1696 Negotiation of contract for construction of public work with construction manager at risk; awarding of contract if public body unable to negotiate satisfactory contract with construction manager at risk.
NRS 338.1697 Authorized provision in contract with construction manager at risk for construction of public work for guaranteed maximum price.
NRS 338.1698 Required and authorized provisions in contract awarded to construction manager at risk.
NRS 338.16985 Duties and powers of construction manager at risk who enters contract for construction of public work.
NRS 338.1699 Subcontractors on public works for which contractor at risk was awarded contract: Eligibility; submission of list to public body.

CONTRACTS INVOLVING DESIGN-BUILD TEAMS, PRIME CONTRACTORS OR NONPROFIT ORGANIZATIONS

GENERAL PROVISIONS

NRS 338.1711 Contracts for which public body is required or authorized to enter into with prime contractor or design-build team.
NRS 338.1715 Procedure for selecting design-build team.
NRS 338.1717 Employment of architect, general contractor, construction manager as agent, landscape architect or engineer as consultant.
NRS 338.1718 Contract with construction manager as agent.

PROCEDURES FOR AWARDING CONTRACTS TO DESIGN-BUILD TEAMS

NRS 338.1721 Qualifications of design-build team.
NRS 338.1723 Advertisement for preliminary proposals.
NRS 338.1725 Selection of finalists based on preliminary proposals; availability to public of results of evaluations of preliminary proposals and rankings of design-build teams.
NRS 338.1727 Request for and submission of final proposals; selection or rejection of final proposals; awarding of contract; partial reimbursement of unsuccessful finalists in certain circumstances; contents of contract; availability to public of certain information.

NOTIFICATION OF LICENSING BOARDS

NRS 338.175 Substantially incomplete or rejected plans submitted by registered architect, interior designer, residential designer or landscape architect.
NRS 338.176 Substantially incomplete or rejected plans submitted by licensed professional engineer or land surveyor.

DESIGN, CONSTRUCTION, RENOVATION AND DEMOLITION OF PUBLIC WORKS

GENERAL PROVISIONS

NRS 338.177 Lease of property acquired by local government for public work pending completion of public work.
NRS 338.180 Accommodation of persons with physical handicap or disability; verification of conformity with requirements; enforcement.
NRS 338.185 Public body to reimburse contractor for certain costs of locating underground facility of public utility.

ENERGY AND ENVIRONMENTAL DESIGN REQUIREMENTS

NRS 338.187 Standards for energy and environmental design. [Repealed.]
NRS 338.190 Analysis of certain public buildings before construction or renovation to estimate certain costs and to identify measures for conservation of energy and use of alternative types of energy; requirements for contracts for cost-saving measures. [Repealed.]
NRS 338.1905 Retrofitting of state buildings for energy efficiency: Appointment of energy retrofit coordinators and person to assist coordinators. [Effective through April 30, 2013.]
NRS 338.1906 Retrofitting of state buildings for energy efficiency: Duties of energy retrofit coordinators and State Board of Examiners; procedures for requesting and approving proposals; limitation on money committed beyond biennium; restrictions on approval of change orders to executed contracts; projects exempt from certain procedural requirements. [Effective through April 30, 2013.]
NRS 338.1907 Retrofitting of local governmental buildings for energy efficiency: Duties of energy retrofit coordinators and local governments; procedures for requesting and approving proposals; restrictions on approval of change orders to executed contracts; projects exempt from certain procedural requirements. [Effective through April 30, 2013.]

ADDITIONAL CONDITIONS AND LIMITATIONS

NRS 338.193 Standards for plumbing fixtures.
NRS 338.195 Survey for presence of asbestos required before renovation or demolition of public building.
NRS 338.200 Prohibition against naming public building or structure after member of governing body.

PROGRESS PAYMENTS

GENERAL PROVISIONS

NRS 338.400 Definitions.
NRS 338.415 "Progress bill" defined.
NRS 338.420 "Progress payment" defined.
NRS 338.425 "Retainage" defined.
NRS 338.430 "Retainage bill" defined.
NRS 338.435 "Retainage payment" defined.
NRS 338.455 Methods to be used for providing notice.
NRS 338.460 Dates to be used for calculating accrual of interest on retainage.

APPLICABILITY AND LIMITATIONS

NRS 338.480 Provisions inapplicable to certain contracts made by Department of Transportation.
NRS 338.485 Limitations on waiving certain rights, obligations and liabilities.
NRS 338.490 Limitations on requiring release or waiver of right to receive progress payment or retainage payment.

PAYMENTS MADE BY PUBLIC BODY TO CONTRACTOR

NRS 338.510 Submittal of progress bills.
NRS 338.515 Time for making payments; amounts paid; amounts withheld as retainage; rate of interest paid on amounts withheld; powers of Labor Commissioner when workman is owed wages.
NRS 338.520 Payment of outstanding balance upon occupancy, use or recording of notice of completion.
NRS 338.525 Withholding amounts for failure of contractor to comply with contract or applicable building code, law or regulation; payment of amounts withheld upon confirmation of correction of condition.
NRS 338.530 Payment of interest on amounts withheld improperly.
NRS 338.535 Public body to provide notice concerning progress payments and retainage payments to certain subcontractors and suppliers.

PAYMENTS MADE BY CONTRACTOR TO SUBCONTRACTORS AND SUPPLIERS

NRS 338.550 Time for making payments; amounts paid.
NRS 338.555 Amounts withheld as retainage; payment of interest.
NRS 338.560 Withholding amounts for failure of subcontractor or supplier to comply with subcontract or applicable building code, law or regulation or for claim for wages against subcontractor; payment of amounts withheld upon correction of condition.
NRS 338.565 Payment of interest on amounts withheld improperly.
NRS 338.570 Contractor to provide notice concerning progress payments and retainage payments to certain subcontractors and suppliers.

PAYMENTS MADE BY SUBCONTRACTOR TO SUBCONTRACTORS AND SUPPLIERS

NRS 338.590 Time for making payments; amounts paid.
NRS 338.595 Amounts withheld as retainage; payment of interest.
NRS 338.600 Withholding amounts for failure of subcontractor or supplier to comply with subcontract or applicable building code, law or regulation; payment of amounts withheld upon correction of condition.
NRS 338.605 Payment of interest on amounts withheld improperly.
NRS 338.610 Subcontractor to provide notice concerning progress payments and retainage payments to certain subcontractors and suppliers.

REMEDIES

NRS 338.630 Action by contractor for alternate writ of mandamus to compel performance by public body.
NRS 338.635 Action by subcontractor or supplier to remedy unjustified or excessive withholding.
NRS 338.640 Award of reasonable costs and attorney's fees to prevailing party.
NRS 338.645 Other rights and remedies not affected.

GENERAL PROVISIONS

NRS 338.010 Definitions. As used in this chapter:

1. "Authorized representative" means a person designated by a public body to be responsible for the development, solicitation, award or administration of contracts for public works pursuant to this chapter.
2. "Contract" means a written contract entered into between a contractor and a public body for the provision of labor, materials, equipment or supplies for a public work.
3. "Contractor" means:

(a) A person who is licensed pursuant to the provisions of chapter 624 of NRS or performs such work that he is not required to be licensed pursuant to chapter 624 of NRS.

(b) A design-build team.

4. "Day labor" means all cases where public bodies, their officers, agents or employees, hire, supervise and pay the wages thereof directly to a workman or workmen employed by them on public works by the day and not under a contract in writing.
5. "Design-build contract" means a contract between a public body and a design-build team in which the design-build team agrees to design and construct a public work.
6. "Design-build team" means an entity that consists of:

(a) At least one person who is licensed as a general engineering contractor or a general building contractor pursuant to chapter 624 of NRS; and

(b) For a public work that consists of:

(1) A building and its site, at least one person who holds a certificate of registration to practice architecture pursuant to chapter 623 of NRS.

(2) Anything other than a building and its site, at least one person who holds a certificate of registration to practice architecture pursuant to chapter 623 of NRS or landscape architecture pursuant to chapter 623A of NRS or who is licensed as a professional engineer pursuant to chapter 625 of NRS.

7. "Design professional" means:

(a) A person who is licensed as a professional engineer pursuant to chapter 625 of NRS;

(b) A person who is licensed as a professional land surveyor pursuant to chapter 625 of NRS;

(c) A person who holds a certificate of registration to engage in the practice of architecture, interior design or residential design pursuant to chapter 623 of NRS;

(d) A person who holds a certificate of registration to engage in the practice of landscape architecture pursuant to chapter 623A of NRS; or

(e) A business entity that engages in the practice of professional engineering, land surveying, architecture or landscape architecture.

8. "Eligible bidder" means a person who is:

(a) Found to be a responsible and responsive contractor by a local government or its authorized representative which requests bids for a public work in accordance with paragraph (b) of subsection 1 of NRS 338.1373; or

(b) Determined by a public body or its authorized representative which awarded a contract for a public work pursuant to NRS 338.1375 to 338.139, inclusive, to be qualified to bid on that contract pursuant to NRS 338.1379 or 338.1382.

9. "General contractor" means a person who is licensed to conduct business in one, or both, of the following branches of the contracting business:

(a) General engineering contracting, as described in subsection 2 of NRS 624.215.

(b) General building contracting, as described in subsection 3 of NRS 624.215.

10. "Governing body" means the board, council, commission or other body in which the general legislative and fiscal powers of a local government are vested.
11. "Local government" means every political subdivision or other entity which has the right to levy or receive money from ad valorem or other taxes or any mandatory assessments, and includes, without limitation, counties, cities, towns, boards, school districts and other districts organized pursuant to chapters 244A, 309, 318, 379, 474, 538, 541, 543 and 555 of NRS, NRS 450.550 to 450.750, inclusive, and any agency or department of a county or city which prepares a budget separate from that of the parent political subdivision. The term includes a person who has been designated by the governing body of a local government to serve as its authorized representative.
12. "Offense" means failing to:

(a) Pay the prevailing wage required pursuant to this chapter;
(b) Pay the contributions for unemployment compensation required pursuant to chapter 612 of NRS;
(c) Provide and secure compensation for employees required pursuant to chapters 616A to 617, inclusive, of NRS; or
(d) Comply with subsection 4 or 5 of NRS 338.070.

13. "Prime contractor" means a contractor who:
(a) Contracts to construct an entire project;
(b) Coordinates all work performed on the entire project;
(c) Uses his own workforce to perform all or a part of the public work; and
(d) Contracts for the services of any subcontractor or independent contractor or is responsible for payment to any contracted subcontractors or independent contractors.

➥ The term includes, without limitation, a general contractor or a specialty contractor who is authorized to bid on a project pursuant to NRS 338.139 or 338.148.

14. "Public body" means the State, county, city, town, school district or any public agency of this State or its political subdivisions sponsoring or financing a public work.

15. "Public work" means any project for the new construction, repair or reconstruction of:
(a) A project financed in whole or in part from public money for:
(1) Public buildings;
(2) Jails and prisons;
(3) Public roads;
(4) Public highways;
(5) Public streets and alleys;
(6) Public utilities;
(7) Publicly owned water mains and sewers;
(8) Public parks and playgrounds;
(9) Public convention facilities which are financed at least in part with public money; and
(10) All other publicly owned works and property.
(b) A building for the Nevada System of Higher Education of which 25 percent or more of the costs of the building as a whole are paid from money appropriated by this State or from federal money.

16. "Specialty contractor" means a person who is licensed to conduct business as described in subsection 4 of NRS 624.215.

17. "Stand-alone underground utility project" means an underground utility project that is not integrated into a larger project, including, without limitation:
(a) An underground sewer line or an underground pipeline for the conveyance of water, including facilities appurtenant thereto; and
(b) A project for the construction or installation of a storm drain, including facilities appurtenant thereto,

➥ that is not located at the site of a public work for the design and construction of which a public body is authorized to contract with a design-build team pursuant to subsection 2 of NRS 338.1711.

18. "Subcontract" means a written contract entered into between:
(a) A contractor and a subcontractor or supplier; or
(b) A subcontractor and another subcontractor or supplier,

➥ for the provision of labor, materials, equipment or supplies for a construction project.

19. "Subcontractor" means a person who:
(a) Is licensed pursuant to the provisions of chapter 624 of NRS or performs such work that he is not required to be licensed pursuant to chapter 624 of NRS; and
(b) Contracts with a contractor, another subcontractor or a supplier to provide labor, materials or services for a construction project.

20. "Supplier" means a person who provides materials, equipment or supplies for a construction project.

21. "Wages" means:
(a) The basic hourly rate of pay; and
(b) The amount of pension, health and welfare, vacation and holiday pay, the cost of apprenticeship training or other similar programs or other bona fide fringe benefits which are a benefit to the workman.

22. "Workman" means a skilled mechanic, skilled workman, semiskilled mechanic, semiskilled workman or unskilled workman in the service of a contractor or subcontractor under any appointment or contract of hire or apprenticeship, express or implied, oral or written, whether lawfully or unlawfully employed. The term does not include a design professional.

[1 1/2:139:1937; added 1941, 389; 1931 NCL § 6179.51 1/2]—(NRS A 1969, 735; 1979, 1288; 1981, 526; 1983, 130, 1573; 1989, 1965; 1993, 392, 2131, 2247; 1995, 691; 1999, 1849, 1991, 2396, 3472, 3502; 2001, 252, 1143, 1268, 2022, 2258, 2276; 2003, 119, 124, 1518, 1986, 2411, 2489; 2005, 1793)

NRS 338.011 Applicability: Contracts related to normal operation and normal maintenance; contracts related to emergency. The requirements of this chapter do not apply to a contract:

1. Awarded in compliance with chapter 332 or 333 of NRS which is directly related to the normal operation of the public body or the normal maintenance of its property.

2. Awarded to meet an emergency which results from a natural or man-made disaster and which threatens the health, safety or welfare of the public. If the public body or its authorized representative determines that an emergency exists, a contract or contracts necessary to contend with the emergency may be let without complying with the requirements of this chapter. If such emergency action was taken by the authorized representative, the authorized representative shall report the contract or contracts to the public body at the next regularly scheduled meeting of the public body.

(Added to NRS by 1981, 526; A 2003, 2414)

NRS 338.0115 Inapplicability of this chapter and chapters 332 and 339 of NRS to certain projects constructed by

private developers.

1. Except as otherwise provided in subsection 2, the provisions of this chapter and chapters 332 and 339 of NRS do not apply to a contract under which a private developer, for the benefit of a private development, constructs a water or sewer line extension and any related appurtenances:

(a) Which qualify as a public work pursuant to NRS 338.010; and

(b) For which he will receive a monetary contribution or refund from a public body as reimbursement for a portion of the costs of the project.

2. If, pursuant to the provisions of such a contract, the developer is not responsible for paying all of the initial construction costs of the project, the provisions of NRS 338.013 to 338.090, inclusive, and 338.1373 to 338.148, inclusive, apply to the contract.

(Added to NRS by 1995, 2648; A 1999, 2397)

NRS 338.012 Regulations of Labor Commissioner. The Labor Commissioner may adopt such regulations as are necessary to enable him to carry out his duties pursuant to the provisions of this chapter.

(Added to NRS by 1983, 1361)

EMPLOYMENT

General Provisions

NRS 338.013 Inclusion of identifying number from Labor Commissioner in advertisement for bids; reports by public bodies and contractors to Labor Commissioner.

1. A public body that advertises for bids for a public work shall request from the Labor Commissioner, and include in the advertisement, an identifying number with his designation of the work. That number must be included in any bid submitted in response to the advertisement.

2. Each public body which awards a contract for any public work shall report its award to the Labor Commissioner within 10 days after the award, giving the name and address of the contractor to whom the public body awarded the contract and the identifying number for the public work.

3. Each contractor engaged on a public work shall report to the Labor Commissioner and the public body that awarded the contract the name and address of each subcontractor whom he engages for work on the project within 10 days after the subcontractor commences work on the contract and the identifying number for the public work.

4. The public body which awarded the contract shall report the completion of all work performed under the contract to the Labor Commissioner before the final payment of money due the contractor by the public body.

(Added to NRS by 1977, 789; A 1985, 2039; 1997, 3081; 2003, 2414)

NRS 338.015 Enforcement by Labor Commissioner and Attorney General.

1. The Labor Commissioner shall enforce the provisions of NRS 338.010 to 338.130, inclusive.

2. In addition to any other remedy or penalty provided in this chapter, if any person, including, without limitation, a public body, violates any provision of NRS 338.010 to 338.130, inclusive, or any regulation adopted pursuant thereto, the Labor Commissioner may, after providing the person with notice and an opportunity for a hearing, impose against the person an administrative penalty of not more than $5,000 for each such violation.

3. The Labor Commissioner may, by regulation, establish a sliding scale based on the severity of the violation to determine the amount of the administrative penalty to be imposed against the person pursuant to this section.

4. The Labor Commissioner shall report the violation to the Attorney General, and the Attorney General may prosecute the person in accordance with law.

(Added to NRS by 1973, 874; A 1993, 2248; 2001, 1146; 2003, 798; 2005, 202)

NRS 338.016 Civil action to recover damages resulting from commission of offense.

1. If, after an opportunity for a hearing, an administrative penalty is imposed against a contractor on a public work for the commission of an offense:

(a) An eligible bidder, or any person who entered into a contract with the eligible bidder before bids for the contract for the public work were let, may commence a civil action against the contractor to recover damages suffered as a proximate result of the eligible bidder not being awarded the contract for the public work.

(b) There is a rebuttable presumption that the contractor was awarded the contract for the public work because his bid on the contract was based, in part, on his intent to commit the offense and, as a result, was lower than it otherwise would have been.

2. The court may award costs and reasonable attorney's fees to the prevailing party in any action brought pursuant to this section.

(Added to NRS by 1993, 2247; A 2003, 799)

NRS 338.017 Temporary disqualification of contractor after imposition of administrative penalty; notification of State Contractors' Board. If any administrative penalty is imposed against a person for the commission of an offense:

1. That person, and the corporate officers, if any, of that person, may not be awarded a contract for a public work:

(a) For the first offense, for a period of 3 years after the date of the imposition of the administrative penalty; and

(b) For the second or subsequent offense, for a period of 5 years after the date of the imposition of the administrative penalty.

2. The Labor Commissioner shall notify the State Contractors' Board of each contractor who is prohibited from being awarded a contract for a public work pursuant to this section.

(Added to NRS by 1993, 2247; A 2001, 1146; 2003, 2145)

NRS 338.018 Applicability to certain contracts for construction work of Nevada System of Higher Education. The provisions of NRS 338.013 to 338.018, inclusive, apply to any contract for construction work of the Nevada System of Higher Education for which the estimated cost exceeds $100,000 even if the construction work does not qualify as a public work, as defined in subsection 15 of NRS 338.010.

(Added to NRS by 2005, 2890)

Wages

NRS 338.020 Hourly and daily rate of wages must not be less than prevailing wage in county; rate must be included in contract and posted on-site; payment of overtime; wages paid in accordance with jurisdictional classes recognized in locality.

1. Every contract to which a public body of this State is a party, requiring the employment of skilled mechanics, skilled workmen, semiskilled mechanics, semiskilled workmen or unskilled labor in the performance of public work, must contain in express terms the hourly and daily rate of wages to be paid each of the classes of mechanics and workmen. The hourly and daily rate of wages must:

(a) Not be less than the rate of such wages then prevailing in the county in which the public work is located, which prevailing rate of wages must have been determined in the manner provided in NRS 338.030; and

(b) Be posted on the site of the public work in a place generally visible to the workmen.

2. When public work is performed by day labor, the prevailing wage for each class of mechanics and workmen so employed applies and must be stated clearly to such mechanics and workmen when employed.

3. Except as otherwise provided in subsection 4, a contractor or subcontractor shall pay to a mechanic or workman employed by the contractor or subcontractor on the public work not less than one and one-half times the prevailing rate of wages applicable to the class of the mechanic or workman for each hour the mechanic or workman works on the public work in excess of:

(a) Forty hours in any scheduled week of work by the mechanic or workman for the contractor or subcontractor, including, without limitation, hours worked for the contractor or subcontractor on work other than the public work; or

(b) Eight hours in any workday that the mechanic or workman was employed by the contractor or subcontractor, including, without limitation, hours worked for the contractor or subcontractor on work other than the public work, unless by mutual agreement the mechanic or workman works a scheduled 10 hours per day for 4 calendar days within any scheduled week of work.

4. The provisions of subsection 3 do not apply to a mechanic or workman who is covered by a collective bargaining agreement that provides for the payment of wages at not less than one and one-half times the rate of wages set forth in the collective bargaining agreement for work in excess of:

(a) Forty hours in any scheduled week of work; or

(b) Eight hours in any workday unless the collective bargaining agreement provides that the mechanic or workman shall work a scheduled 10 hours per day for 4 calendar days within any scheduled week of work.

5. The prevailing wage and any wages paid for overtime pursuant to subsection 3 or 4 to each class of mechanics or workmen must be in accordance with the jurisdictional classes recognized in the locality where the work is performed.

6. Nothing in this section prevents an employer who is signatory to a collective bargaining agreement from assigning such work in accordance with established practice.

[1:139:1937; A 1941, 389; 1931 NCL § 6179.51]—(NRS A 1969, 736; 1973, 874; 1983, 131; 1985, 2040; 2003, 1741; 2005, 812)

NRS 338.030 Procedure for determination of prevailing wage in county.

1. The public body awarding any contract for public work, or otherwise undertaking any public work, shall ascertain from the Labor Commissioner the prevailing wage in the county in which the public work is to be performed for each craft or type of work.

2. To establish a prevailing wage in each county, including Carson City, the Labor Commissioner shall, annually, survey contractors who have performed work in the county. Within 30 days after the determination is issued:

(a) A public body or person entitled under subsection 5 to be heard may submit an objection to the Labor Commissioner with evidence to substantiate that a different wage prevails; and

(b) Any person may submit information to the Labor Commissioner that would support a change in the prevailing wage of a craft or type of work by 50 cents or more per hour in any county.

3. The Labor Commissioner shall hold a hearing in the locality in which the work is to be executed if he:

(a) Is in doubt as to the prevailing wage; or

(b) Receives an objection or information pursuant to subsection 2.

➥ The Labor Commissioner may hold only one hearing a year on the prevailing wage of any craft or type of work in any county.

4. Notice of the hearing must be advertised in a newspaper nearest to the locality of the work once a week for 2 weeks before the time of the hearing.

5. At the hearing, any public body, the crafts affiliated with the State Federation of Labor or other recognized national labor organizations, and the contractors of the locality or their representatives must be heard. From the evidence presented, the Labor Commissioner shall determine the prevailing wage.

6. The wages so determined must be filed by the Labor Commissioner and must be available to any public body which awards a contract for any public work.

7. Nothing contained in NRS 338.020 to 338.090, inclusive, may be construed to authorize the fixing of any wage below any rate which may now or hereafter be established as a minimum wage for any person employed upon any public work, or employed by any officer or agent of any public body.

[2:139:1937; 1931 NCL § 6179.52]—(NRS A 1985, 2040; 2001, 1147; 2003, 2414)

NRS 338.035 Discharge of part of obligation of contractor or subcontractor engaged on public work to pay wages by making certain contributions in name of workman. The obligation of a contractor engaged on a public work or a subcontractor engaged on a public work to pay wages in accordance with the determination of the Labor Commissioner may be discharged in part by making contributions to a third person pursuant to a fund, plan or program in the name of the workman.

(Added to NRS by 1983, 1574; A 2003, 2415; 2005, 813)

NRS 338.040 Workmen deemed to be employed on public works.

1. Except as otherwise provided by specific statute, workmen who are:

(a) Employed at the site of a public work; and

(b) Necessary in the execution of the contract for the public work,

↪ are deemed to be employed on public works.

2. The Labor Commissioner shall adopt regulations to define the circumstances under which a workman is:

(a) Employed at the site of a public work; and

(b) Necessary in the execution of the contract for the public work.

[3:139:1937; A 1941, 389; 1931 NCL § 6179.53]—(NRS A 2001, 1147)

NRS 338.050 Contractual relationships: Applicability of NRS 338.010 to 338.090, inclusive. For the purpose of NRS 338.010 to 338.090, inclusive, except as otherwise provided by specific statute, every workman who performs work for a public work covered by a contract therefor is subject to all of the provisions of NRS 338.010 to 338.090, inclusive, regardless of any contractual relationship alleged to exist between such workman and his employer.

[4:139:1937; A 1941, 389; 1931 NCL § 6179.54]—(NRS A 2001, 1148; 2005, 2891)

NRS 338.060 Forfeitures when workmen paid less than designated rates or willfully reported in inaccurate or incomplete manner or not reported to public body; forfeiture clause in contracts; regulation establishing sliding scale for penalties; recovery of investigative costs and attorney's fees; waiver or reduction of penalty.

1. Except as otherwise provided in subsection 8, a contractor engaged on a public work shall forfeit, as a penalty to the public body on behalf of which the contract has been made and awarded to the contractor, not less than $20 nor more than $50 for each calendar day or portion thereof that each workman employed on the public work is paid less than the designated rate for any work done under the contract, by the contractor or any subcontractor engaged on the public work.

2. Except as otherwise provided in subsection 8, a contractor engaged on a public work shall forfeit, as a penalty to the public body on behalf of which the contract has been made and awarded to the contractor, not less than $20 nor more than $50 for each calendar day or portion thereof for each workman employed on the public work for which the contractor or subcontractor willfully included inaccurate or incomplete information in the monthly record required to be submitted to the public body pursuant to subsection 5 of NRS 338.070.

3. Except as otherwise provided in subsection 8, a contractor engaged on a public work shall forfeit, as a penalty to the public body on behalf of which the contract has been made and awarded to the contractor, not less than $20 nor more than $50 for each calendar day or portion thereof that each workman employed on the public work is not reported to the public body awarding the contract by the contractor or any subcontractor engaged on the public work as required pursuant to subsection 5 of NRS 338.070, up to a maximum of:

(a) For the first failure to comply during the term of the contract for the public work, $1,000; and

(b) For each subsequent failure to comply during the term of the contract for the public work, $5,000.

4. Except as otherwise provided in subsection 8, if a violation of more than one provision of subsections 1, 2 and 3 involves the same workman, the contractor shall forfeit the penalty set forth in each subsection that was violated.

5. A public body awarding a contract for a public work shall cause a stipulation setting forth the penalties specified in subsections 1 to 4, inclusive, to be inserted in the contract.

6. The Labor Commissioner shall, by regulation, establish a sliding scale based on the size of the business of a contractor engaged on a public work to determine the amount of the penalty to be imposed pursuant to subsections 1 and 2.

7. If a penalty is imposed pursuant to this section, the costs of the proceeding, including investigative costs and attorney's fees, may be recovered by the Labor Commissioner and the public body.

8. The Labor Commissioner may, for good cause shown, waive or reduce any penalty imposed pursuant to this section.

[6:139:1937; A 1941, 389; 1931 NCL § 6179.56]—(NRS A 1993, 896; 1997, 3355; 2001, 1148; 2003, 1862, 2415)

NRS 338.070 Investigations of violations by public bodies; withholding of certain sums by public bodies and contractors; maintenance and inspection of records regarding employees; penalty for noncompliance.

1. Any public body awarding a contract shall:

(a) Investigate possible violations of the provisions of NRS 338.010 to 338.090, inclusive, committed in the course of the execution of the contract, and determine whether a violation has been committed and inform the Labor Commissioner of any such violations; and

(b) When making payments to the contractor engaged on the public work of money becoming due under the contract, withhold and retain all sums forfeited pursuant to the provisions of NRS 338.010 to 338.090, inclusive.

2. No sum may be withheld, retained or forfeited, except from the final payment, without a full investigation being made by the awarding public body.

3. Except as otherwise provided in subsection 6, it is lawful for any contractor engaged on a public work to withhold from any subcontractor engaged on the public work sufficient sums to cover any penalties withheld from the contractor by the awarding public body on account of the failure of the subcontractor to comply with the terms of NRS 338.010 to 338.090, inclusive. If payment has already been made to the subcontractor, the contractor may recover from the subcontractor the amount of the penalty or forfeiture in a suit at law.

4. A contractor engaged on a public work and each subcontractor engaged on the public work shall keep or cause to be kept an accurate record showing the name, the occupation and the actual per diem, wages and benefits paid to each workman

employed by the contractor and subcontractor in connection with the public work.

5. The record maintained pursuant to subsection 4 must be open at all reasonable hours to the inspection of the public body awarding the contract. The contractor engaged on the public work or subcontractor engaged on the public work shall ensure that a copy of the record for each calendar month is received by the public body awarding the contract no later than 15 days after the end of the month. The copy must be open to public inspection as provided in NRS 239.010. The record in the possession of the public body awarding the contract may be discarded by the public body 2 years after final payment is made by the public body for the public work.

6. A contractor engaged on a public work shall not withhold from a subcontractor engaged on the public work the sums necessary to cover any penalties provided pursuant to subsection 3 of NRS 338.060 that may be withheld from the contractor by the public body awarding the contract because the public body did not receive a copy of the record maintained by the subcontractor pursuant to subsection 4 for a calendar month by the time specified in subsection 5 if:

(a) The subcontractor provided to the contractor, for submission to the public body by the contractor, a copy of the record not later than the later of:

(1) Ten days after the end of the month; or

(2) A date agreed upon by the contractor and subcontractor; and

(b) The contractor failed to submit the copy of the record to the public body by the time specified in subsection 5.

➥ Nothing in this subsection prohibits a subcontractor from submitting a copy of a record for a calendar month directly to the public body by the time specified in subsection 5.

7. Any contractor or subcontractor, or agent or representative thereof, performing work for a public work who neglects to comply with the provisions of this section is guilty of a misdemeanor.

[7:139:1937; 1931 NCL § 6179.57]—(NRS A 1977, 789; 1985, 274; 1987, 1045; 1989, 464; 2001, 1148; 2003, 1863, 2416)

NRS 338.075 Applicability to certain contracts for construction work of Nevada System of Higher Education. The provisions of NRS 338.020 to 338.090, inclusive, apply to any contract for construction work of the Nevada System of Higher Education for which the estimated cost exceeds $100,000 even if the construction work does not qualify as a public work, as defined in subsection 15 of NRS 338.010.

(Added to NRS by 2005, 2890)

NRS 338.080 Exemptions. None of the provisions of NRS 338.020 to 338.090, inclusive, apply to:

1. Any work, construction, alteration, repair or other employment performed, undertaken or carried out, by or for any railroad company or any person operating the same, whether such work, construction, alteration or repair is incident to or in conjunction with a contract to which a public body is a party, or otherwise.

2. Apprentices recorded under the provisions of chapter 610 of NRS.

3. Any contract for a public work whose cost is less than $100,000. A unit of the project must not be separated from the total project, even if that unit is to be completed at a later time, in order to lower the cost of the project below $100,000.

[9:139:1937; 1931 NCL § 6179.59] + [8:169:1941; 1931 NCL § 6179.62]—(NRS A 1967, 34; 1985, 2041; 2003, 2416)

NRS 338.090 Penalties.

1. Any person, including the officers, agents or employees of a public body, who violates any provision of NRS 338.010 to 338.090, inclusive, or any regulation adopted pursuant thereto, is guilty of a misdemeanor.

2. The Labor Commissioner, in addition to any other remedy or penalty provided in this chapter:

(a) Shall assess a person who, after an opportunity for a hearing, is found to have failed to pay the prevailing wage required pursuant to NRS 338.020 to 338.090, inclusive, an amount equal to the difference between the prevailing wages required to be paid and the wages that the contractor or subcontractor actually paid; and

(b) May, in addition to any other administrative penalty, impose an administrative penalty not to exceed the costs incurred by the Labor Commissioner to investigate and prosecute the matter.

3. If the Labor Commissioner finds that a person has failed to pay the prevailing wage required pursuant to NRS 338.020 to 338.090, inclusive, the public body may, in addition to any other remedy or penalty provided in this chapter, require the person to pay the actual costs incurred by the public body to investigate the matter.

[7 1/2:139:1937; A 1941, 389; 1931 NCL § 6179.57 1/2]—(NRS A 1967, 553; 1985, 2041; 1993, 2248; 2001, 1149; 2003, 799, 2417)

Employment Practices

NRS 338.125 Fair employment practices: Contents of contracts concerning public works; breach of contract.

1. It is unlawful for any contractor in connection with the performance of work under a contract with a public body, when payment of the contract price, or any part of such payment, is to be made from public money, to refuse to employ or to discharge from employment any person because of his race, color, creed, national origin, sex, sexual orientation or age, or to discriminate against a person with respect to hire, tenure, advancement, compensation or other terms, conditions or privileges of employment because of his race, creed, color, national origin, sex, sexual orientation or age.

2. Contracts between contractors and public bodies must contain the following contractual provisions:

> In connection with the performance of work under this contract, the contractor agrees not to discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, sexual orientation or age, including, without limitation, with regard to employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including, without limitation, apprenticeship.
>
> The contractor further agrees to insert this provision in all subcontracts hereunder, except subcontracts for standard commercial supplies or raw materials.

3. Any violation of such provision by a contractor constitutes a material breach of contract.

4. As used in this section, "sexual orientation" means having or being perceived as having an orientation for heterosexuality, homosexuality or bisexuality.

(Added to NRS by 1959, 137; A 1973, 981; 1999, 1942; 2003, 2417)

NRS 338.130 Preferential employment in construction of public works.

1. In all cases where persons are employed in the construction of public works, preference must be given, the qualifications of the applicants being equal:

(a) First: To persons who:

(1) Have been honorably discharged from the Army, Navy, Air Force, Marine Corps or Coast Guard of the United States, a reserve component thereof or the National Guard; and

(2) Are citizens of the State of Nevada.

(b) Second: To other citizens of the State of Nevada.

2. Nothing in this section shall be construed to prevent the working of prisoners by a public body on a public work.

3. In each contract for the construction of public works, a clause must be inserted to the effect that if the provisions of this section are not complied with by the contractor engaged on the public work, the contract is void, and any failure or refusal to comply with any of the provisions of this section renders any such contract void. All boards, commissions, officers, agents and employees having the power to enter into contracts for the expenditure of public money on public works shall file in the Office of the Labor Commissioner the names and addresses of all contractors holding contracts with the public body, and upon the letting of new contracts, the names and addresses of such new contractors must likewise be filed with the Labor Commissioner. Upon the demand of the Labor Commissioner, a contractor shall furnish a list of the names and addresses of all subcontractors employed by the contractor engaged on a public work.

4. Subject to the exceptions contained in this section, no money may be paid out of the State Treasury or out of the treasury of any political subdivision of the State to any person employed on any work mentioned in this section unless there has been compliance with the provisions of this section.

5. Any contractor engaged on a public work or any other person who violates any of the provisions of this section is guilty of a misdemeanor. The penalties provided for in this section do not apply where violations thereof are due to misrepresentations made by the employee or employees.

[Part 1:168:1919; A 1921, 205; 1929, 89; NCL § 6173] + [2:168:1919; A 1921, 205; NCL § 6174] + [3:168:1919; 1919 RL p. 2965; NCL § 6175] + [Part 4:168:1919; A 1921, 205; NCL § 6176]—(NRS A 1967, 554; 1971, 209; 2003, 2418; 2005, 22)

NRS 338.135 Rental or lease of trucks or truck and trailer combinations by contractors or subcontractors: Hourly rate for vehicle and services of driver. Where a truck or truck and trailer combination is rented or leased after April 22, 1969, by a contractor or subcontractor on a public work, the hourly rate for the rental or lease of such truck or truck and trailer combination must, when added to the prevailing rate of wages required by NRS 338.020 for the driver, not be less than the hourly rate for similar vehicles with a driver as such hourly rate appears in freight tariffs approved by the Nevada Transportation Authority for the area in which the public work is located.

(Added to NRS by 1969, 900; A 1997, 1987)

PROCEDURES FOR AWARDING CONTRACTS

Limitations on General Applicability of Provisions

NRS 338.1373 Option of local governments to comply with alternative procedures; inapplicability of certain provisions to contracts awarded by Department of Transportation.

1. A local government or its authorized representative shall award a contract for a public work pursuant to the provisions of:

(a) NRS 338.1377 to 338.139, inclusive;

(b) NRS 338.143 to 338.148, inclusive;

(c) NRS 338.169 to 338.1699, inclusive; or

(d) NRS 338.1711 to 338.1727, inclusive.

2. The provisions of NRS 338.1375 to 338.1382, inclusive, 338.1386, 338.13862, 338.13864, 338.139, 338.142, 338.169 to 338.1699, inclusive, and 338.1711 to 338.1727, inclusive, do not apply with respect to contracts for the construction, reconstruction, improvement and maintenance of highways that are awarded by the Department of Transportation pursuant to NRS 408.313 to 408.433, inclusive.

(Added to NRS by 1999, 2390; A 2001, 640, 1930, 2262; 2003, 157, 1988, 2128, 2418, 2491; 2007, 2896)

Qualification of Bidders; Qualification of Subcontractors on State Public Works

NRS 338.1375 State Public Works Board: Acceptance of bids from qualified bidders only; adoption and use of criteria for qualification of bidders.

1. The State Public Works Board shall not accept a bid on a contract for a public work unless the contractor who submits the bid has qualified pursuant to NRS 338.1379 to bid on that contract.

2. The State Public Works Board shall by regulation adopt criteria for the qualification of bidders on contracts for public works of this State. The criteria adopted by the State Public Works Board pursuant to this section must be used by the State Public Works Board to determine the qualification of bidders on contracts for public works of this State.

3. The criteria adopted by the State Public Works Board pursuant to this section:

(a) Must be adopted in such a form that the determination of whether an applicant is qualified to bid on a contract for a

public work does not require or allow the exercise of discretion by any one person.

(b) May include only:

(1) The financial ability of the applicant to perform a contract;

(2) The principal personnel of the applicant;

(3) Whether the applicant has breached any contracts with a public body or person in this State or any other state;

(4) Whether the applicant has been disqualified from being awarded a contract pursuant to NRS 338.017 or 338.13895;

(5) The performance history of the applicant concerning other recent, similar contracts, if any, completed by the applicant; and

(6) The truthfulness and completeness of the application.

(Added to NRS by 1999, 2390; A 2001, 1930; 2003, 2128, 2419)

NRS 338.1376 Qualification of subcontractors on contracts awarded by State Public Works Board required; methods of qualification; disqualification; appeal.

1. Each subcontractor whose name is required to be included in a bid pursuant to NRS 338.141 must, to be eligible to provide labor or a portion of the work or improvement to a contractor to whom the State Public Works Board awards a contract pursuant to this chapter, be qualified in accordance with criteria established by regulation by the State Public Works Board. The criteria established by the State Public Works Board pursuant to this subsection must be made applicable to a subcontractor but must otherwise be substantively identical to the criteria set forth in paragraph (b) of subsection 3 of NRS 338.1375.

2. A subcontractor shall be presumed to be qualified pursuant to subsection 1 unless the State Public Works Board has received information that:

(a) The State Public Works Board determines to be sufficient and verifiable; and

(b) Indicates the subcontractor does not meet the criteria established by regulation pursuant to subsection 1.

3. Upon receipt of sufficient and verifiable information of a type described in subsection 2, the State Public Works Board shall require a subcontractor regarding whom such information is received to submit to the State Public Works Board, on a form prescribed by the State Public Works Board, an application for qualification in accordance with the criteria established by regulation pursuant to subsection 1. After receiving such an application, the State Public Works Board shall determine whether the subcontractor is qualified in accordance with the criteria established by regulation pursuant to subsection 1. Except as otherwise provided in subsection 4, if the State Public Works Board determines that the subcontractor does not meet such criteria, the State Public Works Board may disqualify the subcontractor, for a period set by the State Public Works Board, from participating in public works projects which are sponsored by the State Public Works Board. The State Public Works Board shall provide written notice to the subcontractor of any such disqualification.

4. A subcontractor may appeal a disqualification pursuant to subsection 3 in the manner set forth in NRS 338.1381.

(Added to NRS by 2003, 2127)

NRS 338.1377 Local governments: Adoption of criteria for qualification of bidders. Except as otherwise provided in NRS 338.1382, if a governing body that sponsors or finances a public work elects to award contracts for public works pursuant to the provisions of NRS 338.1377 to 338.139, inclusive, the governing body shall adopt the following criteria for determining whether a person who has applied pursuant to NRS 338.1379 is qualified to bid on contracts for public works of the local government:

1. Whether the applicant possesses a valid contractor's license of a class corresponding to the work to be required by the local government;

2. Whether the applicant has the ability to obtain the necessary bonding for the work to be required by the local government;

3. Whether the applicant has successfully completed an appropriate number of projects as determined by the local government, but not to exceed five projects, during the 5 years immediately preceding the date of application of similar size, scope or type as the work to be required by the local government;

4. Whether the principal personnel employed by the applicant have the necessary professional qualifications and experience for the work to be required by the local government;

5. Whether the applicant has breached any contracts with a public agency or person in this State or any other state during the 5 years immediately preceding the date of application;

6. Whether the applicant has been disqualified from being awarded a contract pursuant to NRS 338.017 or 338.13895;

7. Whether the applicant has been convicted of a violation for discrimination in employment during the 2 years immediately preceding the date of application;

8. Whether the applicant has the ability to obtain and maintain insurance coverage for public liability and property damage within limits sufficient to protect the applicant and all the subcontractors of the applicant from claims for personal injury, accidental death and damage to property that may arise in connection with the work to be required by the local government;

9. Whether the applicant has established a safety program that complies with the requirements of chapter 618 of NRS;

10. Whether the applicant has been disciplined or fined by the State Contractors' Board or another state or federal agency for conduct that relates to the ability of the applicant to perform the work to be required by the local government;

11. Whether, during the 5 years immediately preceding the date of application, the applicant has filed as a debtor under the provisions of the United States Bankruptcy Code;

12. Whether the application of the applicant is truthful and complete; and

13. Whether, during the 5 years immediately preceding the date of application, the applicant has, as a result of causes within the control of the applicant or a subcontractor or supplier of the applicant, failed to perform any contract:

(a) In the manner specified by the contract and any change orders initiated or approved by the person or governmental entity that awarded the contract or its authorized representative;

(b) Within the time specified by the contract unless extended by the person or governmental entity that awarded the

contract or its authorized representative; or

(c) For the amount of money specified in the contract or as modified by any change orders initiated or approved by the person or governmental entity that awarded the contract or its authorized representative.

➥ Evidence of the failures described in this subsection may include, without limitation, the assessment of liquidated damages against the applicant, the forfeiture of any bonds posted by the applicant, an arbitration award granted against the applicant or a decision by a court of law against the applicant.

(Added to NRS by 1999, 2390; A 2001, 170, 1931; 2003, 2419, 2491; 2005, 1795)

NRS 338.1378 Advertisement required before local government may accept applications for qualification of bidders.

1. Before a local government accepts applications pursuant to NRS 338.1379, the local government must, in accordance with subsection 2, advertise in a newspaper that is:

(a) Qualified pursuant to the provisions of chapter 238 of NRS; and

(b) Published in a county in which the contracts for the potential public works will be performed or, if no qualified newspaper is published in that county, published in a qualified newspaper that is published in the State of Nevada and which has a general circulation in the county in which the contracts for the potential public works will be performed.

2. An advertisement required pursuant to subsection 1:

(a) Must be published at least once not less than 21 days before applications are to be submitted to the local government; and

(b) Must include:

(1) A description of the potential public works for which applications to qualify as a bidder are being accepted;

(2) The time and place at which applications are to be submitted to the local government;

(3) The place at which applications may be obtained; and

(4) Any other information that the local government deems necessary.

(Added to NRS by 2003, 2488; A 2005, 1797)

NRS 338.1379 Submission of application to qualify as bidder; investigation of applicant; determination; notice; period of qualification; use of criteria; confidentiality of certain financial information concerning applicant.

1. Except as otherwise provided in NRS 338.1382, a contractor who wishes to qualify as a bidder on a contract for a public work must submit an application to the State Public Works Board or the local government.

2. Upon receipt of an application pursuant to subsection 1, the State Public Works Board or the local government shall:

(a) Investigate the applicant to determine whether he is qualified to bid on a contract; and

(b) After conducting the investigation, determine whether the applicant is qualified to bid on a contract. The determination must be made within 45 days after receipt of the application.

3. The State Public Works Board or the local government shall notify each applicant in writing of its determination. If an application is denied, the notice must set forth the reasons for the denial and inform the applicant of his right to a hearing pursuant to NRS 338.1381.

4. The State Public Works Board or the local government may determine an applicant is qualified to bid:

(a) On a specific project; or

(b) On more than one project over a period of time to be determined by the State Public Works Board or the local government.

5. The State Public Works Board shall not use any criteria other than criteria adopted by regulation pursuant to NRS 338.1375 in determining whether to approve or deny an application.

6. The local government shall not use any criteria other than the criteria described in NRS 338.1377 in determining whether to approve or deny an application.

7. Except as otherwise provided in NRS 239.0115, financial information and other data pertaining to the net worth of an applicant which is gathered by or provided to the State Public Works Board or a local government to determine the financial ability of an applicant to perform a contract is confidential and not open to public inspection.

(Added to NRS by 1999, 2391; A 2001, 1931; 2003, 2421, 2493; 2005, 1797; 2007, 2089)

NRS 338.1381 Procedure upon appeal of denial of application to qualify as bidder or disqualification of subcontractor.

1. If, within 10 days after receipt of the notice denying an application pursuant to NRS 338.1379 or disqualifying a subcontractor pursuant to NRS 338.1376, the applicant or subcontractor, as applicable, files a written request for a hearing with the State Public Works Board or the local government, the Board or governing body shall set the matter for a hearing within 20 days after receipt of the request. The hearing must be held not later than 45 days after the receipt of the request for a hearing unless the parties, by written stipulation, agree to extend the time.

2. The hearing must be held at a time and place prescribed by the Board or local government. At least 10 days before the date set for the hearing, the Board or local government shall serve the applicant or subcontractor with written notice of the hearing. The notice may be served by personal delivery to the applicant or subcontractor or by certified mail to the last known business or residential address of the applicant or subcontractor.

3. The applicant or subcontractor has the burden at the hearing of proving by substantial evidence that the applicant is entitled to be qualified to bid on a contract for a public work, or that the subcontractor is qualified to be a subcontractor on a contract for a public work.

4. In conducting a hearing pursuant to this section, the Board or governing body may:

(a) Administer oaths;

(b) Take testimony;

(c) Issue subpoenas to compel the attendance of witnesses to testify before the Board or governing body;

(d) Require the production of related books, papers and documents; and

(e) Issue commissions to take testimony.

5. If a witness refuses to attend or testify or produce books, papers or documents as required by the subpoena issued pursuant to subsection 4, the Board or governing body may petition the district court to order the witness to appear or testify or produce the requested books, papers or documents.

6. The Board or governing body shall issue a decision on the matter during the hearing. The decision of the Board or governing body is a final decision for purposes of judicial review.

(Added to NRS by 1999, 2392; A 2003, 2128, 2421, 3515; 2005, 1798)

NRS 338.1382 Alternative procedure for qualification of bidders by local government. In lieu of adopting criteria pursuant to NRS 338.1377 and determining the qualification of bidders pursuant to NRS 338.1379, a governing body may deem a person to be qualified to bid on:

1. Contracts for public works of the local government if the person has been determined by:

(a) The State Public Works Board pursuant to NRS 338.1379 to be qualified to bid on contracts for public works of the State pursuant to criteria adopted pursuant to NRS 338.1375; or

(b) Another governing body pursuant to NRS 338.1379 to be qualified to bid on contracts for public works of that local government pursuant to the criteria set forth in NRS 338.1377.

2. A contract for a public work of the local government if:

(a) The person has been determined by the Department of Transportation pursuant to NRS 408.333 to be qualified to bid on the contract for the public work;

(b) The public work will be owned, operated or maintained by the Department of Transportation after the public work is constructed by the local government; and

(c) The Department of Transportation requested that bidders on the contract for the public work be qualified to bid on the contract pursuant to NRS 408.333.

(Added to NRS by 2003, 2488)

Advertising; Acceptance of Bids; Award of Contract

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.

(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

(d) The public interest would be served by such a rejection.

7. A public body may let a contract without competitive bidding if no bids were received in response to an advertisement for bids and:

(a) The public body publishes a notice stating that no bids were received and that the contract may be let without further bidding;

(b) The public body considers any bid submitted in response to the notice published pursuant to paragraph (a);

(c) The public body lets the contract not less than 7 days after publishing a notice pursuant to paragraph (a); and

(d) The contract is awarded to the bidder who has submitted the lowest responsive and responsible bid.

8. Before a public body may commence the performance of a public work itself pursuant to the provisions of this section, based upon a determination that the public interest would be served by rejecting any bids received in response to an advertisement for bids, the public body shall prepare and make available for public inspection a written statement containing:

(a) A list of all persons, including supervisors, whom the public body intends to assign to the public work, together with

their classifications and an estimate of the direct and indirect costs of their labor;

(b) A list of all equipment that the public body intends to use on the public work, together with an estimate of the number of hours each item of equipment will be used and the hourly cost to use each item of equipment;

(c) An estimate of the cost of administrative support for the persons assigned to the public work;

(d) An estimate of the total cost of the public work, including the fair market value of or, if known, the actual cost of all materials, supplies, labor and equipment to be used for the public work; and

(e) An estimate of the amount of money the public body expects to save by rejecting the bids and performing the public work itself.

9. This section does not apply to:

(a) Any utility subject to the provisions of chapter 318 or 710 of NRS;

(b) Any work of construction, reconstruction, improvement and maintenance of highways subject to NRS 408.323 or 408.327;

(c) Normal maintenance of the property of a school district;

(d) The Las Vegas Valley Water District created pursuant to chapter 167, Statutes of Nevada 1947, the Moapa Valley Water District created pursuant to chapter 477, Statutes of Nevada 1983 or the Virgin Valley Water District created pursuant to chapter 100, Statutes of Nevada 1993;

(e) The design and construction of a public work for which a public body contracts with a design-build team pursuant to NRS 338.1711 to 338.1727, inclusive;

(f) A constructability review of a public work, which review a local government or its authorized representative is required to perform pursuant to NRS 338.1435; or

(g) The preconstruction or construction of a public work for which a public body enters into a contract with a construction manager at risk pursuant to NRS 338.169 to 338.1699, inclusive.

(Added to NRS by 1999, 2392; A 1999, 3491, 3497; 2001, 252, 2022; 2003, 119, 1989, 2422, 2494; 2005, 1798; 2007, 2896)

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 May 1, 2013.]

1. Except as otherwise provided in subsection 9, 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 having a general circulation within the county.

(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

(d) The public interest would be served by such a rejection.

7. A public body may let a contract without competitive bidding if no bids were received in response to an advertisement for bids and:

(a) The public body publishes a notice stating that no bids were received and that the contract may be let without further bidding;

(b) The public body considers any bid submitted in response to the notice published pursuant to paragraph (a);

(c) The public body lets the contract not less than 7 days after publishing a notice pursuant to paragraph (a); and

(d) The contract is awarded to the lowest responsive and responsible bidder.

8. Before a public body may commence the performance of a public work itself pursuant to the provisions of this section, based upon a determination that the public interest would be served by rejecting any bids received in response to an advertisement for bids, the public body shall prepare and make available for public inspection a written statement containing:

(a) A list of all persons, including supervisors, whom the public body intends to assign to the public work, together with their classifications and an estimate of the direct and indirect costs of their labor;

(b) A list of all equipment that the public body intends to use on the public work, together with an estimate of the number

of hours each item of equipment will be used and the hourly cost to use each item of equipment;

(c) An estimate of the cost of administrative support for the persons assigned to the public work;

(d) An estimate of the total cost of the public work, including, the fair market value of or, if known, the actual cost of all materials, supplies, labor and equipment to be used for the public work; and

(e) An estimate of the amount of money the public body expects to save by rejecting the bids and performing the public work itself.

9. This section does not apply to:

(a) Any utility subject to the provisions of chapter 318 or 710 of NRS;

(b) Any work of construction, reconstruction, improvement and maintenance of highways subject to NRS 408.323 or 408.327;

(c) Normal maintenance of the property of a school district;

(d) The Las Vegas Valley Water District created pursuant to chapter 167, Statutes of Nevada 1947, the Moapa Valley Water District created pursuant to chapter 477, Statutes of Nevada 1983 or the Virgin Valley Water District created pursuant to chapter 100, Statutes of Nevada 1993;

(e) The design and construction of a public work for which a public body contracts with a design-build team pursuant to NRS 338.1711 to 338.1727, inclusive;

(f) A constructability review of a public work, which review a local government or its authorized representative is required to perform pursuant to NRS 338.1435; or

(g) The preconstruction or construction of a public work for which a public body enters into a contract with a construction manager at risk pursuant to NRS 338.169 to 338.1699, inclusive.

(Added to NRS by 1999, 2392; A 1999, 3491, 3497; 2001, 252, 2006, 2022; 2003, 119, 1989, 1990, 2422, 2423, 2494, 2495; 2005, 1798, 1799; 2007, 2896, 2898, effective May 1, 2013)

NRS 338.1386 State or local government to award contract for smaller public work to contractor or perform public work itself. If the estimated cost of a public work is $100,000 or less, this State or a local government shall:

1. Award a contract for the completion of the public work to a properly licensed contractor in accordance with NRS 338.13862; or

2. Perform the public work itself in accordance with NRS 338.13864.

(Added to NRS by 2003, 1984)

NRS 338.13862 Requirements for awarding contract for smaller public work to contractor.

1. Before this State or a local government awards a contract for the completion of a public work in accordance with subsection 1 of NRS 338.1386, the State or the local government must:

(a) If the estimated cost of the public work is more than $25,000 but not more than $100,000, solicit bids from at least three properly licensed contractors; and

(b) If the estimated cost of the public work is $25,000 or less, solicit a bid from at least one properly licensed contractor.

2. Any bids received in response to a solicitation for bids made pursuant to this section may be rejected if the State or the local government determines that:

(a) The quality of the services, materials, equipment or labor offered does not conform to the approved plan or specifications;

(b) The bidder is not responsive or responsible; or

(c) The public interest would be served by such a rejection.

3. At least once each quarter, the State and each local government shall prepare a report detailing, for each public work over $25,000 for which a contract for its completion is awarded pursuant to paragraph (a) of subsection 1, if any:

(a) The name of the contractor to whom the contract was awarded;

(b) The amount of the contract awarded;

(c) A brief description of the public work; and

(d) The names of all contractors from whom bids were solicited.

4. A report prepared pursuant to subsection 3 is a public record and must be maintained on file at the administrative offices of the applicable public body.

5. The provisions of this section do not relieve this State from the duty to award the contract for the public work to a bidder who is:

(a) Qualified pursuant to the applicable provisions of NRS 338.1375 to 338.1382, inclusive; and

(b) The lowest responsive and responsible bidder, if bids are required to be solicited from more than one properly licensed contractor pursuant to subsection 1.

(Added to NRS by 2003, 1984)

NRS 338.13864 Attestation required before State or local government may perform certain smaller public works itself.

1. If the State or a local government proposes to perform a public work itself in accordance with subsection 2 of NRS 338.1386, the public officer responsible for the management of the public works of the State or the local government, as applicable, must, if the estimated cost of the public work is more than $25,000 but not more than $100,000 and before work on the public work is commenced, prepare a signed attestation regarding the decision of the State or the local government to perform the public work itself.

2. An attestation prepared pursuant to subsection 1:

(a) Must set forth:

(1) The estimated cost of the public work;

(2) A general statement as to why the State or the local government has decided to perform the public work itself; and

(3) A general statement that the public work will adhere to the same quality and standards as would be required of a

properly licensed contractor if the public work had been awarded to a properly licensed contractor; and

(b) Is a public record and must be maintained on file at the administrative offices of the applicable public body.

(Added to NRS by 2003, 1985)

NRS 338.1389 Contract for public work for which estimated cost exceeds $250,000 must be awarded to contractor who submits best bid; certain bids deemed best bid; eligibility to receive preference in bidding; issuance of certificate of eligibility by State Contractors' Board; regulations; fees; sanctions; objections.

1. Except as otherwise provided in subsection 10 and NRS 338.1385, 338.1386 and 338.13864, a public body or its authorized representative shall award a contract for a public work for which the estimated cost exceeds $250,000 to the contractor who submits the best bid.

2. Except as otherwise provided in subsection 10 or limited by subsection 11, the lowest bid that is:

(a) Submitted by a responsive and responsible contractor who:

(1) Has been determined by the public body to be a qualified bidder pursuant to NRS 338.1379 or 338.1382; and

(2) At the time he submits his bid, has a valid certificate of eligibility to receive a preference in bidding on public works issued to the contractor by the State Contractors' Board pursuant to subsection 3 or 4; and

(b) Not more than 5 percent higher than the bid submitted by the lowest responsive and responsible bidder who does not have, at the time he submits his bid, a valid certificate of eligibility to receive a preference in bidding on public works issued to him by the State Contractors' Board pursuant to subsection 3 or 4,

↪ shall be deemed to be the best bid for the purposes of this section.

3. The State Contractors' Board shall issue a certificate of eligibility to receive a preference in bidding on public works to a general contractor who is licensed pursuant to the provisions of chapter 624 of NRS and submits to the Board an affidavit from a certified public accountant setting forth that the general contractor has, while licensed as a general contractor in this State:

(a) Paid directly, on his own behalf:

(1) The sales and use taxes imposed pursuant to chapters 372, 374 and 377 of NRS on materials used for construction in this State, including, without limitation, construction that is undertaken or carried out on land within the boundaries of this State that is managed by the Federal Government or is on an Indian reservation or Indian colony, of not less than $5,000 for each consecutive 12-month period for 60 months immediately preceding the submission of the affidavit from the certified public accountant;

(2) The governmental services tax imposed pursuant to chapter 371 of NRS on the vehicles used in the operation of his business in this State of not less than $5,000 for each consecutive 12-month period for 60 months immediately preceding the submission of the affidavit from the certified public accountant; or

(3) Any combination of such sales and use taxes and governmental services tax; or

(b) Acquired, by purchase, inheritance, gift or transfer through a stock option plan, all the assets and liabilities of a viable, operating construction firm that possesses a:

(1) License as a general contractor pursuant to the provisions of chapter 624 of NRS; and

(2) Certificate of eligibility to receive a preference in bidding on public works.

4. The State Contractors' Board shall issue a certificate of eligibility to receive a preference in bidding on public works to a specialty contractor who is licensed pursuant to the provisions of chapter 624 of NRS and submits to the Board an affidavit from a certified public accountant setting forth that the specialty contractor has, while licensed as a specialty contractor in this State:

(a) Paid directly, on his own behalf:

(1) The sales and use taxes pursuant to chapters 372, 374 and 377 of NRS on materials used for construction in this State, including, without limitation, construction that is undertaken or carried out on land within the boundaries of this State that is managed by the Federal Government or is on an Indian reservation or Indian colony, of not less than $5,000 for each consecutive 12-month period for 60 months immediately preceding the submission of the affidavit from the certified public accountant;

(2) The governmental services tax imposed pursuant to chapter 371 of NRS on the vehicles used in the operation of his business in this State of not less than $5,000 for each consecutive 12-month period for 60 months immediately preceding the submission of the affidavit from the certified public accountant; or

(3) Any combination of such sales and use taxes and governmental services tax; or

(b) Acquired, by purchase, inheritance, gift or transfer through a stock option plan, all the assets and liabilities of a viable, operating construction firm that possesses a:

(1) License as a specialty contractor pursuant to the provisions of chapter 624 of NRS; and

(2) Certificate of eligibility to receive a preference in bidding on public works.

5. For the purposes of complying with the requirements set forth in paragraph (a) of subsection 3 and paragraph (a) of subsection 4, a contractor shall be deemed to have paid:

(a) Sales and use taxes and governmental services taxes that were paid in this State by an affiliate or parent company of the contractor, if the affiliate or parent company is also a general contractor or specialty contractor, as applicable; and

(b) Sales and use taxes that were paid in this State by a joint venture in which the contractor is a participant, in proportion to the amount of interest the contractor has in the joint venture.

6. A contractor who has received a certificate of eligibility to receive a preference in bidding on public works from the State Contractors' Board pursuant to subsection 3 or 4 shall, at the time for the renewal of his contractor's license pursuant to NRS 624.283, submit to the Board an affidavit from a certified public accountant setting forth that the contractor has, during the immediately preceding 12 months, paid the taxes required pursuant to paragraph (a) of subsection 3 or paragraph (a) of subsection 4, as applicable, to maintain his eligibility to hold such a certificate.

7. A contractor who fails to submit an affidavit to the Board pursuant to subsection 6 ceases to be eligible to receive a preference in bidding on public works unless he reapplies for and receives a certificate of eligibility pursuant to subsection 3 or 4, as applicable.

8. If a contractor holds more than one contractor's license, he must submit a separate application for each license

pursuant to which he wishes to qualify for a preference in bidding. Upon issuance, the certificate of eligibility to receive a preference in bidding on public works becomes part of the contractor's license for which the contractor submitted the application.

9. If a contractor who applies to the State Contractors' Board for a certificate of eligibility to receive a preference in bidding on public works submits false information to the Board regarding the required payment of taxes, the contractor is not eligible to receive a preference in bidding on public works for a period of 5 years after the date on which the Board becomes aware of the submission of the false information.

10. If any federal statute or regulation precludes the granting of federal assistance or reduces the amount of that assistance for a particular public work because of the provisions of subsection 2, those provisions do not apply insofar as their application would preclude or reduce federal assistance for that work.

11. If a bid is submitted by two or more contractors as a joint venture or by one of them as a joint venturer, the bid may be deemed the best bid only if both or all of the joint venturers separately meet the requirements of subsection 2.

12. The State Contractors' Board shall adopt regulations and may assess reasonable fees relating to the certification of contractors for a preference in bidding on public works.

13. A person or entity who believes that a contractor wrongfully holds a certificate of eligibility to receive a preference in bidding on public works may challenge the validity of the certificate by filing a written objection with the public body to which the contractor has submitted a bid on a contract for the construction of a public work. A written objection authorized pursuant to this subsection must:

(a) Set forth proof or substantiating evidence to support the belief of the person or entity that the contractor wrongfully holds a certificate of eligibility to receive a preference in bidding on public works; and

(b) Be filed with the public body not later than 3 business days after the opening of the bids by the public body or its authorized representative.

14. If a public body receives a written objection pursuant to subsection 13, the public body shall determine whether the objection is accompanied by the proof or substantiating evidence required pursuant to paragraph (a) of that subsection. If the public body determines that the objection is not accompanied by the required proof or substantiating evidence, the public body shall dismiss the objection and the public body or its authorized representative may proceed immediately to award the contract. If the public body determines that the objection is accompanied by the required proof or substantiating evidence, the public body shall determine whether the contractor qualifies for the certificate pursuant to the provisions of this section and the public body or its authorized representative may proceed to award the contract accordingly.

(Added to NRS by 1999, 2395; A 1999, 3491, 3497; 2001, 252, 296, 2008, 2022, 2262; 2003, 119, 124, 1992, 2426, 2497; 2007, 864)

NRS 338.13895 Award of contract to unlicensed or improperly licensed contractor prohibited; replacement of unacceptable subcontractor before contract is awarded; rescission of award of contract to unlicensed or improperly licensed contractor before commencement of work.

1. The State Public Works Board shall not award a contract to a person who, at the time of the bid, is not properly licensed under the provisions of chapter 624 of NRS or if the contract would exceed the limit of his license. A subcontractor who is:

(a) Named in the bid for the contract as a subcontractor who will provide a portion of the work on the public work pursuant to NRS 338.141; and

(b) Not properly licensed for that portion of the work, or who, at the time of the bid, is on disqualified status with the State Public Works Board pursuant to NRS 338.1376,

➥ shall be deemed unacceptable. If the subcontractor is deemed unacceptable pursuant to this subsection, the contractor shall provide an acceptable subcontractor.

2. A local government awarding a contract for a public work shall not award the contract to a person who, at the time of the bid, is not properly licensed under the provisions of chapter 624 of NRS or if the contract would exceed the limit of his license. A subcontractor who is:

(a) Named in the bid for the contract as a subcontractor who will provide a portion of the work on the public work pursuant to NRS 338.141; and

(b) Not properly licensed for that portion of work,

➥ shall be deemed unacceptable. If the subcontractor is deemed unacceptable pursuant to this subsection, the contractor shall provide an acceptable subcontractor with no increase in the amount of the contract.

3. If, after awarding the contract, but before commencement of the work, the public body or its authorized representative discovers that the person to whom the contract was awarded is not licensed, or that the contract would exceed his license, the public body or its authorized representative shall rescind the award of the contract and may accept the next lowest bid for that public work from a responsive bidder who was determined by the public body or its authorized representative to be a qualified bidder pursuant to NRS 338.1379 or 338.1382 without requiring that new bids be submitted.

(Added to NRS by 1999, 2395; A 2003, 2129, 2425, 2497; 2005, 1802)

NRS 338.139 Awarding of contract to specialty contractor: Conditions.

1. A public body or its authorized representative may award a contract for a public work pursuant to NRS 338.1375 to 338.13895, inclusive, to a specialty contractor if:

(a) The majority of the work to be performed on the public work to which the contract pertains consists of specialty contracting for which the specialty contractor is licensed; and

(b) The public work to which the contract pertains is not part of a larger public work.

2. If a public body or its authorized representative awards a contract to a specialty contractor pursuant to NRS 338.1375 to 338.13895, inclusive, all work to be performed on the public work to which the contract pertains that is outside the scope of the license of the specialty contractor must be performed by a subcontractor who:

(a) Is licensed to perform such work; and

(b) At the time of the performance of the work, is not on disqualified status with the State Public Works Board pursuant

to NRS 338.1376.
(Added to NRS by 2001, 2258; A 2003, 2129, 2429)

ADDITIONAL PROCEDURES, CONDITIONS AND LIMITATIONS RELATING TO CONTRACTS

General Provisions

NRS 338.140 Requirements and limitations relating to drafting of specifications for bids; documents generated by bidder in preparation or determination of prices included in bid.

1. A public body shall not draft or cause to be drafted specifications for bids, in connection with a public work:

(a) In such a manner as to limit the bidding, directly or indirectly, to any one specific concern.

(b) Except in those instances where the product is designated to match others in use on a particular public improvement either completed or in the course of completion, calling for a designated material, product, thing or service by specific brand or trade name unless the specification lists at least two brands or trade names of comparable quality or utility and is followed by the words "or equal" so that bidders may furnish any equal material, product, thing or service.

(c) In such a manner as to hold the bidder to whom such contract is awarded responsible for extra costs incurred as a result of errors or omissions by the public body in the contract documents.

(d) Except as otherwise provided in subsection 2, in such a manner as to require a bidder to furnish to the public body, whether before or after the bid is submitted, documents generated in the preparation or determination of prices included in the bid, except when requested by the public body for:

(1) A determination of the price of additional work performed pursuant to a change order;

(2) An evaluation of claims for costs incurred for the performance of additional work;

(3) Preparation for arbitration or litigation;

(4) A determination of the validity of the protest of a bid;

(5) A determination of the validity of an increase or decrease in the price of a contract in accordance with a provision in the contract which authorizes such an increase or decrease to correspond to changing market conditions; or

(6) Any combination thereof.

2. A public body may, at the time a bid is submitted, require documents generated in the preparation or determination of prices included in the bid to be transmitted to and stored electronically by the public body or a third party. Any document furnished by a bidder pursuant to this subsection may be transmitted and stored electronically if the manner of transmission ensures that the documents are exclusively accessible to the bidder. Electronic transmission and storage of such documents does not waive or otherwise affect the proprietary interests of the bidder in the documents, except that the third party or the bidder must release any document furnished pursuant to this subsection if requested by the public body pursuant to paragraph (d) of subsection 1.

3. In those cases involving a unique or novel product application required to be used in the public interest, or where only one brand or trade name is known to the public body, it may list only one.

4. Specifications must provide a period of time of at least 7 days after award of the contract for submission of data substantiating a request for a substitution of "an equal" item.

(Added to NRS by 1967, 929; A 1975, 540; 1997, 3164; 2003, 2429; 2005, 1802, 2891; 2007, 3266)

NRS 338.141 Bids to include certain information concerning subcontractors; when bids deemed not responsive with respect to subcontractors; requirements for substitution of named subcontractors.

1. Except as otherwise provided in NRS 338.1727, each bid submitted to a public body for any public work to which paragraph (a) of subsection 1 of NRS 338.1385 or paragraph (a) of subsection 1 of NRS 338.143 applies, must include:

(a) If the public body provides 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 of the public work, the name of each first tier subcontractor who will provide such labor or portion of the work on the public work which is estimated to exceed 3 percent of the estimated cost of the public work; or

(b) If the public body does not provide 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 of the public work, the name of each first tier subcontractor who will provide labor or a portion of the work on the public work to the prime contractor for which the first tier subcontractor will be paid an amount exceeding 5 percent of the prime contractor's total bid. If the bid is submitted pursuant to this paragraph, within 2 hours after the completion of the opening of the bids, the contractors who submitted the three lowest bids must submit a list containing the name of each first tier subcontractor who will provide labor or a portion of the work on the public work to the prime contractor for which the first tier subcontractor will be paid an amount exceeding 1 percent of the prime contractor's total bid or $50,000, whichever is greater, and the number of the license issued to the first tier subcontractor pursuant to chapter 624 of NRS.

2. The lists required by subsection 1 must include a description of the labor or portion of the work which each first tier subcontractor named in the list will provide to the prime contractor.

3. A prime contractor shall include his name on a list required by paragraph (a) of subsection 1 if he will perform any of the work required to be listed pursuant to paragraph (a) of subsection 1.

4. Except as otherwise provided in this subsection, if a contractor:

(a) Fails to submit the list within the required time; or

(b) Submits a list that includes the name of a subcontractor who, at the time of the submission of the list, is on disqualified status with the State Public Works Board pursuant to NRS 338.1376,

➥ the contractor's bid shall be deemed not responsive. A contractor's bid shall not be deemed not responsive on the grounds that the contractor submitted a list that includes the name of a subcontractor who, at the time of the submission of the list, is on disqualified status with the State Public Works Board pursuant to NRS 338.1376 if the contractor, before the award of the contract, provides an acceptable replacement subcontractor in the manner set forth in subsection 1 or 2 of NRS 338.13895.

5. A contractor whose bid is accepted shall not substitute a subcontractor for any subcontractor who is named in the bid,

unless:

(a) The public body or its authorized representative objects to the subcontractor, requests in writing a change in the subcontractor and pays any increase in costs resulting from the change.

(b) The substitution is approved by the public body or its authorized representative. The substitution must be approved if the public body or its authorized representative determines that:

(1) The named subcontractor, after having a reasonable opportunity, fails or refuses to execute a written contract with the contractor which was offered to the named subcontractor with the same general terms that all other subcontractors on the project were offered;

(2) The named subcontractor files for bankruptcy or becomes insolvent;

(3) The named subcontractor fails or refuses to perform his subcontract within a reasonable time or is unable to furnish a performance bond and payment bond pursuant to NRS 339.025; or

(4) The named subcontractor is not properly licensed to provide that labor or portion of the work.

(c) If the public body awarding the contract is a governing body, the public body or its authorized representative, in awarding the contract pursuant to NRS 338.1375 to 338.139, inclusive:

(1) Applies such criteria set forth in NRS 338.1377 as are appropriate for subcontractors and determines that the subcontractor does not meet that criteria; and

(2) Requests in writing a substitution of the subcontractor.

6. If a contractor indicates pursuant to subsection 1 that he will perform a portion of work on the public work and thereafter requests to substitute a subcontractor to perform such work, the contractor shall provide to the public body a written explanation in the form required by the public body which contains the reasons that:

(a) A subcontractor was not originally contemplated to be used on that portion of the public work; and

(b) The substitution is in the best interest of the public body.

7. As used in this section:

(a) "First tier subcontractor" means a subcontractor who contracts directly with a prime contractor to provide labor, materials or services for a construction project.

(b) "General terms" means the terms and conditions of a contract that set the basic requirements for a public work and apply without regard to the particular trade or specialty of a subcontractor, but does not include any provision that controls or relates to the specific portion of the public work that will be completed by a subcontractor, including, without limitation, the materials to be used by the subcontractor or other details of the work to be performed by the subcontractor.

(Added to NRS by 1993, 2130; A 2001, 573, 2268; 2003, 2130, 2430, 2500; 2005, 1803)

NRS 338.142 Notice of protest of award of contract: Period for filing; contents; posting and disposition of bond or security; stay of action; immunity of public body from liability to bidder.

1. A person who bids on a contract may file a notice of protest regarding the awarding of the contract with the authorized representative designated by the public body within 5 business days after the date the bids were opened by the public body or its authorized representative.

2. The 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.

3. A person filing a notice of protest may be required by the public body or its authorized representative, at the time the notice of protest is filed, to post a bond with a good and solvent surety authorized to do business in this state or submit other security, in a form approved by the public body, to the public body who shall hold the bond or other security until a determination is made on the protest. A bond posted or other security submitted with a notice of protest must be in an amount equal to the lesser of:

(a) Twenty-five percent of the total value of the bid submitted by the person filing the notice of protest; or

(b) Two hundred fifty thousand dollars.

4. A notice of protest filed in accordance with the provisions of this section operates as a stay of action in relation to the awarding of any contract until a determination is made by the public body on the protest.

5. A person who makes an unsuccessful bid may not seek any type of judicial intervention until the public body has made a determination on the protest and awarded the contract.

6. Neither a public body nor any authorized representative of the public body is liable for any costs, expenses, attorney's fees, loss of income or other damages sustained by a person who makes a bid, whether or not the person files a notice of protest pursuant to this section.

7. If the protest is upheld, the bond posted or other security submitted with the notice of protest must be returned to the person who posted the bond or submitted the security. If the protest is rejected, a claim may be made against the bond or other security by the public body in an amount equal to the expenses incurred by the public body because of the unsuccessful protest. Any money remaining after the claim has been satisfied must be returned to the person who posted the bond or submitted the security.

(Added to NRS by 2003, 2410)

Alternative Procedures for Local Governments

NRS 338.143 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 local government may commence public work itself; exemptions. [Effective through April 30, 2013.]

1. Except as otherwise provided in subsection 8 and NRS 338.1907, a local government or its authorized representative that awards a contract for a public work in accordance with paragraph (b) 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.

(b) Commence a public work for which the estimated cost is $100,000 or less unless it complies with the provisions of NRS 338.1442, 338.1444 and 338.1446.

(c) Divide a project work into separate portions to avoid the requirements of paragraph (a) or (b).

2. At least once each quarter, the authorized representative of a local government shall report to the governing body any contract that the authorized representative awarded pursuant to subsection 1 in the immediately preceding quarter.

3. 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.

4. Except as otherwise provided in subsection 5 and NRS 338.147, the local government or its authorized representative shall award a contract to the lowest responsive and responsible bidder.

5. Any bids received in response to an advertisement for bids may be rejected if the local government or its authorized representative responsible for awarding the contract determines that:

(a) The bidder is not responsive or responsible;

(b) The quality of the services, materials, equipment or labor offered does not conform to the approved plans or specifications; or

(c) The public interest would be served by such a rejection.

6. A local government may let a contract without competitive bidding if no bids were received in response to an advertisement for bids and:

(a) The local government publishes a notice stating that no bids were received and that the contract may be let without further bidding;

(b) The local government considers any bid submitted in response to the notice published pursuant to paragraph (a);

(c) The local government lets the contract not less than 7 days after publishing a notice pursuant to paragraph (a); and

(d) The contract is awarded to the lowest responsive and responsible bidder.

7. Before a local government may commence the performance of a public work itself pursuant to the provisions of this section, based upon a determination that the public interest would be served by rejecting any bids received in response to an advertisement for bids, the local government shall prepare and make available for public inspection a written statement containing:

(a) A list of all persons, including supervisors, whom the local government intends to assign to the public work, together with their classifications and an estimate of the direct and indirect costs of their labor;

(b) A list of all equipment that the local government intends to use on the public work, together with an estimate of the number of hours each item of equipment will be used and the hourly cost to use each item of equipment;

(c) An estimate of the cost of administrative support for the persons assigned to the public work;

(d) An estimate of the total cost of the public work, including the fair market value of or, if known, the actual cost of all materials, supplies, labor and equipment to be used for the public work; and

(e) An estimate of the amount of money the local government expects to save by rejecting the bids and performing the public work itself.

8. This section does not apply to:

(a) Any utility subject to the provisions of chapter 318 or 710 of NRS;

(b) Any work of construction, reconstruction, improvement and maintenance of highways subject to NRS 408.323 or 408.327;

(c) Normal maintenance of the property of a school district;

(d) The Las Vegas Valley Water District created pursuant to chapter 167, Statutes of Nevada 1947, the Moapa Valley Water District created pursuant to chapter 477, Statutes of Nevada 1983 or the Virgin Valley Water District created pursuant to chapter 100, Statutes of Nevada 1993;

(e) The design and construction of a public work for which a public body contracts with a design-build team pursuant to NRS 338.1711 to 338.1727, inclusive;

(f) A constructability review of a public work, which review a local government or its authorized representative is required to perform pursuant to NRS 338.1435; or

(g) The preconstruction or construction of a public work for which a public body enters into a contract with a construction manager at risk pursuant to NRS 338.169 to 338.1699, inclusive.

(Added to NRS by 1987, 2322; A 1993, 913, 1439, 2131, 2134, 2135; 1995, 575, 576; 1999, 1360, 2398, 3474; 2001, 252, 269; 2003, 119, 1995, 2431; 2005, 1805; 2007, 2899)

NRS 338.143 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 local government may commence public work itself; exemptions. [Effective May 1, 2013.]

1. Except as otherwise provided in subsection 8, a local government or its authorized representative that awards a contract for a public work in accordance with paragraph (b) 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 within 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 within the county.

(b) Commence a public work for which the estimated cost is $100,000 or less unless it complies with the provisions of NRS 338.1442, 338.1444 or 338.1446.

(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 local government shall report to the governing body any contract that the authorized representative awarded pursuant to subsection 1 in the immediately preceding quarter.

3. 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.

4. Except as otherwise provided in subsection 5 and NRS 338.147, the local government or its authorized representative shall award a contract to the lowest responsive and responsible bidder.

5. Any bids received in response to an advertisement for bids may be rejected if the local government or its authorized representative responsible for awarding the contract determines that:

(a) The bidder is not responsive or responsible;

(b) The quality of the services, materials, equipment or labor offered does not conform to the approved plans or specifications; or

(c) The public interest would be served by such a rejection.

6. A local government may let a contract without competitive bidding if no bids were received in response to an advertisement for bids and:

(a) The local government publishes a notice stating that no bids were received and that the contract may be let without further bidding;

(b) The local government considers any bid submitted in response to the notice published pursuant to paragraph (a);

(c) The local government lets the contract not less than 7 days after publishing a notice pursuant to paragraph (a); and

(d) The contract is awarded to the lowest responsive and responsible bidder.

7. Before a local government may commence the performance of a public work itself pursuant to the provisions of this section, based upon a determination that the public interest would be served by rejecting any bids received in response to an advertisement for bids, the local government shall prepare and make available for public inspection a written statement containing:

(a) A list of all persons, including supervisors, whom the local government intends to assign to the public work, together with their classifications and an estimate of the direct and indirect costs of their labor;

(b) A list of all equipment that the local government intends to use on the public work, together with an estimate of the number of hours each item of equipment will be used and the hourly cost to use each item of equipment;

(c) An estimate of the cost of administrative support for the persons assigned to the public work;

(d) An estimate of the total cost of the public work, including the fair market value of or, if known, the actual cost of all materials, supplies, labor and equipment to be used for the public work; and

(e) An estimate of the amount of money the local government expects to save by rejecting the bids and performing the public work itself.

8. This section does not apply to:

(a) Any utility subject to the provisions of chapter 318 or 710 of NRS;

(b) Any work of construction, reconstruction, improvement and maintenance of highways subject to NRS 408.323 or 408.327;

(c) Normal maintenance of the property of a school district;

(d) The Las Vegas Valley Water District created pursuant to chapter 167, Statutes of Nevada 1947, the Moapa Valley Water District created pursuant to chapter 477, Statutes of Nevada 1983 or the Virgin Valley Water District created pursuant to chapter 100, Statutes of Nevada 1993;

(e) The design and construction of a public work for which a public body contracts with a design-build team pursuant to NRS 338.1711 to 338.1727, inclusive;

(f) A constructability review of a public work, which review a local government or its authorized representative is required to perform pursuant to NRS 338.1435; or

(g) The preconstruction or construction of a public work for which a public body enters into a contract with a construction manager at risk pursuant to NRS 338.169 to 338.1699, inclusive.

(Added to NRS by 1987, 2322; A 1993, 913, 1439, 2131, 2134, 2135; 1995, 575, 576; 1999, 1360, 1362, 2398, 2399, 3474, 3476, 3490; 2001, 252, 269, 2010, 2022; 2003, 119, 1995, 1996, 2431, 2433; 2005, 1805, 1806; 2007, 2899, 2901, effective May 1, 2013)

NRS 338.1435 Constructability review required before advertising for bids.

1. Before a local government or its authorized representative advertises for bids for a contract for a public work, the local government or its authorized representative shall perform a review of the approved plans and specifications to determine if the plans and specifications are complete and contain all necessary information and specifications to construct the public work, if:

(a) The plans and specifications are to be used for the first time on a public work; and

(b) The plans and specifications are for a public work that has an estimated cost which exceeds $10,000,000.

2. A constructability review required pursuant to subsection 1 must be performed by an architect registered pursuant to chapter 623 of NRS, a contractor licensed pursuant to chapter 624 of NRS or a professional engineer licensed pursuant to chapter 625 of NRS and must include, without limitation:

(a) A determination of whether a competent contractor would be able to construct the public work based on the approved plans and specifications; and

(b) A review of the approved plans and specifications for the public work for completeness, clarity and economic feasibility.

3. If the local government or its authorized representative does not employ a person who has the expertise to perform a constructability review as described in subsection 2, the local government or its authorized representative must contract with

an independent third party who is an architect registered pursuant to chapter 623 of NRS, a contractor licensed pursuant to chapter 624 of NRS or a professional engineer licensed pursuant to chapter 625 of NRS to perform the constructability review. A contract entered into pursuant to this section between a local government or its authorized representative and an independent third party is not required to be awarded by competitive bidding.

(Added to NRS by 2007, 2895)

NRS 338.1442 Local government to award contract for smaller public work to contractor or perform public work itself. If the estimated cost of a public work is $100,000 or less, a local government shall:

1. Award a contract for the completion of the public work to a properly licensed contractor in accordance with NRS 338.1444; or

2. Perform the public work itself in accordance with NRS 338.1446.

(Added to NRS by 2003, 1985)

NRS 338.1444 Requirements for awarding contract for smaller public work to contractor.

1. Before a local government awards a contract for the completion of a public work in accordance with subsection 1 of NRS 338.1442, the local government must:

(a) If the estimated cost of the public work is more than $25,000 but not more than $100,000, solicit bids from at least three properly licensed contractors; and

(b) If the estimated cost of the public work is $25,000 or less, solicit a bid from at least one properly licensed contractor.

2. Any bids received in response to a solicitation for bids made pursuant to this section may be rejected if the local government determines that:

(a) The quality of the services, materials, equipment or labor offered does not conform to the approved plan or specifications;

(b) The bidder is not responsive or responsible; or

(c) The public interest would be served by such a rejection.

3. At least once each quarter, a local government shall prepare a report detailing, for each public work over $25,000 for which a contract for its completion is awarded pursuant to paragraph (a) of subsection 1, if any:

(a) The name of the contractor to whom the contract was awarded;

(b) The amount of the contract awarded;

(c) A brief description of the public work; and

(d) The names of all contractors from whom bids were solicited.

4. A report prepared pursuant to subsection 3 is a public record and must be maintained on file at the administrative offices of the applicable public body.

5. The provisions of this section do not relieve a local government from the duty to award the contract for the public work to a bidder who is the lowest responsive and responsible bidder if bids are required to be solicited from more than one properly licensed contractor pursuant to subsection 1.

(Added to NRS by 2003, 1985)

NRS 338.1446 Attestation required before local government may perform certain smaller public works itself.

1. If a local government proposes to perform a public work itself in accordance with subsection 2 of NRS 338.1442, the public officer responsible for the management of the public works of the local government must, if the estimated cost of the public work is more than $25,000 but not more than $100,000 and before work on the public work is commenced, prepare a signed attestation regarding the decision of the local government to perform the public work itself.

2. An attestation prepared pursuant to subsection 1:

(a) Must set forth:

(1) The estimated cost of the public work;

(2) A general statement as to why the local government has decided to perform the public work itself; and

(3) A general statement that the public work will adhere to the same quality and standards as would be required of a properly licensed contractor if the public work had been awarded to a properly licensed contractor; and

(b) Is a public record and must be maintained on file at the administrative offices of the local government.

(Added to NRS by 2003, 1986)

NRS 338.147 Contract for public work for which estimated cost exceeds $250,000 must be awarded to contractor who submits best bid; certain bids deemed best bid; eligibility to receive preference in bidding; issuance of certificate of eligibility by State Contractors' Board; regulations; fees; sanctions; objections.

1. Except as otherwise provided in subsection 10 and NRS 338.143, 338.1442 and 338.1446, a local government or its authorized representative shall award a contract for a public work for which the estimated cost exceeds $250,000 to the contractor who submits the best bid.

2. Except as otherwise provided in subsection 10 or limited by subsection 11, the lowest bid that is:

(a) Submitted by a contractor who:

(1) Has been found to be a responsible and responsive contractor by the local government or its authorized representative; and

(2) At the time he submits his bid, has a valid certificate of eligibility to receive a preference in bidding on public works issued to the contractor by the State Contractors' Board pursuant to subsection 3 or 4; and

(b) Not more than 5 percent higher than the bid submitted by the lowest responsive and responsible bidder who does not have, at the time he submits the bid, a valid certificate of eligibility to receive a preference in bidding on public works issued to him by the State Contractors' Board pursuant to subsection 3 or 4,

↪ shall be deemed to be the best bid for the purposes of this section.

3. The State Contractors' Board shall issue a certificate of eligibility to receive a preference in bidding on public works to a general contractor who is licensed pursuant to the provisions of chapter 624 of NRS and submits to the Board an affidavit

from a certified public accountant setting forth that the general contractor has, while licensed as a general contractor in this State:

(a) Paid directly, on his own behalf:

(1) The sales and use taxes imposed pursuant to chapters 372, 374 and 377 of NRS on materials used for construction in this State, including, without limitation, construction that is undertaken or carried out on land within the boundaries of this State that is managed by the Federal Government or is on an Indian reservation or Indian colony, of not less than $5,000 for each consecutive 12-month period for 60 months immediately preceding the submission of the affidavit from the certified public accountant;

(2) The governmental services tax imposed pursuant to chapter 371 of NRS on the vehicles used in the operation of his business in this State of not less than $5,000 for each consecutive 12-month period for 60 months immediately preceding the submission of the affidavit from the certified public accountant; or

(3) Any combination of such sales and use taxes and governmental services tax; or

(b) Acquired, by purchase, inheritance, gift or transfer through a stock option plan, all the assets and liabilities of a viable, operating construction firm that possesses a:

(1) License as a general contractor pursuant to the provisions of chapter 624 of NRS; and

(2) Certificate of eligibility to receive a preference in bidding on public works.

4. The State Contractors' Board shall issue a certificate of eligibility to receive a preference in bidding on public works to a specialty contractor who is licensed pursuant to the provisions of chapter 624 of NRS and submits to the Board an affidavit from a certified public accountant setting forth that the specialty contractor has, while licensed as a specialty contractor in this State:

(a) Paid directly, on his own behalf:

(1) The sales and use taxes pursuant to chapters 372, 374 and 377 of NRS on materials used for construction in this State, including, without limitation, construction that is undertaken or carried out on land within the boundaries of this State that is managed by the Federal Government or is on an Indian reservation or Indian colony, of not less than $5,000 for each consecutive 12-month period for 60 months immediately preceding the submission of the affidavit from the certified public accountant;

(2) The governmental services tax imposed pursuant to chapter 371 of NRS on the vehicles used in the operation of his business in this State of not less than $5,000 for each consecutive 12-month period for 60 months immediately preceding the submission of the affidavit from the certified public accountant; or

(3) Any combination of such sales and use taxes and governmental services tax; or

(b) Acquired, by purchase, inheritance, gift or transfer through a stock option plan, all the assets and liabilities of a viable, operating construction firm that possesses a:

(1) License as a specialty contractor pursuant to the provisions of chapter 624 of NRS; and

(2) Certificate of eligibility to receive a preference in bidding on public works.

5. For the purposes of complying with the requirements set forth in paragraph (a) of subsection 3 and paragraph (a) of subsection 4, a contractor shall be deemed to have paid:

(a) Sales and use taxes and governmental services taxes paid in this State by an affiliate or parent company of the contractor, if the affiliate or parent company is also a general contractor or specialty contractor, as applicable; and

(b) Sales and use taxes paid in this State by a joint venture in which the contractor is a participant, in proportion to the amount of interest the contractor has in the joint venture.

6. A contractor who has received a certificate of eligibility to receive a preference in bidding on public works from the State Contractors' Board pursuant to subsection 3 or 4 shall, at the time for the renewal of his contractor's license pursuant to NRS 624.283, submit to the Board an affidavit from a certified public accountant setting forth that the contractor has, during the immediately preceding 12 months, paid the taxes required pursuant to paragraph (a) of subsection 3 or paragraph (a) of subsection 4, as applicable, to maintain his eligibility to hold such a certificate.

7. A contractor who fails to submit an affidavit to the Board pursuant to subsection 6 ceases to be eligible to receive a preference in bidding on public works unless he reapplies for and receives a certificate of eligibility pursuant to subsection 3 or 4, as applicable.

8. If a contractor holds more than one contractor's license, he must submit a separate application for each license pursuant to which he wishes to qualify for a preference in bidding. Upon issuance, the certificate of eligibility to receive a preference in bidding on public works becomes part of the contractor's license for which the contractor submitted the application.

9. If a contractor who applies to the State Contractors' Board for a certificate of eligibility to receive a preference in bidding on public works submits false information to the Board regarding the required payment of taxes, the contractor is not eligible to receive a preference in bidding on public works for a period of 5 years after the date on which the Board becomes aware of the submission of the false information.

10. If any federal statute or regulation precludes the granting of federal assistance or reduces the amount of that assistance for a particular public work because of the provisions of subsection 2, those provisions do not apply insofar as their application would preclude or reduce federal assistance for that work.

11. If a bid is submitted by two or more contractors as a joint venture or by one of them as a joint venturer, the bid may be deemed a best bid only if both or all of the joint venturers separately meet the requirements of subsection 2.

12. The State Contractors' Board shall adopt regulations and may assess reasonable fees relating to the certification of contractors for a preference in bidding on public works.

13. A person or entity who believes that a contractor wrongfully holds a certificate of eligibility to receive a preference in bidding on public works may challenge the validity of the certificate by filing a written objection with the local government to which the contractor has submitted a bid on a contract for the construction of a public work. A written objection authorized pursuant to this subsection must:

(a) Set forth proof or substantiating evidence to support the belief of the person or entity that the contractor wrongfully holds a certificate of eligibility to receive a preference in bidding on public works; and

(b) Be filed with the local government not later than 3 business days after the opening of the bids by the local government

or its authorized representative.

14. If a local government receives a written objection pursuant to subsection 13, the local government shall determine whether the objection is accompanied by the proof or substantiating evidence required pursuant to paragraph (a) of that subsection. If the local government determines that the objection is not accompanied by the required proof or substantiating evidence, the local government shall dismiss the objection and the local government or its authorized representative may proceed immediately to award the contract. If the local government determines that the objection is accompanied by the required proof or substantiating evidence, the local government shall determine whether the contractor qualifies for the certificate pursuant to the provisions of this section and the local government or its authorized representative may proceed to award the contract accordingly.

(Added to NRS by 1985, 670; A 1987, 1476; 1989, 932; 1991, 2374; 1993, 1382, 1383, 2133, 2135; 1995, 678, 2062; 1999, 1850, 2401, 3477; 2001, 252, 300, 2011, 2022, 2269; 2003, 119, 124, 1997, 2435; 2007, 866)

NRS 338.1475 Award of contract to unlicensed or improperly licensed contractor prohibited; replacement of unacceptable subcontractor before contract is awarded; rescission of award of contract to unlicensed or improperly licensed contractor before commencement of work.

1. A local government or its authorized representative awarding a contract for a public work shall not award the contract to a person who, at the time of the bid, is not properly licensed under the provisions of chapter 624 of NRS or if the contract would exceed the limit of his license. A subcontractor who is:

(a) Named in the bid for the contract as a subcontractor who will provide a portion of the work on the public work pursuant to NRS 338.141; and

(b) Not properly licensed for that portion of the work,

↪ shall be deemed unacceptable. If the subcontractor is deemed unacceptable pursuant to this subsection, the contractor shall provide an acceptable subcontractor.

2. If, after awarding the contract, but before commencement of the work, the local government or its authorized representative discovers that the person to whom the contract was awarded is not licensed, or that the contract would exceed his license, the local government or its authorized representative shall rescind the award of the contract and may accept the next lowest bid for that public work from a responsive and responsible bidder without requiring that new bids be submitted.

(Added to NRS by 1983, 913; A 1993, 2133; 1999, 2400; 2003, 2434)—(Substituted in revision for NRS 338.145)

NRS 338.148 Awarding of contract to specialty contractor: Conditions.

1. A local government or its authorized representative may award a contract for a public work to a specialty contractor pursuant to NRS 338.143 to 338.1475, inclusive, if:

(a) The majority of the work to be performed on the public work to which the contract pertains consists of specialty contracting for which the specialty contractor is licensed; and

(b) The public work to which the contract pertains is not part of a larger public work.

2. If a local government or its authorized representative awards a contract to a specialty contractor pursuant to NRS 338.143 to 338.1475, inclusive, all work to be performed on the public work to which the contract pertains that is outside the scope of the license of the specialty contractor must be performed by a subcontractor who is licensed to perform such work.

(Added to NRS by 2001, 2258; A 2003, 2438)

Provisions Required in Contracts

NRS 338.150 Provisions requiring arbitration of disputes; use of alternate dispute resolution methods before arbitration not prohibited.

1. Except as otherwise provided in subsection 3, any public body charged with the drafting of specifications for a public work shall include in the specifications a clause requiring arbitration of a dispute arising between the public body and the contractor engaged on a public work if the dispute cannot otherwise be settled.

2. Any dispute requiring arbitration must be handled in accordance with the construction industry's rules for arbitration as administered by the American Arbitration Association or the Nevada Arbitration Association.

3. The provisions of subsection 1 do not require the Department of Transportation to include such a clause in any contract entered into by the Department.

4. This section does not prohibit the use of alternate dispute resolution methods before arbitration.

(Added to NRS by 1969, 618; A 1971, 621; 1979, 1796; 1985, 1462; 2003, 2438; 2005, 1808)

NRS 338.153 Provision requiring persons who provide labor, equipment, materials, supplies or services for public work to comply with all applicable state and local laws. A public body shall include in each contract for a public work a clause requiring each contractor, subcontractor and other person who provides labor, equipment, materials, supplies or services for the public work to comply with the requirements of all applicable state and local laws, including, without limitation, any applicable licensing requirements and requirements for the payment of sales and use taxes on equipment, materials and supplies provided for the public work.

(Added to NRS by 2003, 20th Special Session, 21)

NRS 338.155 Provisions relating to design professional who is not member of design-build team. If a public body enters into a contract with a design professional who is not a member of a design-build team, for the provision of services in connection with a public work, the contract:

1. Must set forth:

(a) The specific period within which the public body must pay the design professional.

(b) The specific period and manner in which the public body may dispute a payment or portion thereof that the design professional alleges is due.

(c) The terms of any penalty that will be imposed upon the public body if the public body fails to pay the design

professional within the specific period set forth in the contract pursuant to paragraph (a).

(d) That the prevailing party in an action to enforce the contract is entitled to reasonable attorney's fees and costs.

2. May set forth the terms of any discount that the public body will receive if the public body pays the design professional within the specific period set forth in the contract pursuant to paragraph (a) of subsection 1.

3. May set forth the terms by which the design professional agrees to name the public body, at the cost of the public body, as an additional insured in an insurance policy held by the design professional, if the policy allows such an addition.

4. Except as otherwise provided in subsection 5, must not require the design professional to defend, indemnify or hold harmless the public body or the employees, officers or agents of that public body from any liability, damage, loss, claim, action or proceeding caused by the negligence, errors, omissions, recklessness or intentional misconduct of the employees, officers or agents of the public body.

5. Except as otherwise provided in this subsection, may require the design professional to defend, indemnify and hold harmless the public body, and the employees, officers and agents of the public body from any liabilities, damages, losses, claims, actions or proceedings, including, without limitation, reasonable attorneys' fees, that are caused by the negligence, errors, omissions, recklessness or intentional misconduct of the design professional or the employees or agents of the design professional in the performance of the contract. If the insurer by which the design professional is insured against professional liability does not so defend the public body and the employees, officers and agents of the public body and the design professional is adjudicated to be liable by a trier of fact, the trier of fact shall award reasonable attorney's fees to be paid to the public body by the design professional in an amount which is proportionate to the liability of the design professional. As used in this subsection, "agents" means those persons who are directly involved in and acting on behalf of the public body in furtherance of the contract or the public work to which the contract pertains.

(Added to NRS by 1997, 2975; A 1999, 3481; 2001, 1270, 2022; 2003, 119, 124, 2438; 2005, 823)

CONTRACTS FOR TRANSPORTATION FACILITIES

NRS 338.161 "Transportation facility" defined. As used in NRS 338.161 to 338.168, inclusive, unless the context otherwise requires, "transportation facility" means a road, railroad, bridge, tunnel, overpass, airport, mass transit facility, parking facility for vehicles or similar commercial facility used for the support of or the transportation of persons or goods, including, without limitation, any other property that is needed to operate the facility. The term does not include a toll bridge or toll road.

(Added to NRS by 2003, 2022)

NRS 338.162 Alternative methods of authorization. A public body may authorize a person to develop, construct, improve, maintain or operate, or any combination thereof, a transportation facility pursuant to NRS 338.163 or 338.164.

(Added to NRS by 2003, 2022)

NRS 338.163 Submission of request to public body; contents of request.

1. A person may submit a request to a public body to develop, construct, improve, maintain or operate, or any combination thereof, a transportation facility.

2. The request must be accompanied by the following information:

(a) A topographic map indicating the location of the transportation facility.

(b) A description of the transportation facility, including, without limitation, the conceptual design of the transportation facility and all proposed interconnections with other transportation facilities.

(c) The projected total cost of the transportation facility over its life and the proposed date for the development of or the commencement of the construction of, or improvements to, the transportation facility.

(d) A statement setting forth the method by which the person submitting the request proposes to secure all property interests required for the transportation facility. The statement must include, without limitation:

(1) The names and addresses, if known, of the current owners of any property needed for the transportation facility;

(2) The nature of the property interests to be acquired; and

(3) Any property that the person submitting the request proposes that the public body condemn.

(e) Information relating to the current transportation plans, if any, of any governmental entity in the jurisdiction of which any portion of the transportation facility is located.

(f) A list of all permits and approvals required for the development or construction of or improvement to the transportation facility from local, state or federal agencies and a projected schedule for obtaining those permits and approvals.

(g) A list of the facilities of any utility or existing transportation facility that will be crossed by the transportation facility and a statement of the plans of the person submitting the request to accommodate such crossings.

(h) A statement setting forth the general plans of the person submitting the request for financing and operating the transportation facility, which must include, without limitation:

(1) A plan for the development, financing and operation of the transportation facility, including, without limitation, an indication of the proposed sources of money for the development and operation of the transportation facility, the anticipated use of such money and the anticipated schedule for the receipt of such money;

(2) A list of any assumptions made by the person about the anticipated use of the transportation facility, including, without limitation, the fees that will be charged for the use of the transportation facility, and a discussion of those assumptions;

(3) The identification of any risk factors identified by the person that are associated with developing, constructing or improving the transportation facility and the plan for addressing those risk factors;

(4) The identification of any local, state or federal resources that the person anticipates requesting for development and operation of the transportation facility, including, without limitation, an anticipated schedule for the receipt of those resources and the effect of those resources on any statewide or regional program for the improvement of transportation; and

(5) The identification and analysis of any costs or benefits associated with the proposed facility, performed by a

professional engineer who is licensed pursuant to chapter 625 of NRS.

(i) The names and addresses of the persons who may be contacted for further information concerning the request.

(j) Any additional material and information that the public body may request.

(Added to NRS by 2003, 2022)

NRS 338.164 Request for submission of proposals by public body. If a public body receives a request regarding a transportation facility pursuant to NRS 338.163 and the public body determines that the transportation facility serves a public purpose, the public body may request other persons to submit proposals to develop, construct, improve, maintain or operate, or any combination thereof, the transportation facility.

(Added to NRS by 2003, 2023)

NRS 338.166 Approval of request or proposal: Determination of public purpose; staff reports; copy of request or proposal to be furnished to affected governmental entities; fee; approval contingent on entering agreement with public body; establishment of date for development of or commencement of construction of transportation facility.

1. A public body may approve a request or proposal submitted pursuant to NRS 338.163 or 338.164 if the public body determines that the transportation facility serves a public purpose. In determining whether the transportation facility serves a public purpose, the public body shall consider whether:

(a) There is a public need for the type of transportation facility that is proposed;

(b) The proposed interconnections between the transportation facility and existing transportation facilities and the plans of the person submitting the request for the operation of the transportation facility are reasonable and compatible with any statewide or regional program for the improvement of transportation and with the transportation plans of any other governmental entity in the jurisdiction of which any portion of the transportation facility will be located;

(c) The estimated cost of the transportation facility is reasonable in relation to similar transportation facilities, as determined by an analysis of the cost performed by a professional engineer who is licensed pursuant to chapter 625 of NRS;

(d) The plans of the person submitting the request will result in the timely development or construction of, or improvement to, the transportation facility or its more efficient operation;

(e) The plans of the person submitting the request contain any penalties for the failure of the person submitting the request to meet any deadline which results in the untimely development or construction of, or improvement to, the transportation facility or failure to meet any deadline for its more efficient operation; and

(f) The long-term quality of the transportation facility will meet a level of performance established by the public body over a sufficient duration of time to provide value to the public.

2. In evaluating a request or proposal submitted pursuant to NRS 338.163 or 338.164, the public body may consider internal staff reports prepared by personnel of the public body who are familiar with the operation of similar transportation facilities or the advice of outside advisors or consultants with relevant experience.

3. The public body shall request that a person who submitted a request or proposal pursuant to NRS 338.163 or 338.164 furnish a copy of the request or proposal to each governmental entity that has jurisdiction over an area in which any part of the transportation facility is located. Within 30 days after receipt of such a request or proposal, the governmental entity shall submit in writing to the public body, for consideration by the public body, any comments that the governmental entity has concerning the transportation facility and shall indicate whether the transportation facility is compatible with any local, regional or statewide transportation plan or program that is applicable to the governmental entity.

4. A public body shall charge a reasonable fee to cover the costs of processing, reviewing and evaluating a request or proposal submitted pursuant to NRS 338.163 or 338.164, including, without limitation, reasonable fees for the services of an attorney or a financial or other consultant or advisor, to be collected before the public body accepts the request or proposal for processing, review and evaluation.

5. The approval of a request or proposal by the public body is contingent on the person who submitted the request or proposal entering into an agreement with the public body. In such an agreement, the public body shall include, without limitation:

(a) Criteria that address the long-term quality of the transportation facility.

(b) The date of termination of the authority and duties pursuant to NRS 338.161 to 338.168, inclusive, of the person whose request or proposal was approved by the public body with respect to the transportation facility and for the dedication of the transportation facility to the public body on that date.

(c) Provision for the imposition by the person whose request or proposal was approved by the public body of such rates, fees or other charges as may be established from time to time by agreement of the parties for use of all or a portion of a transportation facility, other than a bridge or road.

6. In connection with the approval of a transportation facility, the public body shall establish a date for the development of or the commencement of the construction of, or improvements to, the transportation facility. The public body may extend the date from time to time.

(Added to NRS by 2003, 2023)

NRS 338.167 Contract for transportation services. A public body may contract with a person whose request or proposal is approved pursuant to NRS 338.166 for transportation services to be provided by the transportation facility in exchange for such payments for service and other consideration as the public body may deem appropriate.

(Added to NRS by 2003, 2025)

NRS 338.168 Federal, state or local assistance. The public body may take any action necessary to obtain federal, state or local assistance for a transportation facility that it approves and may enter into any contracts required to receive such assistance. The public body shall, by resolution, determine if it serves the public purpose for all or a portion of the costs of the transportation facility to be paid, directly or indirectly, from the proceeds of a grant or loan made by the local, state or Federal Government or any agency or instrumentality thereof.

(Added to NRS by 2003, 2025)

CONTRACTS INVOLVING CONSTRUCTION MANAGERS AT RISK

NRS 338.169 Public body authorized to construct public work by selecting and entering into contracts with construction manager at risk. A public body may construct a public work by:

1. Selecting a construction manager at risk pursuant to the provisions of NRS 338.1691 to 338.1696, inclusive; and
2. Entering into separate contracts with a construction manager at risk:

(a) For preconstruction services, including, without limitation:

(1) Assisting the public body in determining whether scheduling or design problems exist that would delay the construction of the public work;

(2) Estimating the cost of the labor and material for the public work; and

(3) Assisting the public body in determining whether the public work can be constructed within the public body's budget; and

(b) To construct the public work.

(Added to NRS by 2007, 2891)

NRS 338.1691 Qualifications for construction manager at risk. To qualify to enter into contracts with a public body for preconstruction services and to construct a public work, a construction manager at risk must:

1. Not have been found liable for breach of contract with respect to a previous project, other than a breach for legitimate cause, during the 5 years immediately preceding the date of the advertisement for statements of qualifications pursuant to NRS 338.1692;
2. Not have been disqualified from being awarded a contract pursuant to NRS 338.017, 338.13895, 338.1475 or 408.333;
3. Be licensed as a contractor pursuant to chapter 624 of NRS; and
4. If the project is for the design of a public work of the State, be qualified to bid on a public work of the State pursuant to NRS 338.1379.

(Added to NRS by 2007, 2891)

NRS 338.1692 Advertising for statements of qualifications for construction manager at risk; contents of request; requirements for statement of qualifications.

1. A public body shall advertise for statements of qualifications for a construction manager at risk in a newspaper qualified pursuant to chapter 238 of NRS that is published in the county where the public work will be performed. 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.
2. A request for a statement of qualifications published pursuant to subsection 1 must include, without limitation:

(a) A description of the public work;

(b) An estimate of the cost of construction;

(c) A description of the work that the public body expects a construction manager at risk to perform;

(d) The dates on which it is anticipated that the separate phases of the preconstruction and construction of the public work will begin and end;

(e) The date by which statements of qualifications must be submitted to the public body;

(f) If the project is a public work of the State, a statement setting forth that the construction manager at risk must be qualified to bid on a public work of the State pursuant to NRS 338.1379 before submitting a statement of qualifications;

(g) The name, title, address and telephone number of a person employed by the public body that an applicant may contact for further information regarding the public work; and

(h) A list of the selection criteria and relative weight of the selection criteria that will be used to evaluate statements of qualifications.

3. A statement of qualifications must include, without limitation:

(a) An explanation of the experience that the applicant has with projects of similar size and scope;

(b) The contact information for references who have knowledge of the background, character and technical competence of the applicant;

(c) The applicant's preliminary proposal for managing the preconstruction and construction of the public work;

(d) Evidence of the ability of the applicant to obtain the necessary bonding for the work to be required by the public body;

(e) Evidence that the applicant has obtained or has the ability to obtain such insurance as may be required by law; and

(f) A statement of whether the applicant has been:

(1) Found liable for breach of contract with respect to a previous project, other than a breach for legitimate cause; and

(2) Disqualified from being awarded a contract pursuant to NRS 338.017, 338.13895, 338.1475 or 408.333.

(Added to NRS by 2007, 2891)

NRS 338.1693 Ranking of statements of qualifications; selection of finalists; availability to public of rankings of applicants; minimum number of qualified applicants required.

1. The public body shall appoint a panel consisting of at least three members to rank the statements of qualifications submitted to the public body by evaluating the statements of qualifications as required pursuant to subsections 2 and 3.
2. The panel shall rank the statements of qualifications by:

(a) Verifying that each applicant satisfies the requirements of NRS 338.1691; and

(b) Conducting an evaluation of the qualifications of each applicant based on the factors and relative weight assigned to each factor that the public body specified in the request for statements of qualifications advertised pursuant to NRS 338.1692.

3. When ranking the statements of qualifications, the panel shall assign a relative weight of 5 percent to the possession of a certificate of eligibility to receive a preference in bidding on public works.
4. After the panel ranks the statements of qualifications, the public body shall:

(a) Make available to the public the rankings of the applicants; and

(b) Except as otherwise provided in subsection 5, select at least the two but not more than the five applicants that the panel determined to be most qualified as finalists to submit final proposals to the public body pursuant to NRS 338.1694.

5. If the public body did not receive at least two statements of qualifications from applicants that the panel determines to be qualified pursuant to this section and NRS 338.1691, the public body may not contract with a construction manager at risk.

(Added to NRS by 2007, 2892)

NRS 338.1694 Final proposals: Requests; requirements.

1. After the finalists are selected pursuant to paragraph (b) of subsection 4 of NRS 338.1693, the public body shall provide to each finalist a request for final proposals. The request for final proposals must:

(a) Set forth the date by which final proposals must be submitted to the public body;

(b) Set forth the proposed forms of the contract to assist in the preconstruction of the public work and the contract to construct the public work that include, without limitation, the proposed terms and general conditions of the contracts; and

(c) Set forth the selection criteria and relative weight of the selection criteria that will be used to evaluate the final proposals.

2. A final proposal must include, without limitation:

(a) The professional qualifications and experience of the applicant, including, without limitation, the resumes of any employees of the applicant who will be managing the preconstruction and construction of the public work;

(b) The performance history of the applicant concerning other recent, similar projects completed by the applicant, if any;

(c) The safety programs established and the safety records accumulated by the applicant;

(d) The proposed plan of the applicant to manage the preconstruction and construction of the public work, which plan sets forth in detail the ability of the applicant to provide preconstruction services and to construct the public work; and

(e) A proposed plan of the applicant for the selection of any necessary subcontractors.

(Added to NRS by 2007, 2893)

NRS 338.1695 Ranking of applicants based on final proposals and interviews; negotiations with certain applicants for contract for preconstruction services; availability to applicants and public of certain information.

1. The panel appointed by the public body pursuant to NRS 338.1693 shall evaluate and assign a score to each of the final proposals received by the public body based on the factors and relative weight assigned to each factor that the public body specified in the request for final proposals. The panel shall interview the two or three applicants whose final proposals received the highest scores. After conducting such interviews, the panel shall rank the applicants based on the final proposals and interviews, which must be given equal weight.

2. Upon receipt of the final rankings of the applicants from the panel, the public body shall enter into negotiations with the most qualified applicant determined pursuant to subsection 1 for a contract for preconstruction services. If the public body is unable to negotiate a contract with the most qualified applicant at an amount of compensation that the public body and the most qualified applicant determine to be fair and reasonable, the public body shall terminate negotiations with that applicant. The public body may then undertake negotiations with the next most qualified applicant in sequence until an agreement is reached or a determination is made by the public body to reject all applicants.

3. The public body shall make available to the applicants and the public the results of the evaluations of final proposals and interviews conducted pursuant to subsection 1 and the final rankings of the applicants.

(Added to NRS by 2007, 2893)

NRS 338.1696 Negotiation of contract for construction of public work with construction manager at risk; awarding of contract if public body unable to negotiate satisfactory contract with construction manager at risk.

1. If a public body enters into a contract with a construction manager at risk for preconstruction services pursuant to NRS 338.1695, after the public body has finalized the design for the public work, the public body shall enter into negotiations with the construction manager at risk for a contract to construct the public work for the public body for:

(a) The cost of the work, plus a fee, with a guaranteed maximum price;

(b) A fixed price; or

(c) A fixed price plus reimbursement for overhead and other costs and expenses related to the construction of the public work.

2. If the public body is unable to negotiate a satisfactory contract with the construction manager at risk to construct the public work, the public body:

(a) Shall terminate negotiations with that applicant; and

(b) May award the contract for the public work:

(1) If the public body is not a local government, pursuant to the provisions of NRS 338.1377 to 338.139, inclusive.

(2) If the public body is a local government, pursuant to the provisions of NRS 338.1377 to 338.139, inclusive, or 338.143 to 338.148, inclusive.

(Added to NRS by 2007, 2893)

NRS 338.1697 Authorized provision in contract with construction manager at risk for construction of public work for guaranteed maximum price. A contract entered into pursuant to NRS 338.1696 that is for a guaranteed maximum price may include a provision that authorizes the construction manager at risk to receive all or part of any difference between the guaranteed maximum price set forth in the contract and the actual price of construction of the public work, if the actual price is less than the guaranteed maximum price.

(Added to NRS by 2007, 2894)

NRS 338.1698 Required and authorized provisions in contract awarded to construction manager at risk. A contract awarded to a construction manager at risk pursuant to NRS 338.1695 or 338.1696:

1. Must comply with the provisions of NRS 338.020 to 338.090, inclusive.

2. Must specify a date by which performance of the work required by the contract must be completed.
3. May set forth the terms by which the construction manager at risk agrees to name the public body, at the cost of the public body, as an additional insured in an insurance policy held by the construction manager at risk.
4. Must require that the construction manager at risk to whom a contract is awarded assume overall responsibility for ensuring that the preconstruction or construction of the public work, as applicable, is completed in a satisfactory manner.
5. May include such additional provisions as may be agreed upon by the public body and the construction manager at risk.

(Added to NRS by 2007, 2894)

NRS 338.16985 Duties and powers of construction manager at risk who enters contract for construction of public work. A construction manager at risk who enters into a contract for the construction of a public work pursuant to NRS 338.1696:

1. Is responsible for contracting for the services of any necessary subcontractor, supplier or independent contractor necessary for the construction of the public work and for the performance of and payment to any such subcontractors, suppliers or independent contractors.
2. If the public work involves the construction of a fixed work that is described in subsection 2 of NRS 624.215, shall perform not less than 25 percent of the construction of the fixed work himself or using his own employees.
3. If the public work involves the construction of a building or structure that is described in subsection 3 of NRS 624.215, may perform himself or using his own employees as much of the construction of the building or structure that the construction manager at risk is able to demonstrate that he or his own employees have performed on similar projects.

(Added to NRS by 2007, 2894)

NRS 338.1699 Subcontractors on public works for which contractor at risk was awarded contract: Eligibility; submission of list to public body.

1. To be eligible to provide materials, equipment, work or other services on a public work for which a construction manager at risk was awarded a contract pursuant to NRS 338.1696, a subcontractor must be:
(a) Licensed pursuant to chapter 624 of NRS; and
(b) Selected by the construction manager at risk based on the process of competitive bidding set forth in the applicable provisions of NRS 338.1373 to 338.148, inclusive.
2. A construction manager at risk to whom a contract for the construction of a public work is awarded pursuant to NRS 338.1696 shall submit to the public body that awarded the contract a list containing the names of each subcontractor with whom the construction manager at risk intends to enter into a contract for the provision of materials, equipment, work or other services on the public work.

(Added to NRS by 2007, 2895)

CONTRACTS INVOLVING DESIGN-BUILD TEAMS, PRIME CONTRACTORS OR NONPROFIT ORGANIZATIONS

General Provisions

NRS 338.1711 Contracts for which public body is required or authorized to enter into with prime contractor or design-build team.

1. Except as otherwise provided in this section and NRS 338.161 to 338.1699, inclusive, a public body shall contract with a prime contractor for the construction of a public work for which the estimated cost exceeds $100,000.
2. A public body may contract with a design-build team for the design and construction of a public work that is a discrete project if the public body has approved the use of a design-build team for the design and construction of the public work and the public work:
(a) Is the construction of a park and appurtenances thereto, the rehabilitation or remodeling of a public building, or the construction of an addition to a public building; or
(b) Has an estimated cost which exceeds $10,000,000.

(Added to NRS by 1999, 3467; A 2001, 2013, 2022, 2275; 2003, 119, 157, 2025, 2439; 2005, 1808; 2007, 2903)

NRS 338.1715 Procedure for selecting design-build team. A public body that contracts with a design-build team pursuant to NRS 338.1711 shall select the design-build team in accordance with the provisions of NRS 338.1721 to 338.1727, inclusive.

(Added to NRS by 1999, 3469; A 2001, 2022, 2276; 2003, 119, 157, 2441; 2005, 1810)

NRS 338.1717 Employment of architect, general contractor, construction manager as agent, landscape architect or engineer as consultant. A public body may employ a registered architect, general contractor, construction manager as agent, landscape architect or licensed professional engineer as a consultant to assist the public body in overseeing the construction of a public work. An architect, general contractor, construction manager as agent, landscape architect or engineer so employed shall not:

1. Construct the public work; or
2. Assume overall responsibility for ensuring that the construction of the public work is completed in a satisfactory manner.

(Added to NRS by 1999, 3472; A 2001, 2022; 2003, 119, 2441; 2007, 2903)

NRS 338.1718 Contract with construction manager as agent.

1. A construction manager as agent:
(a) Must:

(1) Be a contractor licensed pursuant to chapter 624 of NRS;

(2) Hold a certificate of registration to practice architecture, interior design or residential design pursuant to chapter 623 of NRS; or

(3) Be licensed as a professional engineer pursuant to chapter 625 of NRS.

(b) May enter into a contract with a public body to assist in the planning, scheduling and management of the construction of a public work without assuming any responsibility for the cost, quality or timely completion of the construction of the public work. A construction manager as agent who enters into a contract with a public body pursuant to this section may not take part in the design or construction of the public work.

2. A contract between a public body and a construction manager as agent is not required to be awarded by competitive bidding.

(Added to NRS by 2007, 2895)

Procedures for Awarding Contracts to Design-Build Teams

NRS 338.1721 Qualifications of design-build team. To qualify to participate in a project for the design and construction of a public work, a design-build team must:

1. Have the ability to obtain a performance bond and payment bond as required pursuant to NRS 339.025;
2. Have the ability to obtain insurance covering general liability and liability for errors and omissions;
3. Not have been found liable for breach of contract with respect to a previous project, other than a breach for legitimate cause, during the 5 years immediately preceding the date of the advertisement for preliminary proposals;
4. Not have been disqualified from being awarded a contract pursuant to NRS 338.017, 338.13895, 338.1475 or 408.333;
5. Ensure that the members of the design-build team possess the licenses and certificates required to carry out the functions of their respective professions within this State; and
6. If the project is for the design and construction of a public work of the State, ensure that the prime contractor is qualified to bid on a public work of the State pursuant to NRS 338.1379.

(Added to NRS by 1999, 3470; A 2001, 252, 2022; 2003, 119, 2131; 2005, 1810)

NRS 338.1723 Advertisement for preliminary proposals.

1. A public body shall advertise for preliminary proposals for the design and construction of a public work by a design-build team in a newspaper qualified pursuant to chapter 238 of NRS that is published in the county where the public work will be performed. 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.
2. A request for preliminary proposals published pursuant to subsection 1 must include, without limitation:

(a) A description of the public work to be designed and constructed;

(b) An estimate of the cost to design and construct the public work;

(c) The dates on which it is anticipated that the separate phases of the design and construction of the public work will begin and end;

(d) The date by which preliminary proposals must be submitted to the public body;

(e) If the proposal is for a public work of the State, a statement setting forth that the prime contractor must be qualified to bid on a public work of the State pursuant to NRS 338.1379 before submitting a preliminary proposal;

(f) A description of the extent to which designs must be completed for both preliminary and final proposals and any other requirements for the design and construction of the public work that the public body determines to be necessary;

(g) A list of the requirements set forth in NRS 338.1721;

(h) A list of the factors and relative weight assigned to each factor that the public body will use to evaluate design-build teams who submit a proposal for the public work;

(i) Notice that a design-build team desiring to submit a proposal for the public work must include with its proposal the information used by the public body to determine finalists among the design-build teams submitting proposals pursuant to subsection 2 of NRS 338.1725 and a description of that information; and

(j) A statement as to whether a design-build team that is selected as a finalist pursuant to NRS 338.1725 but is not awarded the design-build contract pursuant to NRS 338.1727 will be partially reimbursed for the cost of preparing a final proposal and, if so, an estimate of the amount of the partial reimbursement.

(Added to NRS by 1999, 3469; A 2001, 252, 2015, 2022; 2003, 119, 2131, 2441; 2005, 1810)

NRS 338.1725 Selection of finalists based on preliminary proposals; availability to public of results of evaluations of preliminary proposals and rankings of design-build teams.

1. The public body shall select at least two but not more than four finalists from among the design-build teams that submitted preliminary proposals. If the public body does not receive at least two preliminary proposals from design-build teams that the public body determines to be qualified pursuant to this section and NRS 338.1721, the public body may not contract with a design-build team for the design and construction of the public work.
2. The public body shall select finalists pursuant to subsection 1 by:

(a) Verifying that each design-build team which submitted a preliminary proposal satisfies the requirements of NRS 338.1721; and

(b) Conducting an evaluation of the qualifications of each design-build team that submitted a preliminary proposal, including, without limitation, an evaluation of:

(1) The professional qualifications and experience of the members of the design-build team;

(2) The performance history of the members of the design-build team concerning other recent, similar projects completed by those members, if any;

(3) The safety programs established and the safety records accumulated by the members of the design-build team; and

(4) The proposed plan of the design-build team to manage the design and construction of the public work that sets forth in detail the ability of the design-build team to design and construct the public work.

3. After the selection of finalists pursuant to this section, the public body shall make available to the public the results of the evaluations of preliminary proposals conducted pursuant to paragraph (b) of subsection 2 and the rankings of the design-build teams who submitted preliminary proposals.

(Added to NRS by 1999, 3470; A 2001, 2016, 2022; 2003, 119; 2005, 1811)

NRS 338.1727 Request for and submission of final proposals; selection or rejection of final proposals; awarding of contract; partial reimbursement of unsuccessful finalists in certain circumstances; contents of contract; availability to public of certain information.

1. After selecting the finalists pursuant to NRS 338.1725, the public body shall provide to each finalist a request for final proposals for the public work. The request for final proposals must:

(a) Set forth the factors that the public body will use to select a design-build team to design and construct the public work, including the relative weight to be assigned to each factor; and

(b) Set forth the date by which final proposals must be submitted to the public body.

2. If one or more of the finalists selected pursuant to NRS 338.1725 is disqualified or withdraws, the public body may select a design-build team from the remaining finalist or finalists.

3. Except as otherwise provided in this subsection, in assigning the relative weight to each factor for selecting a design-build team pursuant to subsection 1, the public body shall assign, without limitation, a relative weight of 5 percent to the possession of a certificate of eligibility to receive a preference in bidding on public works and a relative weight of at least 30 percent to the proposed cost of design and construction of the public work. If any federal statute or regulation precludes the granting of federal assistance or reduces the amount of that assistance for a particular public work because of the provisions of this subsection relating to preference in bidding on public works, those provisions of this subsection do not apply insofar as their application would preclude or reduce federal assistance for that public work.

4. A final proposal submitted by a design-build team pursuant to this section must be prepared thoroughly and be responsive to the criteria that the public body will use to select a design-build team to design and construct the public work described in subsection 1. A design-build team that submits a final proposal which is not responsive shall not be awarded the contract and shall not be eligible for the partial reimbursement of costs provided for in subsection 7.

5. A final proposal is exempt from the requirements of NRS 338.141.

6. After receiving and evaluating the final proposals for the public work, the public body, at a regularly scheduled meeting, shall:

(a) Select the final proposal, using the criteria set forth pursuant to subsections 1 and 3, and award the design-build contract to the design-build team whose proposal is selected; or

(b) Reject all the final proposals.

7. If a public body selects a final proposal and awards a design-build contract pursuant to paragraph (a) of subsection 6, the public body shall:

(a) Partially reimburse the unsuccessful finalists if partial reimbursement was provided for in the request for preliminary proposals pursuant to paragraph (j) of subsection 2 of NRS 338.1723. The amount of reimbursement must not exceed, for each unsuccessful finalist, 3 percent of the total amount to be paid to the design-build team as set forth in the design-build contract.

(b) Make available to the public the results of the evaluation of final proposals that was conducted and the ranking of the design-build teams who submitted final proposals. The public body shall not release to a third party, or otherwise make public, financial or proprietary information submitted by a design-build team.

8. A contract awarded pursuant to this section:

(a) Must comply with the provisions of NRS 338.020 to 338.090, inclusive.

(b) Must specify:

(1) An amount that is the maximum amount that the public body will pay for the performance of all the work required by the contract, excluding any amount related to costs that may be incurred as a result of unexpected conditions or occurrences as authorized by the contract;

(2) An amount that is the maximum amount that the public body will pay for the performance of the professional services required by the contract; and

(3) A date by which performance of the work required by the contract must be completed.

(c) May set forth the terms by which the design-build team agrees to name the public body, at the cost of the public body, as an additional insured in an insurance policy held by the design-build team.

(d) Except as otherwise provided in paragraph (e), must not require the design professional to defend, indemnify or hold harmless the public body or the employees, officers or agents of that public body from any liability, damage, loss, claim, action or proceeding caused by the negligence, errors, omissions, recklessness or intentional misconduct of the employees, officers and agents of the public body.

(e) May require the design-build team to defend, indemnify and hold harmless the public body, and the employees, officers and agents of the public body from any liabilities, damages, losses, claims, actions or proceedings, including, without limitation, reasonable attorneys' fees, that are caused by the negligence, errors, omissions, recklessness or intentional misconduct of the design-build team or the employees or agents of the design-build team in the performance of the contract.

(f) Must require that the design-build team to whom a contract is awarded assume overall responsibility for ensuring that the design and construction of the public work is completed in a satisfactory manner.

9. Upon award of the design-build contract, the public body shall make available to the public copies of all preliminary and final proposals received.

(Added to NRS by 1999, 3471; A 2001, 1272, 2017, 2022; 2003, 33, 119, 2027, 2132, 2442; 2005, 1812)

NOTIFICATION OF LICENSING BOARDS

NRS 338.175 Substantially incomplete or rejected plans submitted by registered architect, interior designer, residential designer or landscape architect. A public body shall notify the State Board of Architecture, Interior Design and Residential Design or the State Board of Landscape Architecture, as applicable, in writing if a registered architect, interior designer, residential designer or landscape architect:

1. Submits plans for a project which are substantially incomplete; or
2. Submits plans for the same project which are rejected by the public body at least three times.

(Added to NRS by 1997, 1409; A 2003, 2444)

NRS 338.176 Substantially incomplete or rejected plans submitted by licensed professional engineer or land surveyor. A public body shall notify the State Board of Professional Engineers and Land Surveyors in writing if a licensed professional engineer or land surveyor:

1. Submits plans that are substantially incomplete; or
2. Submits plans for the same public work that are rejected by the public body at least three times.

(Added to NRS by 1997, 156)

DESIGN, CONSTRUCTION, RENOVATION AND DEMOLITION OF PUBLIC WORKS

General Provisions

NRS 338.177 Lease of property acquired by local government for public work pending completion of public work.

1. Real property acquired by a governing body for a public work may be leased, pending the completion of the public work but for not more than 5 years, upon such terms and conditions as the governing body prescribes.
2. The governing body shall:

(a) Adopt the procedures for entering into such a lease at a public hearing held thereon; and

(b) Offer to lease the property to the person from whom it was acquired before offering to lease the property to any other person.

3. Except as otherwise provided in this subsection, revenue from the lease must be used to maintain the property in order to mitigate any adverse effect upon the adjacent area. Any revenue from the lease that is not needed to maintain the property must be used to offset the cost of the public work for which the property was acquired.

(Added to NRS by 1995, 156; A 2003, 2444)

NRS 338.180 Accommodation of persons with physical handicap or disability; verification of conformity with requirements; enforcement.

1. The Legislature of the State of Nevada declares that:

(a) The primary purpose of this section is to provide, subject to the limitations set forth in this section, for the removal and elimination of architectural barriers to persons with a physical handicap in public buildings and facilities designed after July 1, 1973, in order to encourage and facilitate the employment of persons with a physical handicap and to make public buildings accessible to and usable by persons with a physical handicap; and

(b) It is the intent of the Legislature that insofar as possible all buildings and facilities used by the public be accessible to, and functional for, persons with a physical handicap, without loss of function, space or facility where the general public is concerned.

2. All plans and specifications for the construction of public buildings and facilities owned by a public body must, after July 1, 1973, provide facilities and features for persons with a physical handicap so that buildings which are normally used by the public are constructed with entrance ramps, toilet facilities, drinking fountains, doors and public telephones accessible to and usable by persons with a physical handicap. In addition, all plans and specifications for the construction or alteration of public buildings and facilities owned by a public body must comply with the applicable requirements of the:

(a) Americans with Disabilities Act of 1990, 42 U.S.C. §§ 12101 et seq., and the regulations adopted pursuant thereto, including, without limitation, the Americans with Disabilities Act Accessibility Guidelines for Buildings and Facilities set forth in Appendix A of Part 36 of Title 28 of the Code of Federal Regulations;

(b) Minimum Guidelines and Requirements for Accessible Design, 36 C.F.R. §§ 1190.1 et seq.; and

(c) Fair Housing Act, 42 U.S.C. § 3604, and the regulations adopted pursuant thereto.

➥ The requirements of paragraph (a) of this subsection are not satisfied if the plans and specifications comply solely with the Uniform Federal Accessibility Standards set forth in Appendix A of Part 101-19.6 of Title 41 of the Code of Federal Regulations.

3. All public bodies shall, in the design, construction and alteration of public buildings and facilities comply with the applicable requirements of the:

(a) Americans with Disabilities Act of 1990, 42 U.S.C. §§ 12101 et seq., and the regulations adopted pursuant thereto, including, without limitation, the Americans with Disabilities Act Accessibility Guidelines for Buildings and Facilities set forth in Appendix A of Part 36 of Title 28 of the Code of Federal Regulations;

(b) Minimum Guidelines and Requirements for Accessible Design, 36 C.F.R. §§ 1190.1 et seq.; and

(c) Fair Housing Act, 42 U.S.C. § 3604, and the regulations adopted pursuant thereto.

➥ The requirements of paragraph (a) of this subsection are not satisfied if the public body complies solely with the Uniform Federal Accessibility Standards set forth in Appendix A of Part 101-19.6 of Title 41 of the Code of Federal Regulations.

4. In each public building and facility owned by a public body, each entrance to a corridor which leads to a toilet facility must be marked with a sign which:

(a) Conforms to the requirements related to signage contained in §§ 4.30 et seq. of the Americans with Disabilities Act Accessibility Guidelines for Buildings and Facilities set forth in Appendix A of Part 36 of Title 28 of the Code of Federal Regulations; and

(b) Uses symbols, raised letters and Braille to:

(1) Identify the toilet facility and the gender of persons who may use the toilet facility; and

(2) If the toilet facility is for the exclusive use of persons of one gender:
(I) Indicate that the toilet facility is for the exclusive use of persons of that gender; and
(II) Provide direction to a toilet facility that may be used by persons of the other gender.

5. The State Public Works Board shall verify that all public buildings and facilities owned by the State of Nevada conform with the requirements of this section. Each political subdivision shall verify that all public buildings and facilities owned by the political subdivision conform with the requirements of this section.

6. A person may report a violation of this section to the Attorney General.

7. Upon receiving a report pursuant to subsection 6, the Attorney General shall notify the public body responsible for the alleged violation. Not later than 30 days after receiving such a notification, the public body shall:

(a) Present evidence to the Attorney General that it is in compliance with this section; or

(b) Begin any action necessary to comply with the requirements of this section and notify the Attorney General of the date on which it will be in compliance with those requirements.

8. If the public body responsible for the alleged violation fails to comply with this section, the Attorney General shall take such action as is necessary to ensure compliance with this section, including, without limitation, commencing proceedings in a court of competent jurisdiction, if appropriate.

(Added to NRS by 1973, 394; A 1975, 155; 1985, 42, 274; 1999, 2852; 2001, 704; 2003, 2444)

NRS 338.185 Public body to reimburse contractor for certain costs of locating underground facility of public utility. If a public body directs a contractor to locate the facility of a public utility placed underground on the site of a public work, the public body shall reimburse the contractor for the difference between the costs incurred in finding the actual location of the facility and the costs of finding the reputed location of the facility.

(Added to NRS by 1987, 1042)

Energy and Environmental Design Requirements

NRS 338.187 Standards for energy and environmental design. Repealed. (See chapter 347, Statutes of Nevada 2007, at page 1656.)

NRS 338.190 Analysis of certain public buildings before construction or renovation to estimate certain costs and to identify measures for conservation of energy and use of alternative types of energy; requirements for contracts for cost-saving measures. Repealed. (See chapter 347, Statutes of Nevada 2007, at page 1656 and chapter 539, Statutes of Nevada 2007, at page 3389.)

NRS 338.1905 Retrofitting of state buildings for energy efficiency: Appointment of energy retrofit coordinators and person to assist coordinators. [Effective through April 30, 2013.]

1. The Governor shall designate one or more energy retrofit coordinators for the buildings occupied by the Executive Branch of Government, including, without limitation, the Nevada System of Higher Education and the Public Employees' Retirement System.

2. The Supreme Court shall designate an energy retrofit coordinator for the buildings occupied by the Judicial Branch of State Government.

3. The Legislature, by concurrent resolution, shall designate an energy retrofit coordinator for the buildings occupied by the Legislative Branch of Government. If the position becomes vacant at a time when the Legislature is not in session, the Legislative Commission may designate a replacement.

4. The Governor shall appoint a person who is trained in the management of facilities to assist the energy retrofit coordinator of the:

(a) Judicial Branch of Government, upon request of the Supreme Court.

(b) Legislative Branch of Government, upon request of the Legislative Commission.

➥ A person appointed to assist an energy retrofit coordinator pursuant to this subsection shall provide all assistance requested including making recommendations for proposals for retrofitting buildings and any other assistance necessary to enable the coordinator to carry out the provisions of NRS 338.1906.

(Added to NRS by 1993, 910; A 1993, 1439, 2135; 1995, 550, 575, 576; 1999, 1818)

NRS 338.1906 Retrofitting of state buildings for energy efficiency: Duties of energy retrofit coordinators and State Board of Examiners; procedures for requesting and approving proposals; limitation on money committed beyond biennium; restrictions on approval of change orders to executed contracts; projects exempt from certain procedural requirements. [Effective through April 30, 2013.]

1. Upon request by or consultation with an officer or employee of the State who is responsible for the budget of a department, board, commission, agency or other entity of the State, the appropriate energy retrofit coordinator may request the approval of the State Board of Examiners to advertise a request for proposals to retrofit a building, or any portion thereof, that is occupied by the department, board, commission, agency or other entity, to make the use of energy in the building, or portion thereof, more efficient.

2. Upon approval of the State Board of Examiners, the coordinator shall prepare a request for proposals for the retrofitting of one or more buildings, or any portion thereof, which includes:

(a) The name and location of the coordinator;

(b) A brief description of the requirements for the initial audit of the use of energy and the retrofitting;

(c) Where and how specifications of the requirements for the initial audit of the use of energy and the retrofitting may be obtained;

(d) The date and time not later than which proposals must be received by the coordinator; and

(e) The date and time when responses will be opened.

3. The request for proposals must be published in at least one newspaper of general circulation in the State.

4. After receiving the proposals but before making a decision on the proposals, the coordinator shall consider:
(a) The best interests of the State;
(b) The experience and financial stability of the persons submitting the proposals;
(c) Whether the proposals conform with the terms of the request for proposals;
(d) The prices of the proposals; and
(e) Any other factor disclosed in the request for proposals.
5. The coordinator shall determine the relative weight of each factor before a request for proposals is advertised. The weight of each factor must not be disclosed before the date proposals are required to be submitted to the coordinator.
6. After reviewing the proposals, if the coordinator determines that the dollar value of the annual energy savings resulting from the retrofit will meet or exceed the total annual contract payments to be made by the State, including any financing charges to be incurred by the State over the life of the contract, the coordinator shall select the best proposal and request the approval of the State Board of Examiners to award the contract. The request for approval must include the proposed method of financing the audit and retrofit, which may include an installment contract, a shared savings contract or any other contract for a reasonable financing arrangement. Such a contract may commit the State to make payments beyond the biennium in which the contract is executed, but the interest due on any debt created pursuant to this section must be paid at least semiannually, payments must be made on the principal at least annually and the debt must be fully repaid on or before May 1, 2013.
7. Before approving a retrofit pursuant to this section, the State Board of Examiners shall evaluate any projects that would utilize shared savings as a method of payment or any method of financing that would commit the State to make payments beyond the biennium in which the contract is executed to ensure that:
(a) The dollar value of the annual energy savings resulting from the retrofit will meet or exceed the total annual contract payments to be made by the State, including any financing charges to be incurred by the State over the life of the contract;
(b) The State is likely to continue to occupy the building for the entire period required to recoup the cost of the retrofit in energy savings; and
(c) The limitation set forth in subsection 9 will not be exceeded.
8. Upon approval of the State Board of Examiners, the coordinator shall execute the contract and notify:
(a) The State Board of Examiners of the total amount of money committed by the contract per year; and
(b) Each officer or employee who is responsible for the budget of a department, board, commission, agency or other entity which occupies a portion of a building that will be retrofitted of the amount of money it will be required to pay annually for its portion of the retrofit.
9. The total amount of money committed beyond the biennium for all contracts executed pursuant to this section must not exceed $15,000,000 at any one time.
10. The Legislature hereby pledges that a tax will be levied to pay the principal and interest on any indebtedness resulting from a contract executed pursuant to this section as they become due if the required payments will not be made by the entity that executed the contract from its budgeted accounts and the proceeds from any such taxes are hereby specially appropriated for this purpose.
11. A change order to a contract executed pursuant to this section may not be approved by the State if the cost of the change order would cause the dollar value of the annual energy savings resulting from the retrofit to be less than the total annual contract payments to be made by the State, including any financing charges to be incurred by the State over the life of the contract, unless approval of the change order is more economically feasible than termination of the retrofit.
12. NRS 338.1385 does not apply to a project for which a request for proposals is advertised and the contract is awarded pursuant to the provisions of this section.
(Added to NRS by 1993, 910; A 1993, 1437, 1439, 2135; 1995, 575, 576; 1999, 2402; 2001, 2991; 2005, 2891)

NRS 338.1907 Retrofitting of local governmental buildings for energy efficiency: Duties of energy retrofit coordinators and local governments; procedures for requesting and approving proposals; restrictions on approval of change orders to executed contracts; projects exempt from certain procedural requirements. [Effective through April 30, 2013.]
1. A governing body may designate one or more energy retrofit coordinators for the buildings occupied by the local government.
2. If such a coordinator is designated, upon request by or consultation with an officer or employee of the local government who is responsible for the budget of a department, board, commission or other entity of the local government, the coordinator may request the approval of the governing body to advertise a request for proposals to retrofit a building, or any portion thereof, that is occupied by the department, board, commission or other entity, to make the use of energy in the building, or portion thereof, more efficient.
3. Upon approval of the governing body, the coordinator shall prepare a request for proposals for the retrofitting of one or more buildings, or any portion thereof, which includes:
(a) The name and location of the coordinator;
(b) A brief description of the requirements for the initial audit of the use of energy and the retrofitting;
(c) Where and how specifications of the requirements for the initial audit of the use of energy and the retrofitting may be obtained;
(d) The date and time not later than which proposals must be received by the coordinator; and
(e) The date and time when responses will be opened.
4. The request for proposals must be published in a newspaper qualified pursuant to chapter 238 of NRS that is published in the county where the public work will be performed. 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 where the public work will be performed.
5. After receiving the proposals but before making a decision on the proposals, the coordinator shall consider:
(a) The best interests of the local government;
(b) The experience and financial stability of the persons submitting the proposals;

(c) Whether the proposals conform with the terms of the request for proposals;
(d) The prices of the proposals; and
(e) Any other factor disclosed in the request for proposals.

6. The coordinator shall determine the relative weight of each factor before a request for proposals is advertised. The weight of each factor must not be disclosed before the date proposals are required to be submitted to the coordinator.

7. After reviewing the proposals, if the coordinator determines that the dollar value of the annual energy savings resulting from the retrofit will meet or exceed the total annual contract payments to be made by the local government, including any financing charges to be incurred by the local government over the life of the contract, the coordinator shall select the best proposal and request the approval of the governing body to award the contract. The request for approval must include the proposed method of financing the audit and retrofit, which may include an installment contract, a shared savings contract or any other contract for a reasonable financing arrangement. Such a contract may commit the local government to make payments beyond the fiscal year in which the contract is executed or beyond the terms of office of the governing body, or both.

8. Before approving a retrofit pursuant to this section, the governing body shall evaluate any projects that would utilize shared savings as a method of payment or any method of financing that would commit the local government to make payments beyond the fiscal year in which the contract is executed or beyond the terms of office of the governing body to ensure that:

(a) The dollar value of the annual energy savings resulting from the retrofit will meet or exceed the total annual contract payments to be made by the local government related to the retrofit, including any financing charges to be incurred by the local government over the life of the contract; and

(b) The local government is likely to continue to occupy the building for the entire period required to recoup the cost of the retrofit in energy savings.

9. Upon approval of the governing body, the coordinator shall execute the contract and notify each officer or employee who is responsible for the budget of a department, board, commission or other entity which occupies a portion of a building that will be retrofitted of the amount of money it will be required to pay annually for its portion of the retrofit.

10. A change order to a contract executed pursuant to this section may not be approved by the local government if the cost of the change order would cause the dollar value of the annual energy savings resulting from the retrofit to be less than the total annual contract payments to be made by the local government, including financing charges to be incurred by the local government over the life of the contract, unless approval of the change order is more economically feasible than termination of the retrofit.

11. NRS 338.1385 and 338.143 do not apply to a project for which a request for proposals is advertised and the contract is awarded pursuant to the provisions of this section.

(Added to NRS by 1993, 912; A 1993, 1439, 2135; 1995, 575, 576; 1999, 2404; 2003, 2446; 2005, 2893)

Additional Conditions and Limitations

NRS 338.193 Standards for plumbing fixtures.

1. Each public building sponsored or financed by a public body must meet the standards made applicable for the building pursuant to this section.

2. Except as otherwise provided in subsections 3 and 4, each public building, other than a prison or jail, on which construction begins on or after March 1, 1992, and each existing public building which is expanded or renovated on or after March 1, 1992, must incorporate the following minimal standards for plumbing fixtures:

(a) A toilet which uses water must not be installed unless its consumption of water does not exceed 3.5 gallons of water per flush.

(b) A shower apparatus which uses more than 3 gallons of water per minute must not be installed unless it is equipped with a device to reduce water consumption to 3 gallons of water or less per minute.

(c) Each faucet installed in a lavatory or kitchen must not allow water to flow at a rate greater than 3 gallons per minute.

(d) A toilet or urinal which employs a timing device or other mechanism to flush periodically irrespective of demand must not be installed.

3. Except as otherwise provided in subsection 4, each public building, other than a prison or jail, on which construction begins on or after March 1, 1993, and each existing public building which is expanded or renovated on or after March 1, 1993, must incorporate the following minimal standards for plumbing fixtures:

(a) A toilet which uses water must not be installed unless its consumption of water does not exceed 1.6 gallons of water per flush.

(b) A shower apparatus which uses more than 2.5 gallons of water per minute must not be installed unless it is equipped with a device to reduce water consumption to 2.5 gallons of water or less per minute.

(c) A urinal which uses water must not be installed unless its consumption of water does not exceed 1 gallon of water per flush.

(d) A toilet or urinal which employs a timing device or other mechanism to flush periodically, irrespective of demand, must not be installed.

(e) A urinal which continually flows or flushes water must not be installed.

(f) Each faucet installed in a lavatory or kitchen must not allow water to flow at a rate greater than 2.5 gallons per minute.

(g) Each faucet installed in a public restroom must contain a mechanism which closes the faucet automatically after a predetermined amount of water has flowed through the faucet. Multiple faucets that are activated from a single point must not be installed.

4. The requirements of this section for the installation of certain plumbing fixtures do not apply to any portion of an existing public building which is not being expanded or renovated.

(Added to NRS by 1991, 1168)

NRS 338.195 Survey for presence of asbestos required before renovation or demolition of public building.

1. No public building or other public structure may be renovated or demolished until a survey of the building or structure has been made for the presence of asbestos or material containing asbestos.

2. As used in this section, "material containing asbestos" has the meaning ascribed to it by the Division of Industrial Relations of the Department of Business and Industry pursuant to NRS 618.765.

(Added to NRS by 1989, 1280; A 1993, 1567)

NRS 338.200 Prohibition against naming public building or structure after member of governing body. No public building or other public structure, other than a street or road, may be named after a person who is at the time a member of the governing body which has jurisdiction or control over the building or structure or which is responsible for it.

(Added to NRS by 1981, 1337)

PROGRESS PAYMENTS

General Provisions

NRS 338.400 Definitions. As used in NRS 338.400 to 338.645, inclusive, unless the context otherwise requires, the words and terms defined in NRS 338.415 to 338.435, inclusive, have the meanings ascribed to them in those sections.

(Added to NRS by 1999, 1983; A 2005, 1814)

NRS 338.415 "Progress bill" defined. "Progress bill" means a bill for a portion of the supplies, work performed or services provided by a contractor, subcontractor or supplier for a public work.

(Added to NRS by 1999, 1983)

NRS 338.420 "Progress payment" defined. "Progress payment" means the payment for a portion of the supplies, work performed or services provided by a contractor, subcontractor or supplier for a public work.

(Added to NRS by 1999, 1983)

NRS 338.425 "Retainage" defined. "Retainage" means the amount authorized to be withheld from a progress payment pursuant to the provisions of NRS 338.515, 338.555 or 338.595.

(Added to NRS by 1999, 1983)

NRS 338.430 "Retainage bill" defined. "Retainage bill" means a bill for the amount authorized to be withheld from a progress payment pursuant to the provisions of NRS 338.515, 338.555 or 338.595.

(Added to NRS by 1999, 1983)

NRS 338.435 "Retainage payment" defined. "Retainage payment" means the payment of the amount authorized to be withheld from a progress payment pursuant to the provisions of NRS 338.515, 338.555 or 338.595.

(Added to NRS by 1999, 1983)

NRS 338.455 Methods to be used for providing notice. Each notice required pursuant to NRS 338.400 to 338.645, inclusive, must be:

1. Delivered personally; or
2. Sent by facsimile machine and delivered by regular or certified mail.

(Added to NRS by 1999, 1990)

NRS 338.460 Dates to be used for calculating accrual of interest on retainage. Interest that is required to be paid on the retainage accrues from the date the retainage is withheld until the date the retainage is paid to the person from whom the retainage was withheld.

(Added to NRS by 1999, 1984)

Applicability and Limitations

NRS 338.480 Provisions inapplicable to certain contracts made by Department of Transportation. The provisions of NRS 338.400 to 338.645, inclusive, do not apply to a contract entered into by the Department of Transportation pursuant to chapter 408 of NRS.

(Added to NRS by 1999, 1984)

NRS 338.485 Limitations on waiving certain rights, obligations and liabilities.

1. A person may not waive or modify a right, obligation or liability set forth in the provisions of NRS 338.400 to 338.645, inclusive.
2. A condition, stipulation or provision in a contract or other agreement that:
   (a) Requires a person to waive a right set forth in the provisions of NRS 338.400 to 338.645, inclusive; or
   (b) Relieves a person of an obligation or liability imposed by the provisions of NRS 338.400 to 338.645, inclusive,

is void.

(Added to NRS by 1999, 1990)

NRS 338.490 Limitations on requiring release or waiver of right to receive progress payment or retainage payment. Any release or waiver required to be provided by a contractor, subcontractor or supplier to receive a progress payment or retainage payment must be:

1. Conditional for the purpose of receiving payment and shall be deemed to become unconditional upon the receipt of the

money due to the contractor, subcontractor or supplier; and

2. Limited to claims related to the invoiced amount of the labor, materials, equipment or supplies that are the subject of the progress bill or retainage bill.

(Added to NRS by 1999, 1989)

Payments Made by Public Body to Contractor

NRS 338.510 Submittal of progress bills. A contractor shall submit a progress bill to the public body monthly or more frequently if the provisions of the contract so provide.

(Added to NRS by 1999, 1984)

NRS 338.515 Time for making payments; amounts paid; amounts withheld as retainage; rate of interest paid on amounts withheld; powers of Labor Commissioner when workman is owed wages.

1. Except as otherwise provided in NRS 338.525, a public body and its officers or agents awarding a contract for a public work shall pay or cause to be paid to a contractor the progress payments due under the contract within 30 days after the date the public body receives the progress bill or within a shorter period if the provisions of the contract so provide. Not more than 90 percent of the amount of any progress payment may be paid until 50 percent of the work required by the contract has been performed. Thereafter, the public body may pay any of the remaining progress payments without withholding additional retainage if, in the opinion of the public body, satisfactory progress is being made in the work.

2. Except as otherwise provided in NRS 338.525, a public body shall identify in the contract and pay or cause to be paid to a contractor the actual cost of the supplies, materials and equipment that:

(a) Are identified in the contract;

(b) Have been delivered and stored at a location, and in the time and manner, specified in a contract by the contractor or a subcontractor or supplier for use in a public work; and

(c) Are in short supply or were specially made for the public work,

↪ within 30 days after the public body receives a progress bill from the contractor for those supplies, materials or equipment.

3. A public body shall pay or cause to be paid to the contractor at the end of each quarter interest for the quarter on any amount withheld by the public body pursuant to NRS 338.400 to 338.645, inclusive, at a rate equal to the rate quoted by at least three insured banks, credit unions or savings and loan associations in this State as the highest rate paid on a certificate of deposit whose duration is approximately 90 days on the first day of the quarter. If the amount due to a contractor pursuant to this subsection for any quarter is less than $500, the public body may hold the interest until:

(a) The end of a subsequent quarter after which the amount of interest due is $500 or more;

(b) The end of the fourth consecutive quarter for which no interest has been paid to the contractor; or

(c) The amount withheld under the contract is due pursuant to NRS 338.520,

↪ whichever occurs first.

4. If the Labor Commissioner has reason to believe that a workman is owed wages by a contractor or subcontractor, he may require the public body to withhold from any payment due the contractor under this section and pay the Labor Commissioner instead, an amount equal to the amount the Labor Commissioner believes the contractor owes to the workman. This amount must be paid by the Labor Commissioner to the workman if the matter is resolved in his favor, otherwise it must be returned to the public body for payment to the contractor.

(Added to NRS by 1973, 1159; A 1977, 1035; 1981, 552; 1983, 1591; 1985, 491; 1999, 1992; 2003, 799, 2448; 2007, 2512)

NRS 338.520 Payment of outstanding balance upon occupancy, use or recording of notice of completion. Except with respect to any payment withheld pursuant to NRS 338.525, if:

1. A public body or a person acting with the authority of the public body occupies or begins use of a public work or a portion of a public work;

2. A notice of completion for a public work or a portion of a public work is recorded as provided in NRS 108.228; or

3. A public body partially occupies one or more buildings of a public work,

↪ the public body shall pay or cause to be paid to the contractor any outstanding payment due, including, without limitation, retainage, and any interest accrued thereon within 30 days after whichever event described in subsection 1, 2 or 3 occurs first. The amount paid must be in the proportion that the value of the portion of the public work which is used or occupied bears to the total value of the public work.

(Added to NRS by 1999, 1984)

NRS 338.525 Withholding amounts for failure of contractor to comply with contract or applicable building code, law or regulation; payment of amounts withheld upon confirmation of correction of condition.

1. A public body may, but is not required to, withhold from a progress payment or retainage payment an amount sufficient to pay the expenses the public body reasonably expects to incur as a result of the failure of the contractor to comply with the contract or applicable building code, law or regulation.

2. A public body shall, within 20 days after it receives a progress bill or retainage bill from a contractor, give a written notice to the contractor of any amount that will be withheld pursuant to this section. The written notice must set forth:

(a) The amount of the progress payment or retainage payment that will be withheld from the contractor; and

(b) A detailed explanation of the reason the public body will withhold that amount, including, without limitation, a specific reference to the provision or section of the contract, or any documents related thereto, or the applicable building code, law or regulation with which the contractor has failed to comply.

↪ The written notice must be signed by an authorized agent of the public body.

3. If the public body receives a written notice of the correction of the condition that is the reason for the withholding, signed by an authorized agent of the contractor, the public body shall, after confirming that the condition has been corrected, pay the amount withheld by the public body within 30 days after the public body receives the next progress bill or retainage

bill.
(Added to NRS by 1999, 1984; A 2005, 1814)

NRS 338.530 Payment of interest on amounts withheld improperly.
1. If a public body receives:
(a) A progress bill or retainage bill, fails to give a contractor a written notice of any withholding in the manner set forth in subsection 2 of NRS 338.525, and does not pay the contractor within 30 days after receiving the progress bill or retainage bill; or
(b) A contractor's written notice of the correction of a condition set forth pursuant to subsection 2 of NRS 338.525 as the reason for the withholding, signed by an authorized agent of the contractor, and fails to:
(1) Pay the amount of the progress payment or retainage payment that was withheld from the contractor within 30 days after the public body receives the next progress bill or retainage bill; or
(2) Object to the scope and manner of the correction, within 30 days after the public body receives the notice of correction, in a written statement that sets forth the reason for the objection and is signed by an authorized agent of the public body,
➥ the public body shall pay to the contractor, in addition to the entire amount of the progress bill or retainage bill or any unpaid portion thereof, interest from the 30th day on the amount delayed, at a rate equal to the amount provided for in subsection 3 of NRS 338.515, until payment is made to the contractor.
2. If the public body objects pursuant to subparagraph (2) of paragraph (b) of subsection 1, it shall pay to the contractor an amount equal to the value of the corrections to which the public body does not object.
(Added to NRS by 1999, 1985)

NRS 338.535 Public body to provide notice concerning progress payments and retainage payments to certain subcontractors and suppliers. Within 5 working days after a public body receives a written request from a subcontractor or supplier of the contractor with respect to a contract which has not been fully performed, the public body shall notify the subcontractor or supplier in writing of the following:
1. The date the public body made a specified progress payment or retainage payment to a contractor;
2. Whether the public body has paid the entire amount of a specified progress payment or retainage payment to the contractor; and
3. The amount withheld by the public body from a specified progress payment or retainage payment to the contractor, if any.
(Added to NRS by 1999, 1985)

Payments Made by Contractor to Subcontractors and Suppliers

NRS 338.550 Time for making payments; amounts paid. Except as otherwise provided in NRS 338.555, 338.560 and 338.565:
1. Each contractor shall disburse money paid to him pursuant to this chapter, including any interest which he receives, to his subcontractors and suppliers within 10 days after he receives the money, in direct proportion to the subcontractors' and suppliers' basis in the progress bill or retainage bill and any accrued interest thereon.
2. A contractor shall make payments to his subcontractor or supplier in an amount equal to that subcontractor's or supplier's basis in the payments paid by the public body to the contractor for the supplies, material and equipment identified in the contract between the contractor and the public body, or between the subcontractor or supplier and the contractor, within 10 days after the contractor has received a progress payment or retainage payment from the public body for those supplies, materials and equipment.
(Added to NRS by 1987, 559; A 1999, 1993)—(Substituted in revision for NRS 338.165)

NRS 338.555 Amounts withheld as retainage; payment of interest.
1. If a public body and a contractor enter into a contract for a public work, the contractor may withhold as retainage not more than 10 percent from the amount of any progress payment due under a subcontract which is made before 50 percent of the work has been completed under the subcontract. Thereafter the contractor shall pay any additional progress payments due under the subcontract without withholding any additional retainage if, in the opinion of the contractor, satisfactory progress is being made in the work under the subcontract, and the payment must be equal to that paid by the public body to the contractor for the work performed by the subcontractor.
2. If the contractor receives a payment of interest earned on the retainage or an amount withheld from a progress payment, he shall, within 10 days after he receives the money, pay to each subcontractor or supplier that portion of the interest received from the public body which is attributable to the retainage or amount withheld from a progress payment by the contractor to the subcontractor or supplier.
(Added to NRS by 1973, 1160; A 1981, 553; 1983, 1592; 1999, 1994)—(Substituted in revision for NRS 338.170)

NRS 338.560 Withholding amounts for failure of subcontractor or supplier to comply with subcontract or applicable building code, law or regulation or for claim for wages against subcontractor; payment of amounts withheld upon correction of condition.
1. A contractor may withhold from a progress payment or retainage payment an amount sufficient to pay:
(a) The expenses the contractor reasonably expects to incur as a result of the failure of his subcontractor or supplier to comply with the subcontract or applicable building code, law or regulation.
(b) An amount withheld from payment to the contractor by a public body pursuant to subsection 4 of NRS 338.515 for a claim for wages against the subcontractor.
2. A contractor shall, within 10 days after he receives:
(a) A progress payment or retainage payment from the public body for an amount that is less than the amount set forth in

the applicable progress bill or retainage bill; or

(b) A progress bill or retainage bill from his subcontractor or supplier,

➥ give a written notice to his subcontractor or supplier of any amount that will be withheld pursuant to this section.

3. The written notice must:

(a) Set forth:

(1) The amount of the progress payment or retainage payment that will be withheld from his subcontractor or supplier; and

(2) A detailed explanation of the reason the contractor will withhold that amount, including, without limitation, a specific reference to the provision or section of the subcontract, or documents related thereto, or applicable building code, law or regulation with which his subcontractor or supplier has failed to comply; and

(b) Be signed by an authorized agent of the contractor.

4. The contractor shall pay to his subcontractor or supplier the amount withheld by the public body or the contractor within 10 days after:

(a) The contractor receives a written notice of the correction of the condition that is the reason for the withholding, signed by an authorized agent of the subcontractor or supplier; or

(b) The public body pays to the contractor the amount withheld,

➥ whichever occurs later.

(Added to NRS by 1999, 1985; A 2003, 2448)

NRS 338.565 Payment of interest on amounts withheld improperly.

1. If a contractor makes payment to a subcontractor or supplier more than 10 days after the occurrence of any of the following acts or omissions:

(a) The contractor fails to pay his subcontractor or supplier in accordance with the provisions of subsection 1 of NRS 338.550;

(b) The contractor fails to give his subcontractor or supplier the written notice of any withholding as required by subsections 2 and 3 of NRS 338.560; or

(c) The contractor receives a subcontractor's or supplier's written notice of correction of the condition set forth pursuant to subsection 4 of NRS 338.560 as the reason for the withholding, signed by an authorized agent of the subcontractor or supplier, and fails to:

(1) Pay the amount of the progress payment or retainage payment that was withheld from his subcontractor or supplier within 10 days after the contractor receives the next progress bill or retainage bill; or

(2) Object to the scope and manner of the correction, within 10 days after receiving the written notice of correction, in a written statement that sets forth the reason for the objection and is signed by an authorized agent of the subcontractor, statement that sets forth the reason for the objection and is accompanied by a notarized affidavit signed by the contractor,

➥ the contractor shall pay to the subcontractor or supplier, in addition to the entire amount of the progress bill or the retainage bill or any unpaid portion thereof, interest from the 10th day on the amount delayed, at a rate equal to the lowest daily prime rate at the three largest banks or other financial institutions of the United States on the date the contract was executed plus 2 percent, until payment is made to the subcontractor or supplier.

2. If the contractor objects pursuant to subparagraph (2) of paragraph (c) of subsection 1, the contractor shall pay to the subcontractor or supplier an amount that is equal to the value of the corrections to which the contractor does not object.

(Added to NRS by 1999, 1986)

NRS 338.570 Contractor to provide notice concerning progress payments and retainage payments to certain subcontractors and suppliers. Within 5 working days after a contractor receives a written request from a subcontractor or supplier of his subcontractor or supplier with respect to a subcontract which has not been fully performed, he shall notify the subcontractor or supplier of his subcontractor or supplier in writing of the following:

1. The date the contractor made a specified progress payment or retainage payment to his subcontractor or supplier;

2. Whether the contractor has paid the entire amount of a specified progress payment or retainage payment to his subcontractor or supplier; and

3. The amount withheld by the contractor from a specified progress payment or retainage payment to his subcontractor or supplier, if any.

(Added to NRS by 1999, 1987)

Payments Made by Subcontractor to Subcontractors and Suppliers

NRS 338.590 Time for making payments; amounts paid. Except as otherwise provided in NRS 338.595, 338.600 and 338.605:

1. Each subcontractor shall disburse money paid to him pursuant to this chapter, including any interest which he receives, to his subcontractors and suppliers within 10 days after he receives the money, in direct proportion to the subcontractors' and suppliers' basis in the progress bill or retainage bill and any accrued interest thereon.

2. A subcontractor shall make payments to his subcontractor or supplier in an amount equal to that subcontractor's or supplier's basis in the payments paid by the contractor to him for the supplies, materials and equipment identified in the contract between the contractor and the public body, or in the subcontract between the subcontractor or supplier and the contractor, within 10 days after the subcontractor has received a progress payment or retainage payment from the contractor for those supplies, materials and equipment.

(Added to NRS by 1999, 1987)

NRS 338.595 Amounts withheld as retainage; payment of interest.

1. If a subcontractor and another subcontractor or supplier enter into a subcontract for a public work, the subcontractor may withhold as retainage not more than 10 percent from the amount of any progress payment due under a subcontract which

is made before 50 percent of the work has been completed under the subcontract. The subcontractor shall pay any additional progress payments due under the subcontract without withholding any additional retainage if, in the opinion of the subcontractor, satisfactory progress is being made in the work under the subcontract. The payment must be equal to that paid by the contractor to him for the work performed or supplies provided by his subcontractor or supplier.

2. If the subcontractor receives a payment of interest earned on the retainage or an amount withheld from a progress payment, he shall, within 10 days after receiving the money, pay to each of his subcontractors or suppliers that portion of the interest received from the contractor which is attributable to the retainage or amount withheld from a progress payment by the subcontractor to his subcontractor or supplier.

(Added to NRS by 1999, 1987; A 2003, 2449)

NRS 338.600 Withholding amounts for failure of subcontractor or supplier to comply with subcontract or applicable building code, law or regulation; payment of amounts withheld upon correction of condition.

1. A subcontractor may withhold from a progress payment or retainage payment an amount sufficient to pay the expenses the subcontractor reasonably expects to incur as a result of the failure of his subcontractor or supplier to comply with the subcontract or applicable building code, law or regulation.

2. A subcontractor shall, within 10 days after he receives:

(a) A progress payment or retainage payment from a contractor for an amount that is less than the amount set forth in the applicable progress bill or retainage bill; or

(b) A progress bill or retainage bill from his subcontractor or supplier,

↪ give a written notice to his subcontractor or supplier of any amount that will be withheld pursuant to this section.

3. The written notice must:

(a) Set forth:

(1) The amount of the progress payment or retainage payment that will be withheld from his subcontractor or supplier; and

(2) A detailed explanation of the reason the subcontractor will withhold that amount, including, without limitation, a specific reference to the provision or section of the subcontract, or documents related thereto, or applicable building code, law or regulation with which the subcontractor or supplier has failed to comply; and

(b) Be signed by an authorized agent of the subcontractor.

4. The subcontractor shall pay to his subcontractor or supplier the amount withheld by the public body, contractor or subcontractor within 10 days after:

(a) The subcontractor receives a written notice of the correction of the condition that is the reason for the withholding, signed by an authorized agent of his subcontractor or supplier; or

(b) The contractor pays to the subcontractor the amount withheld,

↪ whichever occurs later.

(Added to NRS by 1999, 1988; A 2003, 2449)

NRS 338.605 Payment of interest on amounts withheld improperly.

1. If a subcontractor makes payment to his subcontractor or supplier more than 10 days after the occurrence of any of the following acts or omissions:

(a) The subcontractor fails to pay his subcontractor or supplier in accordance with the provisions of subsection 1 of NRS 338.590;

(b) The subcontractor fails to give his subcontractor or supplier the written notice of any withholding as required by subsections 2 and 3 of NRS 338.600; or

(c) The subcontractor receives a written notice of the correction of a condition set forth pursuant to subsection 4 of NRS 338.600 as the reason for the withholding from his subcontractor or supplier, signed by an authorized agent of his subcontractor or supplier, and fails to:

(1) Pay the amount of the progress payment or retainage payment that was withheld from his subcontractor or supplier within 10 days after the subcontractor receives the subcontractor's or supplier's next progress bill or retainage bill; or

(2) Object to the scope and manner of the correction, within 10 days after receiving the written notice of correction, in a written statement that sets forth the reason for the objection, signed by an authorized agent of the subcontractor,

↪ the subcontractor shall pay to his subcontractor or supplier, in addition to the entire amount of the progress bill or the retainage bill or any unpaid portion thereof, interest from the 10th day on the amount delayed, at a rate equal to the lowest daily prime rate at the three largest banks or other financial institutions of the United States on the date the contract was executed plus 2 percent, until payment is made to his subcontractor or supplier.

2. If the subcontractor objects pursuant to subparagraph (2) of paragraph (c) of subsection 1, the subcontractor shall pay to his subcontractor or supplier an amount that is equal to the value of the corrections to which he does not object.

(Added to NRS by 1999, 1988)

NRS 338.610 Subcontractor to provide notice concerning progress payments and retainage payments to certain subcontractors and suppliers. Within 5 working days after a subcontractor receives a written request from a subcontractor or supplier of his subcontractor or supplier with respect to a subcontract which has not been fully performed, he shall notify the subcontractor or supplier of his subcontractor or supplier in writing of the following:

1. The date the subcontractor made a specified progress payment or retainage payment to his subcontractor or supplier;

2. Whether the subcontractor has paid the entire amount of a specified progress payment or retainage payment to his subcontractor or supplier; and

3. The amount withheld by the subcontractor from a specified progress payment or retainage payment to his subcontractor or supplier, if any.

(Added to NRS by 1999, 1989)

Remedies

NRS 338.630 Action by contractor for alternate writ of mandamus to compel performance by public body.

1. A contractor who believes that the public body has failed to perform a duty to:

(a) Make a payment;

(b) Provide written notice of any withholding; or

(c) Provide information upon request relating to any payment with respect to a contract which has not been fully performed,

↪ pursuant to one or more of the provisions of NRS 338.515 to 338.535, inclusive, in a timely manner may apply to the district court of the county in which the public work or a part thereof is located for an alternate writ of mandamus pursuant to NRS 34.150 to 34.310, inclusive, to require the public body to perform the duty required pursuant to such a provision.

2. The provisions of this section do not prevent a public body from including a provision governing the payment of attorney's fees in a contract into which it enters with a contractor for a public work.

(Added to NRS by 1999, 1989)

NRS 338.635 Action by subcontractor or supplier to remedy unjustified or excessive withholding.

1. A subcontractor or supplier who believes that the amount withheld by the contractor or subcontractor is not justified or is excessive may apply to the district court of the county where the public work or a part thereof is located for an order directing the contractor or subcontractor to appear before the court to show cause why the relief requested should not be granted.

2. The motion must:

(a) Set forth the grounds upon which relief is requested; and

(b) Be accompanied by a notarized affidavit signed by the petitioner or his attorney that sets forth the facts upon which the motion is based.

3. If the court orders a hearing based upon the motion, the petitioner shall serve the notice of the motion and the order of the court on the respondent within 3 days after the court issues the order. The court shall conduct the hearing not less than 10 days and not more than 20 days after the court issues the order for a hearing.

4. The order for a hearing must include a statement that, if the respondent fails to appear at the time and place of the hearing, the court will order the respondent to pay to the petitioner:

(a) The entire amount that was withheld by the respondent, or a portion thereof;

(b) Interest on the amount that was withheld by the respondent, or a portion thereof;

(c) The costs incurred by the petitioner, including, without limitation, his attorney's fees; or

(d) Any combination of paragraphs (a), (b) and (c).

5. If, when the motion is filed, there is a civil action pending between the petitioner and the respondent, the motion must be consolidated into the civil action.

6. If the court determines that:

(a) The amount withheld is not justified, the court shall order the respondent to pay to the petitioner the amount that was withheld.

(b) The amount withheld is excessive, the court shall order the respondent to pay to the petitioner an amount determined by the court.

(c) The amount withheld is justified, the court shall issue an order approving the amount that was withheld by the respondent.

7. The proceedings conducted pursuant to the provisions of this section do not affect any other rights or remedies provided by law or contract.

(Added to NRS by 1999, 1990)

NRS 338.640 Award of reasonable costs and attorney's fees to prevailing party.

1. The court or arbitrator shall award to a contractor, subcontractor or supplier who is the prevailing party in a civil action or an arbitration proceeding to recover an amount that was required to be paid to him pursuant to the provisions of NRS 338.400 to 338.645, inclusive, his reasonable costs and attorney's fees.

2. The provisions of NRS 338.400 to 338.645, inclusive, do not prevent a public body from including a provision governing attorney's fees in a contract for a public work.

(Added to NRS by 1999, 1991)

NRS 338.645 Other rights and remedies not affected. The provisions of NRS 338.400 to 338.645, inclusive, do not impair or affect the rights of a contractor, subcontractor or supplier to whom any amount may be owed for work performed or materials, equipment or supplies furnished to maintain a civil action or to submit any controversy arising under the contract to arbitration to recover that amount.

(Added to NRS by 1999, 1991)

INSTRUCTIONS TO BIDDERS

A. IN GENERAL

ITB 1 CONTACT PERSON

The person to contact for questions pertaining to this Invitation to Bid and Bid Documents is **Lloyd E. Davis** phone number (702) 229-2487, fax number (702) 384-9964. All questions concerning this Invitation to Bid must be submitted in writing and received no later than **September 12, 2008** . Do not contact the architects, engineers and other consulting authors of the Bid Documents except through the aforementioned contact person.

ITB 2 DEFINITIONS

The following definitions are applicable to the Bid Documents:

"Addendum" means a written or graphic instrument issued by the Owner via the City of Las Vegas Purchasing and Contracts Office prior to the submission of the Bids which modifies or interprets the Bid Documents by addition, deletion, clarification, correction or other type of modification. All Addenda will become part of the executed Contract.

"Additive Alternate Bid" means the amount stated in the Bid Schedule for completion of additional work that the Owner may elect to add as part of the Project.

"Additive/Deductive Unit Price Bid" means the sum of the unit price times the estimate for portion of the Work described in the Bid Documents that is stated in the Bid Schedule.

"Base Bid" means the lump sum amount the Bidder has offered to complete the Work which shall include, if applicable, each Unit Price Bid.

"Best Bidder" means the Bidder who has been determined to be responsive and responsible and who has submitted the lowest monetary Bid as a result of being entitled to the bid preference set forth in NRS Chapter 338.

"Bid" means a complete and properly signed offer to do the Work for the amount or amounts set forth in the Bid Proposal that is submitted in accordance with the Invitation to Bid.

"Bid Documents" means the Invitation to Bid, Instructions to Bidders, Owner-Contractor Agreement, General Conditions, Drawings, Technical Specifications, Bid Proposal, Attachments and the Addenda issued prior to the date designated for receipt of the Bids, as applicable.

"Bidder" means the person or entity submitting a Bid Proposal for the Work and the person or entity registered on the Plan Holder List in the Office of Purchasing and Contracts Division of the Owner.

"Bid Proposal" means the written document provided by the Owner to the Bidder for the purpose of submitting a Bid.

"Bid Schedule" is the form attached to the Bid Proposal that is used to submit the Base Bid and, if applicable to the Project, the Additive Project Bids and/or the Unit Price Bids of the Bidder.

"Contract" means the entire agreement between the parties as set forth in the Contract Documents and does not come into existence until execution of the Owner-Contractor Agreement by the Owner.

"Contract Amount" means the amount for which the Bidder has offered to complete the Work and is equal to the amount of the Base Bid plus, if applicable, each Additive Alternate Bid selected by the Owner to be included as a part of the Project.

"Contract Documents" means the Owner-Contractor Agreement, General Conditions, Technical Specifications, Drawings and, if applicable, each Addendum issued in connection with the Bid Documents.

"Day" means calendar day unless otherwise specifically designated.

"Disabled Veteran-Owned Business Enterprise" means a business that is at least fifty-one percent (51%) disabled veteran-owned, operated and actively controlled by one or more disabled veterans, or in the case of a publicly-owned business, at least fifty-one percent (51%) of the stock must be owned and the business operated and actively controlled by a disabled veteran. Disabled veteran is defined as a U.S. veteran of any era with a service-connected minimum disability of ten percent (10%), certified by the Department of Veterans Affairs.

"First tier Subcontractor" means a subcontractor who contracts directly with the Bidder to provide labor, materials or services for this Project and has the same meaning ascribed to it in NRS 338.

"Governing Body" means the Las Vegas City Council.

"Lot" means a separate portion of the Work as defined in the Technical Specifications and the Drawings.

"Minority-Owned Business Enterprise" means a business that is at least fifty-one percent (51%) minority-owned, operated and actively controlled by one or more minorities. In the case of a publicly owned business, at least fifty-one percent (51%) of the stock must be minority-owned and the business must be operated and actively controlled by a minority. A minority is a person of Native American, Black/African American, Asian American, and Hispanic American descendant.

"Notice of Award" is the letter issued by the Owner notifying the Contractor of the award of the Project by the City Council, authorizing the Contractor to proceed with the procurement of the bonds and insurance and enclosing the Owner-Contractor Agreement for execution and return to the Owner.

"Owner" means the City of Las Vegas, a municipal corporation of the State of Nevada.

"Owner-Contractor Agreement" means the document (2 pages) executed by the parties after the award of the Contract which summarizes the project description, contract amount, incorporated documents, contract time, Contractor warranties and liquidated damages.

"Project" means the total construction of which the Work performed under the Contract may be the whole or a part thereof and which may include construction by the Owner or by other contractors hired by the Owner.

"Promptly" means done without delay and on time.

"Reasonable Time" means ten (10) business days, except where otherwise specified, or items requiring City Council action.

"Subcontractor" means any individual or entity to whom the Contractor sublets any part of the Work. There is no contractual relationship between the Owner and the Subcontractor who performs work or services for the Contractor.

"Tie Bid" means an instance wherein bids are received from two or more Bidders that are considered the low bids and are identical in the evaluation areas. Unless all of the evaluation areas are identical, the bids are not considered tied and the award will be made to the lowest responsive and responsible Bidder or to the Best Bidder.

"Unit Price" means the price stated on a per unit basis in the Bid Schedule for certain estimated portions of the Work which is used by the Owner to increase or decrease the Contract Amount depending upon the amount of Work actually completed by the Bidder.

"Women-Owned Business Enterprise" means a business that is at least fifty-one percent (51%) women-owned, operated and actively controlled by one or more women, or in the case of a publicly-owned business, at least fifty-one percent (51%) of the stock must be owned and the business operated and actively controlled by a woman or women.

"Work" means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all labor, materials, equipment and services provided or to be provided by the Contractor to fulfill his obligations under the Contract. The Work may constitute the whole or a part of the Project

ITB 3 INTERPRETATION OF BID DOCUMENTS

3.01 Omission of Modifiers

In the interest of brevity, the Bid Documents may omit modifying words such as "all" and "any" and articles such as "the" and "an," but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement.

3.02 Governing Order of Bid Documents

The Bid Documents include various divisions, sections and conditions that are essential parts for the Work to be performed by the Contractor. A requirement occurring in one is as binding as though occurring in all of the Bid Documents. They are intended to be complementary and to describe and provide for a complete scope of Work. In case of discrepancy, the lower numbered document will govern over the higher number document according to the following order of precedence unless to do so would contravene the obvious intent of the Bid Documents as determined by the Owner:

1. Addenda
2. Owner-Contractor Agreement
3. General Conditions
4. Technical Specifications, Drawings and Referenced Standards (these documents are to be construed together in determining the intent of the Owner)

3.03 Optional Sections

Periodically throughout these Instructions to Bidders there are sections preceded by boxes that indicate that the section may, or may not, apply to the Project. **If the box opposite a section has been marked, then the section applies to the Project and the Bidder must comply with the requirements set forth therein.**

3.04 Section and Paragraph Headings

The section and paragraph headings appearing in this document are inserted for the purpose of convenience and ready reference. They do not purport to define, limit or extend the scope or intent of the language of the section and paragraph to which they pertain.

ITB 4 ISSUANCE OF ADDENDUM

The Bidder shall not take advantage of any apparent error or omission in the Bid Documents. If an error or omission is discovered, the Bidder shall immediately notify the Owner. If any part of the Bid Documents is in need of revision or modification, the Owner will issue an Addendum as deemed necessary. The Addendum will be delivered by regular mail, certified mail, facsimile or personal delivery (whichever is selected by the Owner) to each Bidder whose name and address have been previously provided to the Owner at the time that the Bidder received a copy of the Bid Documents. The Owner is not bound by any oral representations, clarifications or changes made in connection with the Bid Documents by the Owner's employees, agents or consultants unless such representation, clarification or change is in the form of a properly issued Addendum.

The Bidder shall ascertain prior to the submission of a Bid Proposal that it has received each Addendum issued by the Owner and has properly acknowledged receipt thereof by completing the acknowledgment section in the Bid Proposal. The failure of the Bidder to contact the Owner to determine the issuance of any Addendum, or to acknowledge receipt of each Addendum issued in connection with this Project, shall entitle the Owner, in its sole discretion, to (i) reject the Bid Proposal of the Bidder as being non-responsive, or (ii) to accept the Bid Proposal of the Bidder in which event the Bidder agrees to be bound by all of the terms and conditions of each unacknowledged Addendum (despite not having read such Addendum).

B. BID DOCUMENTS

ITB 5 BID OPENING: SUBMISSION OF DOCUMENTS NECESSARY FOR CONSIDERATION OF BID

5.01 Submittal: Sealed Envelope
Each Bid Proposal must be submitted in a sealed envelope prominently marked on the lower left side as follows:

SEALED BID

BID NUMBER

BID OPENING DATE AND TIME

COMPANY NAME

No responsibility will attach to the Owner, or any official or employee thereof, for the premature opening or the failure to open a sealed Bid Proposal not properly identified as required pursuant to this Section. Bidders are solely responsible for the timely delivery of their bids. Faxed bids are not acceptable and will not be considered.

All bids must be submitted to the following address:

Office of the City Clerk
1st Floor, City Hall Complex
400 Stewart Avenue
Las Vegas, Nevada 89101-2986

5.02 Submittal: Bid Proposal
The Bidder shall submit its Bid on the Bid Proposal *(Attachment 1 to the Instructions to Bidders)* that shall be manually signed in ink by an officer of, or a duly authorized agent acting on behalf of, the Bidder. All figures must be legibly written in ink or typewritten. Figures written in pencil or erasures are not acceptable. However, mistakes may be crossed out and corrections may be inserted adjacent thereto. **The failure to complete the Base Bid Section of the Bid Schedule in a clear and legible manner may be cause for rejection of the Bid Proposal.**

If there exists a conflict between the unit price and the extended price, such as the extended price is based upon a unit price that is different than the unit price indicated on the Bid Schedule, then the amount which is more beneficial to the City shall control unless the City elects to proceed with the higher amount, and such higher amount does not displace the Bidder as the lowest monetary Bidder.

5.03 Submittal: Bid Security
The Bidder shall submit the Bid Security with the Bid Proposal in the amount of five percent (5%) of the Base Bid pledging that the Bidder will within three (3) business days after issuance of a Notice of Award execute the Owner-Contractor Agreement as required by ITB 8.01 and furnish the required bonds and insurance required by ITB 8.02. The Bid Security shall be in the form of the Bid Bond *(Attachment 2 to the Instructions to Bidders)*, or, at the option of the Bidder, may be in the form of a cashier's check, certified check or money order provided the instrument is issued in the name of the City of Las Vegas as the payee. The check and money order must reflect the bid number of the Project. A Bid Bond issued by an individual as the surety is not acceptable to the Owner. **The failure to enclose the Bid Security with the sealed Bid Proposal shall result in the rejection of that Bid Proposal without consideration.**

If the Bidder fails to furnish the required bonds or insurance or to execute the Owner-Contractor Agreement, the Bid Security may be forfeited to the Owner as liquidated damages, and not as penalty.

If the Bid Security is a Bid Bond, it shall be issued by a surety company acceptable to the Owner and executed by an appointed agent pursuant to NRS 683A.280. The surety company must be licensed to issue the Bid Bond by the State of Nevada Insurance Division pursuant to NRS 683A.090. The attorney-in-fact who executes the Bid Bond on behalf of the surety shall affix thereto a certified and current copy of his power of attorney.

The Owner shall have the right to hold the Bid Security of the three apparent low Bidders until (i) the specified time set forth in ITB 9.02 has elapsed allowing the withdrawal of the Bid Proposals, (ii) a contract has been

1.10 REFERENCE: C-7, Utility Plan

ADD: Add general note: "All water and sewer service laterals within the Stewart Street right of way shall be installed by others and stubbed out at the property line. Contractor shall only construct those items within the parcel limits and shall not enter the Stewart Street right of way."

1.11 REFERENCE: Specification section 01 1000 "Summary"

DELETE: Delete item 1.6 B

REPLACE WITH: "1.6 B

Conservators must have a minimum of 5 year's experience on rehabilitation work complying with the *Secretary of the Interior's Standards for Rehabilitation.* The apparent low bidder shall submit a completed qualifications questionnaire of proposed conservators within one (1) business day after completion of the opening of the Bid Proposals in accordance with ITB 7 of the bid documents."

Conservator qualifications questionnaire attached.

1.12 REFERENCE: Specification section 01 1000 "Summary"

DELETE: Delete item 1.7 E

REPLACE WITH: Replace with the following:

"1.7 E

Access to site: Pre-bid site visits can be arranged by contacting Sam Tolman (702-229-2091) stolman@lasvegasnevada.gov or Erik Singman (702-229-6494) esingman@lasvegasnevada.gov at the City of Las Vegas Office of Architectural Services."

.13 REFERENCE: Specification section 015000 "Temporary Facilities and Controls"

ADD: Add the following:

"1.2 TEMPORARY ELECTRICITY

F. Contractor to have use of the following owner furnished power distribution equipment and lights during construction. Equipment and lights to be turned over to the owner upon project completion.

Power carts- qty 2
Wobblelights- qty 8
Electrical spider box and 50 ft extension cord- qty 4ea
Extension cords- qty 4 (100ft) and 4 (50ft)"

1.14 REFERENCE: Specification section 015000 "Temporary Facilities and Controls"

ADD: Add the following:

"1.3 TEMPORARY LIGHTING FOR CONSTRUCTION PURPOSES

G. Existing exterior building lighting is to remain in place and functional through Tuesday, October 28, 2008. Beyond that date, exterior building lighting may be removed at the discretion of the contractor."

1.15 REFERENCE: Specification section 015000 "Temporary Facilities and Controls"

ADD: Add the following:

"1.13 PARKING

1.5 OWNER SUPPLIED PRODUCTS

A. Owner's Responsibilities:
1. Arrange and pay for delivery to site.
2. On delivery, inspect products jointly with Contractor.
3. Submit claims for transportation damage and replace damaged, defective, or deficient items.
4. Arrange for manufacturers' warranties, inspections, and service.

B. Contractor's Responsibilities:
1. Review Owner-reviewed Shop Drawings, Product Data, and Samples and to acquire all of the above
2. Receive and unload products at site; inspect for completeness or damage jointly with Owner.
3. Handle, store, install and finish products.
4. Repair or replace items damaged after receipt.
5. Provide Owner sufficient advance notice of timing needed for Owner furnished and/or Owner installed items to prevent impact to completion schedule.

C. Products furnished to site and installed by Owner:
1. Central Station life safety system monitoring equipment.

D. Items furnished by Owner for installation by Contractor:
1. Historic marble wainscot.
2. Tongue and groove wood wainscot.
3. Historic light fixtures.
4. Judges bench.

1.6 CONSERVATOR

A. The following scopes of work shall be performed by a qualified Conservator, specializing in the preservation and rehabilitation of historic landmark structures:
1. Masonry rehabilitation.
2. Plaster rehabilitation and restoration.
3. Ornamental painting.

B. Prequalified Conservators are as follows; other Conservators may be submitted for review by Owner/Consultant during the bidding phase, and may be included via Addendum:
1. Griswold Conservation Associates, (310) 271-5225.
2. Evergreene Painting Studios, Inc., (708) 358-1642.

1.7 CONTRACTOR'S USE OF SITE AND PREMISES

A. The Contractor shall confine operations at the site to areas and times permitted by law, ordinances, permits and the Contract Documents and shall not unreasonably encumber the site with materials or equipment. The Contractor shall not dump on adjacent sites without prior written approval of the Owner and of the owner of the adjacent sites.

B. The Contractor shall allow the Owner and the Owner's consultant's access to all areas of work whenever it is in preparation or progress. The Contractor shall provide facilities for such access to allow the Owner and the Owner's consultants to perform their functions under the Contract Documents.

C. The Contractor at all times shall keep the premises free from accumulation of waste materials, rubbish, and fugitive dust caused by his operations. At the completion of the Work he shall

executed between the Owner and the successful Bidder and the required bonds and insurance have been furnished, or (iii) all of the Bid Proposals have been rejected by the Owner, whichever is the first to occur.

☐ If a Bidder chooses to provide the Bid Security in the form of a cashier's check, certified check or money order, separate check or money order must accompany each Lot submitted by the Bidder. If the Bidder elects to provide a Bid Security in the form of a Bid Bond, it may be issued for five percent (5%) of the aggregate amount of all Lots submitted.

5.04 Submittal: 5% Subcontractor List
The Bidder shall submit the 5% Subcontractor List (*Attachment 3 to the Instructions to Bidders*) with the submission of the Bid Proposal in compliance with NRS 338.141. This form shall be completely filled in for each first tier Subcontractor who will be paid an amount exceeding five percent (5%) of the Base Bid. **The failure to complete and submit the 5% Subcontractor List shall result in the rejection of the Bid Proposal.**

ITB 6 POST-BID OPENING: SUBMISSION OF DOCUMENT NECESSARY FOR CONSIDERATION OF BID

6.01 Submittal: 1% Subcontractor List
Within two (2) hours after completion of the opening of the Bid Proposals, the three apparent low Bidders shall submit the 1% Subcontractor List (*Attachment 8 to the Instructions to Bidders*) identifying each first tier Subcontractor who will be paid an amount exceeding one percent (1%) of the Bidder's Base Bid or $50,000, whichever is greater. This form shall be completely filled in for each first tier Subcontractor. The 1% Subcontractor List must be time stamped by and submitted to the City Clerk's Office. The faxing of this document is not acceptable. The Bidder may submit the 1% Subcontractor List with the Bid Proposal in satisfaction of this requirement. **The failure to complete and submit the 1% Subcontractor List shall result in the rejection of the Bid Proposal.**

ITB 7 POST BID OPENING: SUBMISSION OF INFORMATIONAL DOCUMENTS

7.01 Submittal: Informational Documents
The three (3) apparent low bidders shall complete and submit the informational documents listed below in Secti 7.02 through 7.07 by the prescribed date and time which shall be announced at the bid opening. Thes informational documents must be time stamped by and submitted to the City Clerk's Office. The faxing of these informational documents is not acceptable. The Bidder may submit these informational documents with the Bid Proposal in satisfaction of this requirement. **The failure to complete and submit these informational documents may be cause for rejection of the Bid Proposal.**

7.02 Submittal: Certificate of Eligibility
Each Bidder submitting a Bid Proposal to the Owner on a public work project whose estimated cost exceeds $250,000 is responsible for ascertaining whether the Bidder is entitled to the bidder preference and other matters relating thereto provided in NRS Chapter 338. The Bidder claiming the bid preference must, at the time of the submission of the bid, have a valid "Certificate of Eligibility" issued by the Nevada State Contractors' Board. Within one (1) business day after completion of the opening of the Bid Proposals, the three apparent low Bidders claiming the bid preference shall submit the Certificate of Eligibility. The Owner will not accept an affidavit or any other document as proof that the Bidder qualifies for the bid preference. Any Bidder requiring additional information relative to obtaining a "Certificate of Eligibility" should contact the Nevada State Contractors' Board.

7.03 Submittal: Evidence of Good Faith Effort
Within one (1) business day after the completion of the opening of the Bid Proposals, the three apparent low Bidders shall submit the Good Faith Effort Form (*Attachment 4 to the Instructions to Bidders).*

7.04 Submittal: Schedule of Values
Within one (1) business day after the completion of the opening of the Bid Proposals, the three apparent low Bidders shall submit the Schedule of Values (*Attachment 5 to the Instructions to Bidders*) allocating values to the various portions of the Work.

7.05 Submittal: Superintendent Project Resume
Within one (1) business day after the completion of the opening of the Bid Proposals, the three apparent lo Bidders shall submit the Superintendent's resume who will be assigned to the Project. The Superintendent must have experience in Historic Rehabilitation projects **conforming with the US Secretary of the Interior Standards for Historic Rehabilitation**. Such person must be acceptable to the Owner.

7.06 Submittal: List of Completed Projects
Within one (1) business day after the completion of the opening of the Bid Proposals, the three apparent low Bidders shall submit the List of Completed Projects (*Attachment 6 to the Instructions to Bidders).*

☐ **7.07 Submittal Supplier List**
Within one (1) business day after the completion of the opening of the Bid Proposals, the three apparent low Bidders shall submit the Supplier List (*Attachment 7 to the Instructions to Bidders*). The Bidder agrees to assume responsibility for the acts or omissions of its suppliers. Nothing contained in the Bid Documents shall be construed to create any contractual relationship between the supplier and the Owner.

7.08 Submittal: Federal Certifications
The Bidder shall submit all certifications in the Federal Conditions (Attachment 16, Federal Conditions) with the submission of the Bid Proposal. **The failure to complete and submit the required Certifications may result in the rejection of the Bid Proposal.**

ITB 8 POST-BID OPENING: SUBMISSION OF DOCUMENTS NECESSARY FOR AWARD OF CONTRACT

8.01 Submittal: Owner-Contractor Agreement
Within three (3) business days after issuance of the Notice of Award, the Bidder who has been awarded the Contract shall execute the Owner-Contractor Agreement (*Attachment 9 to the Instructions to Bidders*) which incorporates the General Conditions and other documents as a part thereof, and to return it to the Owner. A binding contract will not exist between the parties until (i) all of the bonds, certificates of insurance and other required documents have been executed and submitted to the Owner, and (ii) the Owner has executed the Owner-Contractor Agreement. The failure to execute and return the Owner-Contractor Agreement as required herein may be cause to rescind the award, require the forfeiture of the Bid Security and re-award the Contract to the next lowest responsive and responsible Bidder or Best Bidder.

8.02 Submittal: Bonds and Insurance
Within three (3) business days after issuance of the Notice of Award, the Bidder who has been awarded the Contract shall furnish to the Owner (i) the Performance Bond, Labor and Material Payment Bond and the Guaranty Bond (*Attachments 10, 11 and 12 to the Instructions to Bidders*) required under Section 7.01 of the General Conditions to the Owner-Contractor Agreement, (ii) a completed certificate of insurance evidencing the procurement of the insurance coverages required under Section 8.01 of the General Conditions to the Owner-Contractor Agreement and (iii) an endorsement naming the Owner as an additional insured party as required under Section 8.01 of the General Conditions to the Owner-Contractor Agreement. The bonds and evidence of insurance and additional insured party shall be submitted on the aforementioned forms provided by the Owner.

If the bonds and insurance coverages are not provided within the time required herein, the Owner may (i) extend the submission deadline and deduct from the time allotted for the completion of the Work the same number of days that the Bidder has exceeded the deadline set forth herein for the submission of these documents, (ii) rescind the award, require the forfeiture of the Bid Security and re-award the Contract to the next lowest responsive and responsible Bidder or to the Best Bidder, as the case may be, or (iii) assess liquidated damages in the amount of **$5,000** per business day for each day that the Bidder fails to submit the bonds and insurance, whichever remedy is determined by the Owner to be in its best interest.

C. PRE-BID OPENING RULES AND PROCEDURES

ITB 9 WITHDRAWAL OF BID PROPOSAL

9.01 Pre-Bid Opening
Any Bidder may request the withdrawal of its posted and sealed Bid Proposal prior to the bid opening provided the request is submitted in writing to the City Clerk's Office, or an authorized representative of the Bidder presents himself with proper identification to the City Clerk's Office and verbally requests the withdrawal of the Bid Proposal.

9.02 Post-Bid Opening

No bids may be withdrawn for a period of 90 calendar days after the date of the bid opening. All responsive and responsible bids received are considered firm offers for the aforementioned time period and may be consider for award by the Owner. The Bidder's offer will terminate with the expiration of the aforementioned time peric The Owner may allow the Bidder intended for the award of a contract to withdraw its Bid Proposal during the aforementioned period if a mistake of fact on the part of the Bidder has occurred in the preparation of its bid. The Bidder must immediately notify the Owner in writing upon discovery of the mistake. The written notice must include the following: (i) a request to withdraw its Bid Proposal, (ii) a detailed description of the nature of the mistake, (iii) an explanation of exactly how and why the mistake occurred, (iv) and an explanation of the corrective action that was, or will be implemented to eliminate the possibility of future mistakes. If the above requested information is not adequately provided to the Owner's satisfaction, the Bidder shall be prepared to meet with the Owner within 24 hours of notification to further review the request.

After reviewing the request, the Owner may elect to allow withdrawal of the Bid Proposal by the Bidder (i) without any further implications or penalty, (ii) upon forfeiture of the Bid Security, or (iii) upon forfeiture of the Bid Security and prohibition against the Bidder from bidding on future public work projects for such period of time as may be determined by the Owner, not to exceed three (3) years.

ITB 10 LICENSING

Each Bidder must be qualified and possess the appropriate Nevada State Contractor's License at the time of Bid Opening. Failure to comply with this requirement shall result in the rejection of the Bid Proposal submitted by the Bidder. Bidders are reminded that, pursuant to NRS 624.3015, bidding on a contract for work in excess of its limit and beyond the scope of its license is a violation of state law and grounds for disciplinary action by the Nevada State Contractors Board.

The Bidder's license classification, number and monetary limit must be indicated on the appropriate page in the Bid Proposal. Each Bidder and their Subcontractors shall comply with all provisions of NRS Chapter 624 durin the bidding phase and NAC Chapter 624 through completion of the Project. Any questions concerning the licen requirements shall be directed to the Nevada State Contractors Board.

Bidders must be properly licensed to perform the Work required under this Invitation to Bid. The Bidder who is being recommended for award of the contract shall have the required City of Las Vegas Business License prior to award, or the Bidder will be deemed non-responsible and ineligible for award.

Any Bidder interested in obtaining a City of Las Vegas Business License may expedite processing by indicating on the application form, "License Application filed for City Bid Number **08.15341.04-LED.**" Information concerning City of Las Vegas Business License requirements and fees may be obtained by: (i) calling the Business Services Division at (702) 229-6281, (ii) visiting the City website at www.lasvegasnevada.gov/bus-license, or (iii) e-mailing to businesslicense@lasvegasnevada.gov.

ITB 11 LATE BIDS

Any Bid Proposal arriving after the scheduled date and time of the bid opening will not be considered in the award of the Contract and will be returned to the Bidder.

D. POST-BID OPENING RULES AND PROCEDURES

ITB 12 EVALUATION OF BIDS

12.01 Award Criteria

The award of the Contract shall be made to the lowest responsive and responsible Bidder as determined pursuant to the provisions of ITB 13 or to the Best Bidder who as a result of the provisions of NRS Chapter 338 becom the lowest responsive and responsible Bidder.

12.02 Base Bid

The Bidder shall indicate the amount of its Base Bid for the Project by completing the Base Bid section of the Bid Schedule (*Attachment A to the Bid Proposal*). **The failure of the Bidder to complete the Base Bid section of the Bid Schedule shall result in the rejection of the Bid.**

12.03 Additive Alternate Bids

In addition to the Base Bid, the Bidder shall indicate the amount of each Additive Alternate Bid by completing the applicable section of the Bid Schedule (*Attachment A to the Bid Proposal*). At the time of the award of the Contract, the Owner may, in its sole discretion, elect to include any or all of the Additive Alternate Bids as part of the Project. If the Owner requests more than one Additive Alternate Bid, then each one shall be listed in order of priority and the selection for inclusion as a part of the Project shall be exercised according to such priority depending on the availability of funding for the Project. Each Additive Alternate Bid exercised by the Owner shall be added to the Base Bid in determining the lowest responsive and responsible Bidder. **The failure to complete the Additive Alternate Bid section of the Bid Schedule shall result in the rejection of the Bid Proposal.**

12.04 Additive/Deductive Unit Price Bids

In addition to the Base Bid, the Bidder shall indicate the amount of its Additive/Deductive Unit Price Bid by completing the applicable section of the Bid Schedule (*Attachment A to the Bid Proposal*). Each Unit Price is for certain portions of the Work, the quantities of which for purposes of the bid process have been estimated by the Owner and included in the Bid Documents. The Unit Prices shall remain unchanged through completion of the Project. As construction occurs on the Project, if it is determined by the Owner that the actual Work is less than or exceeds the estimated portion of the Work, the Contract Amount will be decreased or increased using the applicable Unit Price submitted to the Owner. The Unit Price multiplied by the quantity estimated in the Bid Documents shall comprise the Additive/Deductive Unit Price Bid for the applicable portion of the Work. Each Additive/Deductive Unit Price Bid shall be included as a part of the Base Bid for purposes of determining the lowest Bidder. **The failure to complete the Additive/Deductive Unit Price Bid section of the Bid Schedule shall result in the rejection of the Bid Proposal.**

12.05 Award of Contract

After the bid opening, the Purchasing and Contacts Division shall evaluate all of the Bids and formulate a recommendation as to the award of the Contract. The City Council shall make the award after considering the recommendations of the Purchasing and Contracts Division. After the award by the City Council, the Purchasing and Contracts Division shall issue the Notice of Award notifying the successful Bidder of the award, and enclosing the Owner-Contractor Agreement to be executed by the Bidder and returned to the Owner. The Bidder shall utilize the Notice of Award to obtain the bonds and insurance required under ITB 8.02. Notwithstanding the award of the Contract, there is no binding or legally enforceable agreement against the City until the Owner-Contractor Agreement is actually executed by the City, and until such time of execution, the City reserves the right to rescind the award.

ITB 13 DETERMINATION OF LOWEST RESPONSIVE AND RESPONSIBLE BIDDER

13.01 Determination of Lowest

The lowest Bidder is the Bidder who has submitted the lowest Base Bid, if applicable, or the lowest total of the Base Bid and each Additive Alternate Bid selected by the Owner to be a part of the Project. The Best Bidder may become the lowest Bidder as a result of the preference set forth in NRS Chapter 338.

13.02 Determination of Responsible

As a pre-requisite to the award of the Contract, the lowest Bidder or the Best Bidder must be a responsible bidder as determined by the Owner. In determining such responsibility, the Owner may take into consideration, including but not limited to, the criteria set below:

a. Whether the Bidder possesses a valid contractor's license of a class corresponding to the Work to be required by the Owner;

b. Whether the Bidder has the ability to obtain the necessary bonding for the Work to be required by the Owner;

NRS 338.1377

c. Whether the Bidder has experience in Historical Rehabilitation having successfully completed **one (1)** projects during the ten (10) years immediately preceding the date of submission of the Bid Proposal **conforming with the US Secretary of the Interior Standards for Rehabilitation** similar to the Work required by the Owner;

d. Whether the principal personnel employed by the Bidder have the necessary professional qualifications and experience for the Work to be required by the Owner;

e. Whether the Bidder has breached any contracts with a public agency or person in this state or any other state during the five (5) years immediately preceding the date of submission of the Bid;

f. Whether the Bidder has been disqualified from being awarded a contract pursuant to NRS 338.017 or 338.13895;

g. Whether the Bidder has been convicted of a violation for discrimination in employment during the two (2) years immediately preceding the date of submission of the Bid;

h. Whether the Bidder has the ability to obtain and maintain insurance coverage for public liability and property damage within limits sufficient to protect the Bidder and all the subcontractors of the Bidder from claims for personal injury, accidental death and damage to property that may arise in connection with the work to be required by the Owner;

i. Whether the Bidder has a safety program that complies with the requirements of Chapter 618 of NRS;

j. Whether the Bidder has been disciplined or fined by the State Contractors' Board or another state or federal agency for conduct that relates to the ability of the applicant to perform the work to be required by the Owner;

k. Whether, during the five (5) years immediately preceding the date of submission of the Bid Proposal the Bidder has filed as a debtor under the provisions of the United States Bankruptcy Code;

l. Whether, during the five (5) years immediately preceding the date of submission of the Bid, the Bidder has, as a result of causes within the control of the Bidder or a subcontractor or supplier of the Bidder, failed to perform any contract:

   (i) In the manner specified by the contract and any change orders initiated or approved by the person or governmental entity that awarded the contract or its authorized representative;
   (ii) Within the time specified by the contract unless extended by the person or governmental entity that awarded the contract or its authorized representative; or
   (iii) For the amount of money specified in the contract or as modified by any change orders initiated or approved by the person or governmental entity that awarded the contract or its authorized representative.

m. Whether the Bidder has received a satisfactory or unsatisfactory overall rating on the Contractor Evaluation Form for prior public work projects of the City.

n. Whether the Bidder is listed on the "Federal Debarment List"

Evidence of any failure described in this Section 13.02 may include, without limitation, the assessment of liquidated damages against the Bidder, the forfeiture of any bonds posted by the Bidder, or the existence of an arbitration award or a decision by a court of law against the Bidder.

For purposes of Subsection c of this Section 13.02, "successfully completed" means the Bidder has completed at least **one (1)** project **conforming with the US Secretary of the Interior Standards for Rehabilitation similar to the work required by the Owner** in a manner which was acceptable to the party contracting with the Bidder for the public work project, and that there is no arbitration or litigation filed by such party, the Bidder or a subcontractor, supplier or workman of the Bidder which is pending or completed in connection with the prior project. In the event arbitration or litigation is pending, the Bidder may provide evidence to the Owner that the disputes involved therein do not reflect negatively upon the Bidder's ability to perform the Project or, for the most

part, are in favor of the Bidder. Upon request of the Owner, the Bidder shall submit collaborating evidence of the successful completion of the public work project from the Party contracting for the work.

The Bidder cannot avoid its previous work history by means of a company name change, ownership change, change in the form of business entity, change in licensing or bonding status, or bankruptcy, if any key personnel (an individual with an active ownership interest or a corporate officer) remain the same or if the Bidder's business location remains the same after the change.

13.03 Determination of Responsiveness

As a pre-requisite to the award of the Contract, and in addition to the determination that the Bidder is responsible, the lowest Bidder or Best Bidder, as the case may be, must be a responsive Bidder as determined by the Owner. In determining whether the Bidder is responsive, any one or more of the following may be considered:

a. Evidence of collusion amongst the Bidders as described in ITB 22;

b. Failure to properly complete the Bid Proposal furnished by the Owner and to otherwise comply with the requirements of ITB 5.02;

c. Failure to attend the mandatory pre-bid conference scheduled by the Owner;

d. Failure of an authorized representative to sign the Bid Proposal as required by ITB 5.02;

e. Failure to submit the Bid Security with the Bid Proposal as required pursuant to ITB 5.03;

f. Failure to complete and submit the Subcontractor Listings as required by ITB 5.04 and ITB 6.01, or circumventing the Subcontractor List requirements by disingenuous issuance of contracts or purchase orders that avoid such listing, whether these acts and omissions are intentional or otherwise;

g. Failure to submit the Good Faith Effort Form as required by ITB 7.03;

h. Failure to submit the Schedule of Values as required by ITB 7.04;

i. Failure to provide the name of the Superintendent and submit Superintendent Project Resume as required by ITB 7.05;

j. Failure to submit the List of Completed Projects as required by ITB 7.06;

k. Failure to submit the Supplier Listing as required by ITB 7.07;

l. Failure to provide the Certificate of Eligibility as required by ITB 7.02;

m. Failure to obtain the licensing as required by ITB 10;

n. Failure to complete the Additive Alternate Bid Section in the Bid Schedule as required by ITB 12.03;

o. Failure to complete the Additive/Deductive Unit Price Bid Section in the Bid Schedule as required by ITB 12.04; or

p. Failure to comply with any other requirement of the Instructions to Bidders; or

q. Failure to submit the Federal Certifications required by ITB 7.08.

The failure to comply with the requirements of the Instructions to the Bidders shall result in the automatic rejection of the Bid Proposal submitted by the Bidder if rejection is expressly provided for in the Instructions to Bidders. In the case of such automatic rejection, the requirement has been determined to be a material requirement by the Owner. For those requirements in the Instructions to Bidders for which (i) the consequences have not been expressly provided for, or (ii) the consequences state that the Bid Proposal may be rejected, the Owner shall have the discretion as to whether or not to waive the requirement entirely, or to require compliance with the requirement after the bid opening, whichever is determined to be in its best interests.

ITB 14 SUBSTITUTION OF SUBCONTRACTORS

The Bidder shall not substitute any person for itself, or substitute any Subcontractor listed on the 5% Subcontractor List or the 1% Subcontractor List except as provided pursuant to NRS Section 338.141, 338.1389 and 338.1475. If the Owner or State Labor Commissioner's Office has determined that a listed Subcontrac failed to pay prevailing wages for any reason, then this failure shall be cause for, but not necessarily the obligation of, the Owner to request a substitution of the Subcontractor.

As a requirement of the Contract executed with the Owner, the Bidder will be responsible for the acts or omissions of its Subcontractors and of the persons directly or indirectly employed by them. The Owner may request a copy of any or all subcontracts entered into by the Bidder which are a part of the Bid Proposal submitted to the Owner if such request is within the provisions of NRS 338.140(1)(d).

ITB 15 BID IRREGULARITIES

The Owner reserves the right to waive any formality or irregularity in any submitted Bid Proposal, or to reject any or all of the submitted Bid Proposals. In the case of the rejection of all of the Bid Proposals, the Owner reserves the right to advertise for new Bid Proposals, proceed to do the Work itself or take no further action, whichever is in the best interest of the Owner.

ITB 16 RESOLVING TIE BIDS

The procedure for resolving Tie Bids is to hold a public drawing. The winner of the draw shall be recommended for award of the Contract. The Purchasing and Contracts Division will notify the tied Bidders of the time and place of the drawing and invite the tied Bidders to attend, but attendance is not mandatory for the drawing. The drawing will be held in the presence of a minimum two employees of the Purchasing and Contracts Division.

ITB 17 BID PROTESTS

17.01 Protest Procedure

Any Bidder may protest to the Owner the proposed award of a contract by the Las Vegas City Council provided the Bidder complies with the procedure set forth in Resolution R-89-2004 (*Attachment 13 to the Instructions to Bidders*). The City Council will not consider any appeal unless the Bidder complies with this procedure.

17.02 No Liability for Protest Expenses

Neither the City, nor its employees will be liable for any costs, expenses or damages incurred by the Bidder in connection with the protest, such as, but not necessarily limited to, attorney fees, loss of income, bid preparation costs, bid protest costs or other damages sustained by the Bidder.

ITB 18 EQUAL OPPORTUNITY CONTRACTING POLICY

18.01 General Policy

Minority Owned Business Enterprises, Women-Owned Business Enterprises and Disabled Veteran-Owned Business Enterprises (collectively "M/W/DV Business Enterprises") shall be afforded the opportunity to submit bids for the award of a contract or subcontract in connection with the Project, and shall not be discriminated against on the basis of race, color, creed, sex or national origin. Each bidder shall be responsible for making a good faith effort to solicit bids from M/W/DVBE subcontractors and suppliers.

It is the bidder's responsibility to make a sufficient portion of the work available to subcontractors and suppliers and to select those portions of the work and/or material needs consistent with M/W/DVBE availability.

The lack of a good faith effort will subject the apparent low Bidder to additional scrutiny by the Purchasing and Contracts Division, and may affect the performance evaluation rating of the bidder awarded the contract. M/W/DVBE prime contractors are also expected to demonstrate a good faith effort to award subcontractors / M/W/DVBE firms. A M/W/DVBE prime contractor will be rated on the portion of the work to be completed by own workforce and that of M/W/DVBE subcontractors and/or material suppliers.

18.02 Additional Information
Any Bidder needing additional information on the Owner's Equal Opportunity Contracting Policy or information regarding M/W/DV Business Enterprises may contact the Owner at (702) 229-6231.

E. MISCELLANEOUS PROVISIONS

ITB 19 SUBCONTRACTOR BONDS

Each Bidder is directed to review the provisions concerning the subcontractor bonding requirements set forth in Section 7.03 of the General Conditions (*Attachment 9 to the Instructions to Bidders*). The Bidder who is awarded the Project shall furnish to the Owner copies of the Subcontractor's Performance Bond, Labor and Material Payment Bond and the Guaranty Bond, which shall be provided prior to the Subcontractor performing any portion of the Work.

ITB 20 LIQUIDATED DAMAGES

Time is of the essence in the completion of this Project. The Bidder acknowledges and agrees that if the Project is not completed on time, or there is a failure to meet the milestones set forth in the Guaranteed Project Schedule, the Owner and, if applicable because of the nature of the Project, the general public, will suffer damages, the amount and extent of which are uncertain and immeasurable since such damages involved not only additional monetary expense to the Owner, but the lack of use and enjoyment of the Project by the Owner and/or the general public. For the aforementioned reasons, each Bidder is directed to review Section 6.01 of the General Conditions (*Attachment 9 to the Instructions to Bidders*) and Section 017000 of the Technical Specifications which impose Liquidated Damages upon the Bidder for failure to complete the Project on time, or to meet the milestones set forth in the Guaranteed Project Schedule.

ITB 21 APPLICABLE LAWS

21.01 In General
The Bidder should review Section 13 of the General Conditions (*Attachment 9 to the Instructions to Bidders*) that discuss the laws applicable to the Project. The laws listed therein, and which may be listed in this Section, are provided for informational purposes only, and are not intended to be exhaustive of all of the laws that may apply to the Project. Each Bidder is responsible for being aware of the federal, state and local laws that may apply to the Project and for taking into account the effect such laws may have in the preparation of its Bid Proposal submitted to the Owner.

21.02 Compliance with Federal, State and Local Laws
The Bidder who is awarded the Project, and each Subcontractor or other person who provides labor, equipment, materials, supplies or services for the Project, shall comply with the requirements of the applicable federal, state and local laws including, without limitation, the applicable requirements for licensing and the payment of sales and use taxes on equipment, materials and supplies provided for the Project.

21.03 OSHES Notification
Regulations for the Nevada Occupational Safety and Health Enforcement Program adopted pursuant to NRS Chapter 618 requires written notice to the Nevada Occupational Safety and Health Enforcement Section (OSHES) of the Industrial Relations Division of the Business and Industry Administration, State of Nevada, before commencing construction on certain projects.

The Bidder awarded the contract must provide such notice if the Project meets at least one of the following criteria:

i. A new or renovated building or structure that has a ground floor which is more than 30 feet above or below ground level;

ii. A new building or structure that has an initial construction cost of $10,000,000 or more;

iii. A new building or structure which, when completed, will be 50,000 square feet or more; or

iv. A new building or structure which, when completed, will be more than 60 feet above the ground, excluding any antenna, smokestack, flagpole, or similar attachment.

Failure to notify OSHES if the Project meets one or more of the above criteria will result in an issuance of a citation and imposition of a monetary penalty.

The written notice must be provided to the chief of OSHES. The notice must include at least the following information: height, square footage, type of construction, total cost of construction, and the location of the Project. The "Regulated Construction Projects Notification Form" (*Attachment 14 to the Instructions to Bidders*) is attached hereto for use in notifying OSHES of the Project. This form contains space for more information than is required by Nevada Administrative Code 618.505. OSHES utilizes this information to determine whether an in-person pre-construction conference is necessary. Mail the completed form to OSHES at the address shown on the form.

☐ **21.04 Federal Wage Rates**

The Bidder is hereby notified that the Federal Wage Rates (*Attachment 15 to the Instruction to Bidders*) are applicable to the Contract. Any wages paid under the Contract shall conform to the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a through 276a-7) and as supplemented by a regulation of the Department of Labor (29 CFR, Part 5). If the Nevada State Wage Rates and Federal Wage Rates are not equal, the Bidder is required to pay the higher prevailing rate.

☒ **21.05 Special Requirements**

The Bidder is hereby notified that there are special requirements associated with the funding for this Project. (*Attachment 16 to the Instructions to Bidders*) which are applicable to the Contract.

ITB 22 COLLUSION

Any evidence of agreement or collusion amongst the Bidders, acting to restrict freedom of competition by agreement to bid a fixed price or otherwise, will render void the bids of such Bidders. The disclosure of any information to any Bidder which gives the Bidder a competitive advantage over other competing Bidders in advance of the bid opening may be cause for any or all Bids received to be rejected and the Project may be re-bid.

ITB 23 PUBLIC RECORDS

The Owner is a public agency as defined by state law subject to the Nevada Public Records Law (NRS Chapter 239). The Owner's records are public records (unless otherwise declared by law to be confidential) and are subject to inspection and copying by any person. The Bidder is advised that with the opening of the Bid Proposal by the Owner, the contents become a public record and nothing contained in the Bid Proposal will be deemed to be confidential. The Bidder should not include any information in the Bid Proposal that is proprietary in nature or that it would not want to be released to the public.

ATTACHMENT 6
LIST OF COMPLETED PROJECTS

FORM C: Superintendent

Provide the following information for the Bidder's Project Superintendent that demonstrates that he/she has performed General Contractor Project Superintendent duties as defined as: "Superintendent: Contractor's representative at the site who is responsible for continuous field supervision, coordination, completion of the work and, unless another person is designated, for the prevention of accidents" within the last 10 years on a project that was required by a federal, state, local municipality to comply with the *Secretary of the Interior's Standards for the Treatment of Historic Properties (Secretary's Standards)*, Projects that were funded by Non-Profits or Private Entities, but were required by permit to meet the *Secretary's Standards*, are also eligible.

If you do not know if the project was required to meet the *Secretary's Standards*, contact the Owner or Architect of Record for the project for this information.

Name of Superintendent: Brian D. Benson

Total years experience as Superintendent: 16 years

Project name: Los Angeles City Hall

Street: 200 N. Main Street

City: Los Angeles

State: California

Project Description: Please See attached documentation.

Year Completed: 2001

Client/Building Owner: City of Los Angeles
Contact name:
Telephone number:
Email:

Architect of Record:
Albert C. Martin & Associates now AC Martin Partners
Contact name: Christopher Martin
Telephone number: (213) 683-1900
Web Site: www.acmartin.com

Architect of Record:
Levin & Associates Architects
Contact name: Brenda Levin
Telephone number: (213) 623-9207
Email: info@levinarch.com
Web Site: www.levinarch.com

CLARK
CONSTRUCTION

Date: 1/22/2009

From: Greg Groleau
Clark Construction Group, LLC
714 W. Olympic Blvd. Suite 1036
Los Angeles, CA 90015

RE: Los Angeles City Seismic Retrofit and Historical Renovation

To: To Whom It May Concern,

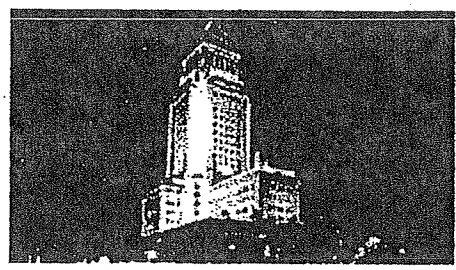
This letter is to certify that Brian Benson was indeed a Project Superintendent on the Los Angeles City Hall Seismic Retrofit and Historical Renovation. Brian performed his duties in strict compliance with the Secretary of Interior Rehabilitation Guidelines. Brian was directly responsible for supervising the restoration and re-construction off an exterior elevator that was comprised of brass and glass, this elevator is located at the N. Spring St entrance to city hall. Brian received strong reviews for dedication and hard work. I would personally recommend Brian Benson for this type of project.

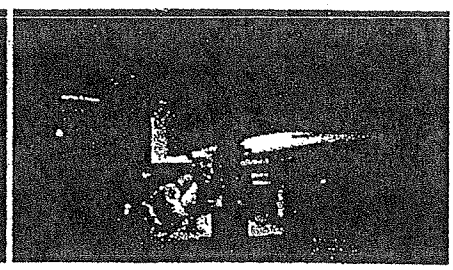
Sincerely,

Greg Groleau
Vice President
Clark Construction Group, LLC

CLARK CONSTRUCTION

Los Angeles City Hall





Project	Los Angeles City Hall
City	Los Angeles
State	California
Architect	Albert C. Martin & Associates
Owner	City of Los Angeles
Category	Office/Corporate
Cost	100,000,000+
Size	911000 *SQF*
Completion	2001
Summary	This project consisted of the seismic rehabilitation and upgrade of a 28-story, 911,000 SF municipal building originally built in 1927. Work includes excavation of a subbasement and installation of a system of hydraulic jacks to support the structure while approximately 550 seismic isolators were installed. Excavation of an exterior perimeter moat and saw cut of the perimeter walls from their foundations was also performed to allow the structure to float or sway during an earthquake. A seismically reinforced shearwall extends from the foundation the height of the building. In addition, the interior of the first five floors was renovated, including historic restoration of the ornate rotunda, grand staircases and other public areas.

- Los Angeles City Hall Website

Press Releases

- Los Angeles City Hall Earns Modernization Award from Buildings Magazine (4/14/2003)
- Los Angeles City Hall Earns Historical Restoration Project of the Year Award (9/25/2002)

Testimonials

- *There are no testimonials associated with this project.*

Awards

- 2003 AGC Build America Award - Renovation
- 2003 Buildings Magazine Modernization Award Winner
- 2002 LA Business Council Architectural Awards Winner - Commercial Mid-Rise category
- 2002 LA Business Council Architectural Awards Grand Prize – Best Completed Project
- 2002 Los Angeles Conservatory Preservation Award
- 2002 American Public Works Association Project of the Year – Historic Restoration Project over $10 million
- 2001 Building Team of the Year – American Institute of Architects Los Angeles Chapter

▸ Back

Copyright 2002 © Clark Construction Group, LLC | HQ Bethesda, MD

CLARK CONSTRUCTION

Los Angeles City Hall Earns Historical Restoration Project of the Year Award

Wednesday, September 25, 2002

LOS ANGELES – When it was completed in 1928, 32-story Los Angeles City Hall was the tallest building in the city. It has appeared in countless Hollywood films and television productions, making the building synonymous with the city itself. After a series of earthquakes weakened the structure, it was closed in 1998 for a seismic retrofit and modernization. The Department of Public Works for the City of Los Angeles selected Clark Construction Group, LLC of Costa Mesa, Calif. as the general contractor for the three-year, $128 million project. The American Public Works Association recognized the team's success with the Project of the Year Award for Historical Restoration/ Preservation in the $10 million plus category.

Strengthening the building added 30,000 cubic yards of concrete, 3,000 tons of structural steel, 5,000 tons of reinforcing steel, and an additional 68,467 million pounds of dead weight to the structure. Five hundred and twenty six isolators and sliders as well as 64 viscous dampers were installed. The seismic upgrade allows City Hall to sustain minimal damage and remain functional after a magnitude 8.2 earthquake.

In addition to meeting rigorous safety and damage mitigation standards, the building's distinctive façade, mosaics, artwork, articulated ceilings and period ornamental details were preserved. For example, historic electrical light fixtures were removed from their settings, cleaned, and restored to comply with current energy codes. Art conservators researched and analyzed the original 1928 paint colors in the main hallways so they could be replicated into the new construction.

The shearwalls are an intrinsic part of the seismic rehabilitation to the building, as such the installation of the shearwall structure required removing any pre-existing structures or finishes that stood in its path. When shearwalls intersected historic fabric or historic walls, the historic fabric was removed, catalogued, crated and stored. Since demising walls cut across the path of the shearwalls on many floors, those existing walls were cut back to give the Clark team space to work.

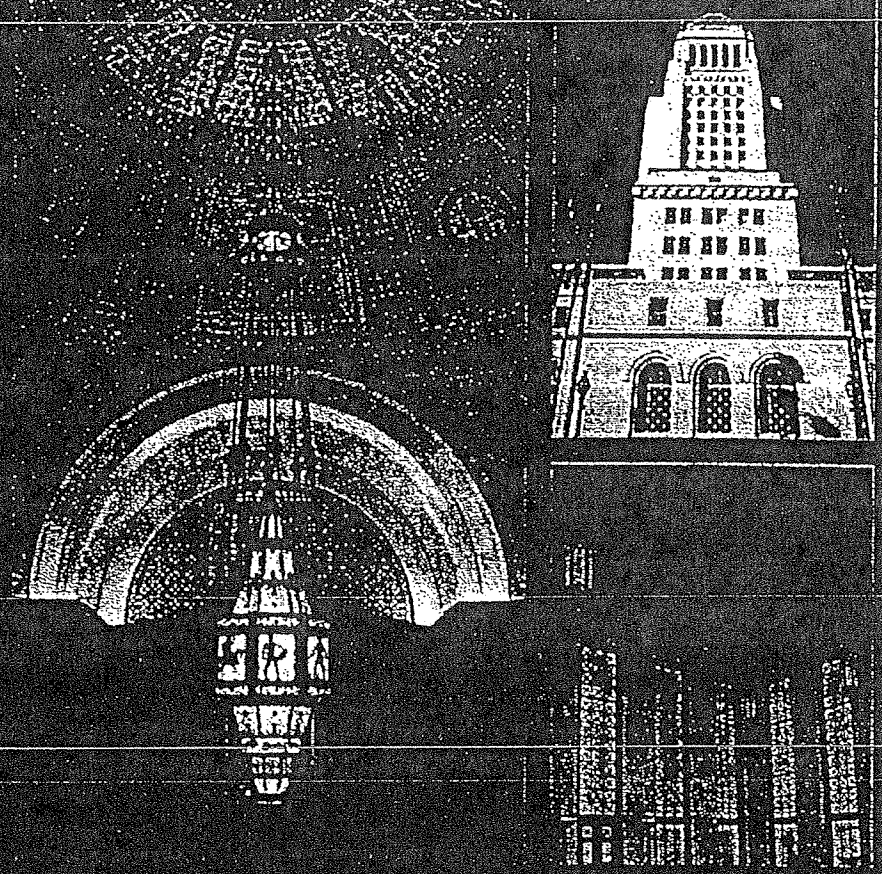
City Hall joins an elite group of buildings in Los Angeles to undergo a total ground to sky refurbishment. The building was restored to its original Art Deco grandeur, while state-of-the-art seismic isolation systems offer a protection that few other Los Angeles buildings enjoy. Through Clark's leadership, the project was brought in on schedule and within budget.

▸ Back

Copyright 2002 © Clark Construction Group, LLC | HQ Bethesda, MD

Levin & Associates Architects

EDUCATION
ARTS & CULTURE
CIVIC & SOCIAL
URBAN REVITALIZATION
LEVIN & ASSOCIATES
NEWS



Los Angeles City Hall
Completion 2001
Downtown Los Angeles
City of Los Angeles
911,000 square feet

Designed in 1925 by architects John Austin, Albert C. Martin and John Parkinson, the 27-story, 911,000 became the city's tallest building from its completion in 1928 until the late 1960s. During the past 72 years, the tower has been damaged by regional earthquakes. Exterior terra cotta cladding and interior unanchored masonry walls have cracked.

As historic preservation architect for the seismic rehabilitation which was initiated in 1993, Levin & Associates, in collaboration with Albert C. Martin Partners, Architects and Engineers, has developed the approach, standards and

Albert C. Martin, FAIA
Principal, AC Martin Partners

alternatives which guide the seismic and code-upgrade methodology for the building's historic areas.

The hierarchy of historic significance for each area established by Levin has enabled the engineers to propose solutions which preserve the most historically-significant areas. The firm articulated and negotiated alternative code compliance strategies in coordination with the State Office of Historic Preservation, and created architectural plans for the areas of impact.

A

AFFIDAVIT OF BRYAN BENSON

STATE OF NEVADA)
) ss.
County of Clark)

I, BRIAN BENSON, being first duly sworn, upon his oath, state:

1. I have personal knowledge of the facts set forth herein. Attached as Attachment A is a copy of my resume, which accurately describes my past work experience. I have been employed by APCO Construction since June, 2008 as a General Superintendent.

2. With regard to the Las Vegas Museum Phase 3-Rehab project, I have significant prior experience with Clark Construction Group in working on a significant restoration project. While employed by Clark Construction, I was a lead field superintendent and responsible for refurbishing and renovating the interior of the Los Angeles City Hall, which was approximately 911,000 square feet building with over 30 stories. Attachment 2 is a summary of this Clark project. The total contract price was $112,000,000. Of that amount, approximately $12,500,000 was dedicated specifically for the restoration and renovation of the building's historical features. Included in that figure was approximately $1,500,000 just for the retrofit and refurbishing of one of the few glass and brass elevators in the world. I oversaw that process. We were required to take the elevator apart piece by piece, log each piece's condition and location, and then rebuild the elevator after each piece had been refurbished. I also was responsible for the restoration and preservation of the exterior marble, interior components, and structural components for the exterior moat walls as well as the setting of the stabilizers. During

the course of that project, I oversaw and was responsible for approximately 20 different subcontractors. All of Clark's restoration work complied with and was governed by the Secretary of the Interior standards that are referenced in the Las Vegas Museum Phase 3 solicitation. It should be noted that our work on the L.A. City Hall received dozens of awards for renovating historically significant buildings. That project was completed in 2001. I was at Clark for eight years.

3. Greg Groleau, Vice President of Clark Construction, was my immediate supervisor. Mr. Groleau can be used as a reference for my work on this restoration project if necessary. His contact information is greg.groleau@clarkconstruction.com Cell # 1-619-666-1295. In addition, Mr. Jim Treadway was the owner's representative. It is my understanding that he is still employed by the City and can be reached as well for a reference.

3. I will be assigned as the General Supetintendent overseeing APCO's work on the Las Vegas Museum Rehab project and am more than qualified to do so.

DATED this 23 day of February, 2009.

BRIAN BENSON

The foregoing instrument was acknowledged before me this 23 day of February, 2009, by Brian Benson.

Notary Public

My Commission Expires: 8/16/09

MARY JO ALLEN
Notary Public State of Nevada
No. 01-70568-1
My appt. exp. Aug. 16, 2009

AFFIDAVIT OF BRIAN BENSON

STATE OF NEVADA)
) ss:
County of Clark)

BRIAN BENSON, being first duly sworn, states as follows:

1. This affidavit is being submitted to supplement my prior affidavit dated February 23, 2009 in connection with the City's Museum project.

2. My prior affidavit detailed my responsibilities on Clark Construction Group's Los Angeles City Hall renovation project. In addition to refurbishing the glass and brass elevator, I also oversaw significant restoration of (1) the marble and terracotta on the exterior façade, in vestibules, entry areas, and corridors throughout the building, (2) various painting and wall coverings, and (3) ornamental metals and light fixtures. All of these components were refurbished, repaired, or replaced in accordance with the Secretary of Interior's restoration guidelines.

3. With regard to the approximate 20 subcontractors I supervised on that project, only three related to the elevator, Dover Elevator, Helix Electric, and a Southland Plumbing. The elevator restoration represented approximately 15% of the dollar volume or time commitment of the restoration work that I supervised. It was mentioned earlier do to the historical significance of the elevators building materials utilized in the first construction of the elevator.

4. All of the marble and terracotta restoration on the City Hall project was completed by Carrera Tile & Marble, under my supervision. We refurbished

and or repaired numerous pieces on both the exterior façade and within the building interior. In a few instances we had to do complete removal of certain areas to tie in new construction. To accomplish this we had to set up an intensive tracking system that consisted of first numbering each individual piece, then assigning it coordinates within a grid, taking photos and video to document its exact placement and then finally removing and properly storing for future use in the same area from which it was removed.

5. The miscellaneous metals involved ornamental metals such as, hand rails and light fixtures these items were removed and cataloged in a similar manner as the marble and terracotta. After being refurbished and or replicated we utilized our system to ensure the exact placement prior to construction.. I supervised two different subcontractors for these scopes of work.

6. The remaining subcontractors that I was responsible for supervising their work involved more standard trades such as mechanical, electrical, plumbing, concrete, and fire systems etc.

7. All of the restoration work that I supervised was inspected and accepted in accordance with the Secretary of Interior's restoration standards.

8. The City Hall project was completed with no injuries, on time and within budget. There were no claims against the owner and, as previously mentioned, this project has won numerous awards for the historical renovation.

9. Additionally, I have extensive recent experience dealing with City staff as I was the General Superintendent on the Newport Lofts and Soho Lofts in

downtown Las Vegas. Both projects were completed in a safe and timely manner and in accordance with all applicable codes and requirements.

10. Further affiant sayeth not.

DATED this 15 day of April, 2009.

BRIAN BENSON

The foregoing instrument was acknowledged before me this 15th day of April, 2009, by Brian Benson.

Notary Public

My Commission Expires:

08/16/09

MARY JO ALLEN
Notary Public State of Nevada
No. 01-70568-1
My appt. exp. Aug. 16, 2009

148

30

COMP
FENNEMORE CRAIG, P.C.
John H. Mowbray (Nevada Bar No. 1140)
Anthony Golden (Nevada Bar No. 9563)
300 South Fourth Street, #1400
Las Vegas, Nevada 89101
Telephone: (702) 384-6340
Email: jmowbray@fclaw.com

FENNEMORE CRAIG, P.C.
John Randall Jefferies (Nevada Bar No. 3512)
(Arizona Bar No. 011542)
3003 North Central Avenue
Suite 2600
Phoenix, Arizona 85012-2913
Telephone: (602) 916-5000
Email: rjefferi@fclaw.com

Attorneys for Plaintiff APCO Construction

FILED
Feb 27 4 41 PM '08
CLERK OF THE COURT

DISTRICT COURT
CLARK COUNTY, NEVADA

In re the Arbitration of:

APCO CONSTRUCTION,

Plaintiff,

v.

CITY OF LAS VEGAS, a political subdivision of the State of Nevada; NEVADA ARBITRATION ASSOCIATION,

Defendant.

CASE NO.: A558042
DEPT NO.: XI

COMPLAINT

Business Court

Statutory Arbitration Exemption Requested:

Injunctive and Extraordinary Relief Sought

Plaintiff APCO Construction ("APCO"), through counsel undersigned, for its Complaint and Application alleges as follows:

RECEIVED
FEB 28 2008
CLERK OF THE COURT

Motion denied as premature w/ ongoing arbitration 5/5/2008

PARTIES

1. Plaintiff APCO Construction is a Nevada corporation licensed to and doing business in Clark County, Nevada.

2. The City of Las Vegas (the "City") is a municipal entity operating within the boundaries of Clark County, Nevada.

JURISDICTION AND VENUE

3. This Court has jurisdiction pursuant to N.R.S §§38.218, 38.227, 38.241, and 38.244.

4. Venue is proper in this District Court pursuant to N.R.S §38.246 as the arbitration is occurring in Clark County, Nevada.

GENERAL ALLEGATIONS

5. APCO Construction entered into a contract to serve as general contractor for the construction of a 102-acre park known as Washington Buffalo Park for the City.

6. Disputes arose between APCO and the City regarding various aspects of the construction and payment.

7. As required by N.R.S §338.150(2), the parties' contract called for binding arbitration before the Nevada Arbitration Association. A copy of the arbitration clause is attached as Exhibit 1.

8. In December 2005, APCO filed for arbitration seeking approximately $6 million due to delay and changes made by the City during construction. The City counterclaimed for up to $30 million on a project where the original contract amount was $29 million.

9. Procedurally, the parties' contract requires that each party appoint one arbitrator and the two appointed arbitrators select the third arbitrator.

10. APCO designated William Haug, Esq. as an arbitrator. Pursuant to N.R.S. §38.227, Arbitrator Haug disclosed that he had previously served as an arbitrator in matters handled by APCO's counsel, but had no relationship with the parties. The City did not object to Arbitrator Haug's disclosure or continued service.

11. The City designated James Olson, Esq. as an arbitrator. Prior to the start of the arbitration proceedings, Arbitrator Olson did not do a disclosure of his firm's relationship with and representation of the City, various City Council members, or the City's primary witness in the arbitration.

12. The City's counsel did represent to APCO that Arbitrator Olson's firm had a prior relationship with the City but that the relationship terminated almost two years prior to Arbitrator Olson's appointment.

13. Arbitrators Olson and Haug selected Thomas C. Wilson, Esq. as the third arbitrator. The three arbitrators are hereafter collectively referred to as the "Panel."

14. As reflected in the City's letter dated December 21, 2005, APCO and the City had a disagreement as to whether their appointed arbitrators were to be considered neutral and whether the parties could have ex parte communications with their selected arbitrators. A copy of that letter is attached as Exhibit 2. APCO objected to the suggestion that the appointed arbitrators were to be partial and able to have ex parte communications with the parties.

15. As part of the ongoing discussions amongst counsel, the parties agreed that the arbitrators would be governed by and act in accordance with the American Arbitration Association Code of Ethics. Pursuant to this agreement, the City's counsel transmitted the Code of Ethics document to the party-appointed arbitrators. A copy of that letter is attached as Exhibit 3.

16. During the initial hearings with the full Panel, the parties and arbitrators agreed that they would act as neutral arbitrators, would not have ex parte communications with counsel, and that the fees for all arbitrators would be shared equally. Copies of letters from Panel Chairman, Arbitrator Wilson and Arbitrator Haug are attached as Exhibit 4.

17. Throughout 2006 and much of 2007, the parties conducted discovery and the Panel made several substantive rulings on pre-hearing motions.

18. Arbitration hearings on APCO's affirmative claims began in September 2007 and continued up through January 18, 2008. During an afternoon arbitration session on January 8, 2008, APCO discovered for the first time that senior litigation counsel for the City, William Henry, was working on a case with attorney Walt Cannon, who is a partner with Arbitrator Olson in Olson, Cannon, Gormley & Desruisseaux ("OCG&D").

19. This inadvertent disclosure ultimately resulted in APCO learning that OCG&D had an established, ongoing, yet undisclosed, attorney-client relationship with the City that continued through the APCO arbitration.

20. APCO formally requested a full disclosure from Arbitrator Olson as to the relationship between the City and his firm, OCG&D. On January 9, 2008, Arbitrator Olson made a written disclosure listing five cases in which his firm had represented the City and one where the firm represented a City judge. That disclosure was not complete.

21. After being advised that the state and federal court records potentially showed additional cases, Arbitrator Olson made a supplemental disclosure of potential conflicts on January 10, 2008, which addressed six additional cases. In that disclosure, Arbitrator Olson indicated that his firm did not represent the City in those additional cases. That disclosure was not complete.

22. Because of discrepancies in Arbitrator Olson's disclosures, APCO actually asked the City to produce evidence of its fee payments to OCG&D from 2003 through 2007. Between that payment information and a review of state and federal court records, APCO learned (1) that OCG&D represented the City on a matter not disclosed by Arbitrator Olson, (2) that Arbitrator Olson's disclosure was inaccurate, (3) that City Attorney Henry, who is responsible for the APCO arbitration for the City, actually approved OCG&D's attorneys' fees in OCG&D's representation of Municipal Judge Assad during the APCO arbitration, and (4) that OCG&D had represented City Council members, which included Councilman Larry Brown. Councilman Brown was going to be called by the City as a witness in the APCO arbitration.

23. From OCG&D's billing records produced by the City, APCO discovered that OCG&D also met with Mr. Jerry Walker, a key City employee, concerning other matters while the APCO matter was pending. Mr. Walker was the City's primary witness in the defense of APCO's claims and is the primary person responsible for investigating and assembling the City's $30 million counterclaim.

24. Arbitrator Olson was required to fully disclose his relationship with the City, its representatives, and counsel prior to and during the arbitration.

25. Given Arbitrator Olson's late and incomplete disclosures regarding OCG&D's fiduciary relationship with the City, its counsel and key witnesses, APCO formally objected to Arbitrator Olson's continued service as an arbitrator on the Panel.

26. After the January arbitration session, APCO sent a letter to the Nevada Arbitration Association requesting that it disqualify Arbitrator Olson for his non-disclosure of the attorney-client relationship pursuant to NAA Rule 33.

27. The City provided a written response opposing APCO's request to the Nevada Arbitration Association.

28. On February 12, 2008, the Nevada Arbitration Association responded that the decision to disqualify Arbitrator Olson from continued service as an arbitrator in this proceeding exceeded the Nevada Arbitration Association's jurisdictional power and refused to make a decision. A copy of that decision is attached as Exhibit 5.

29. Despite presenting nearly six weeks of testimony on APCO's affirmative claims and the City's rebuttal to APCO's claims, APCO anticipates several additional weeks of testimony to address the City's $30 million counterclaim and APCO's rebuttal evidence.

30. Pursuant to the American Arbitration Association Code of Ethics adopted by the parties, the Nevada Arbitration Association rules, and N.R.S. §§38.27 and 38.241, Arbitrator Olson's non-disclosure of the substantial attorney-client relationship his firm maintains with the City and its representatives and subsequent incomplete and inaccurate

disclosures provide the basis to void any subsequent arbitration award as it shows impermissible evident partiality and amounts to undue means and misconduct.

31. APCO has been denied due process given Arbitrator Olson's conduct.

32. To date, APCO has paid Arbitrator Olson $51,000 for his service as a neutral arbitrator in this proceeding.

33. Given the substantial cost of the arbitration proceedings and the magnitude of the parties' respective claims, APCO hereby requests that the Court order the disqualification of Arbitrator Olson at this time and further order that the remaining two arbitrators conclude this phase of the arbitration and issue a decision on APCO's claim. The City can then appoint a replacement neutral arbitrator to hear and decide the evidence on the City's counterclaim with the other two arbitrators.

34. The parties currently are scheduled to conclude APCO's rebuttal evidence in April 2008.

COUNT I (INJUNCTIVE RELIEF)

35. APCO incorporates the prior allegations as though set forth here.

36. APCO is likely to prevail on the merits of its claim that Arbitrator Olson's non-disclosure of his firm's ongoing attorney-client relationship with the City and its representatives, and then the incomplete and inaccurate disclosures made during the course of the arbitration render any subsequent award by Arbitrator Olson voidable.

37. There are many weeks of arbitration work to be completed by the parties at significant cost.

38. The parties, including APCO, will be irreparably harmed by continuing to proceed in a potentially voidable arbitral proceeding.

39. An equitable remedy of injunctive relief is far superior to any legal remedy the parties may have.

40. The parties' rights to a speedy adjudication of their claims will be impaired and judicial and party resources will be wasted if the arbitration continues with Arbitrator Olson.

41. The relative interests of the parties support injunctive relief.

COUNT II (Mandamus)

42. APCO incorporates the prior allegations as though set forth herein.

43. The law and rules adopted by the parties require arbitrators to disclose potential conflicts of interest or relationships with the parties to the arbitration or their representatives at the time of appointment or during the course of the proceedings as may be necessary to provide sufficient information to the parties and other arbitrators.

44. An arbitrator's failure to disclose a conflict of interest or relationship with a party renders any subsequent award voidable.

45. Given OCG&D's on-going representational relationship with the City and Arbitrator Olson's failure to timely and fully disclose his firm's relationship with the City and its representatives, APCO is entitled to an order requiring the Nevada Arbitration Association to disqualify Arbitrator Olson and order the repayment of all fees APCO has paid to OCG&D. APCO is further entitled to a writ requiring the remaining arbitrators to issue a decision on APCO's pending claim.

46. APCO has no plain, speedy or adequate remedy in the ordinary course of law.

WHEREFORE, APCO prays for judgment as follows:

As to Count I – For a Judgment:

A. Enjoining James Olson, Esq. from continuing as an arbitrator in the above-captioned proceeding;

B. Directing the remaining arbitrators, Thomas R. C. Wilson and William F. Haug, to issue an interim ruling on APCO's affirmative claims;

C. Directing the City to appoint a neutral, replacement arbitrator to serve on the Panel for the remainder of the arbitration; and

D. Directing Arbitrator Olson to refund the payments made by APCO for his service as an arbitrator to date or, alternatively, directing the City to reimburse APCO for the fees paid to Arbitrator Olson.

E. Awarding such other relief as the Court deems appropriate.

As to Count II – For a Writ of Mandamus:

A. Directing the Nevada Arbitration Association to remove Arbitrator Olson from the Panel;

B. Directing the remaining arbitrators, Thomas R. C. Wilson and William F. Haug, to issue an interim ruling on APCO's affirmative claims;

C. Directing the City to appoint a neutral, replacement arbitrator to serve on the Panel for the remainder of the arbitration; and

D. Directing Arbitrator Olson to refund the payments made by APCO for his service as an arbitrator to date or, alternatively, directing the City to reimburse APCO for the fees paid to Arbitrator Olson.

E. Awarding such other relief as the Court deems appropriate.

DATED this _____ day of February, 2008.

FENNEMORE CRAIG, P.C.

By _____
John H. Mowbray – No. 1140
Anthony Golden – No. 9563
John Randall Jefferies – No. 3512
300 South Fourth Street, Suite 1400
Las Vegas, Nevada 89101
702.692-8000; 702.692.8099 (Fax)

Attorneys for Plaintiff
APCO Construction

EXHIBIT 1

GENERAL CONDITIONS

GC.1 AIR POLLUTION CONTROL

Prior to starting construction, the Contractor shall obtain a permit from the Clark County District Board of Health, Air Pollution Control Division, and shall pay all costs and conform to all rules and regulations thereof.

The Contractor shall so perform the Work in a manner so as not to discharge into the atmosphere from any source whatever, smoke, dust, or other air contaminants in violation of the laws, rules and regulations of all federal, state and local air pollution requirements including, but not limited to:

1) Nevada Revised Statute 445: Air Quality Regulation

2) Registering with the Clark County Health Department, Air Pollution Board, any equipment requiring operating permits by said Board;

3) Adhering to all Clark County Air Pollution Board regulations.

4) No time extensions shall be granted for time lost due to violations of Clark County Pollution Regulations.

GC.2 DISPUTES

All claims, disputes, or other questions that may arise between the Owner and Contractor concerning any provision of this Contract after award shall be resolved through good faith efforts upon the part of Contractor and Owner. Notice shall be given within 14 days of such claim, dispute or other question arising under the Contract. At all times, Contractor shall carry on the Work and maintain the progress schedule in accordance with the requirements of the Contract and the determination of the Owner, pending resolution of any dispute. If the dispute is not resolved in 30 days, either party may request arbitration in accordance with GC.3 ("Arbitration").

GC.3 ARBITRATION

A. All claims, disputes, or other questions that may arise between the Owner and Contractor concerning any provisions of this Contract which cannot otherwise be settled and, in the case of the Contractor, which have not been waived by the making and acceptance of final payment may be submitted to and be determined and settled by arbitration in the manner set forth in this paragraph. The Owner or Contractor, by written notice to the other party, received before litigation is commenced, may demand arbitration and may appoint any arbitrator. The notice to arbitrate shall be null and void if received after acceptance of final payment. Within 5 days after receipt of such notice, the Contractor shall, by written notice to the Owner, appoint another arbitrator, and, in default of said second appointment, the arbitrator first appointed shall be sole arbitrator and shall proceed in the same manner as hereinafter provided for three arbitrators. When two arbitrators have been appointed as aforesaid, they shall, if possible, agree upon a third arbitrator and shall appoint him or her by written notice, signed by both of them given to the Owner and the Contractor.

002

09/08/2005 15:16 FAX 7340396

If 15 days shall elapse after the appointment of the second arbitrator without notice of appointment of the third arbitrator being given, as aforesaid, then either party may, in writing, require that the Nevada Arbitration Association appoint the third arbitrator. Upon appointment of a third arbitrator, the three arbitrators shall meet without delay and shall proceed to a determination of the dispute in accordance with the construction industry rules of the Nevada Arbitration Association.

B. The fees and expenses of the arbitration proceedings shall be assessed equally against both parties and shall be paid one-half by the Owner and one-half by the Contractor. The Owner and Contractor are each responsible for all of their own costs, expenses, witness fees, and counsel fees associated in the preparation and presentation of all claims, disputes or other questions that may arise.

C. In the event that the Owner is named as a party to any arbitration action or commences an arbitration action against a party other than the Contractor, which arises out of, from, or is connected with the construction of the Project, or the performance of the Contractor under this Contract, the Contractor agrees and irrevocably consents, to be joined as a party in the arbitration proceeding and to be bound by any decision resulting therefrom. Any joinder of the Contractor is conditioned upon the handling of such arbitration in accordance with arbitration rules of the Nevada Arbitration Association. None of the time provisions imposed under subsections D and E apply to the joinder rights provided herein in such a way as to preclude the Owner from joining the Contractor as a party to any arbitration proceedings which the Owner commences or is named as a party and which arises out of, or results from, the construction of the Project.

If the Contractor is named as an additional party by the Owner, the Contractor shall not be entitled to any additional compensation from the Owner as a result of preparing for, or participating in, the arbitration.

D. In order for the Contractor to be able to arbitrate any claim, dispute or other matter in question between the parties, written notice must be given to the Owner within fourteen (14) days after the claim, dispute or other matter arises between the parties. The purpose of such notification is to place the other party on notice so that proper measures can be taken to properly defend against such claim, dispute or other matter, and the failure to give such notice shall preclude the party desiring arbitration from subsequently arbitrating that particular claim, dispute or other matter.

E. The filing of the aforementioned written notice shall preserve that party's right to arbitration, but shall not obligate the party to proceed with arbitration. In the event that either party desires to proceed with the arbitration of any claim, dispute, or other matter with respect to which such notice has been given, a written demand for arbitration shall be filed in writing, with the other party and with the Nevada Arbitration Association within sixty (60) days after the filing of the Certificate of Substantial Completion for the Project and the failure to make such demand shall forever bar such claim, dispute or other matter from being arbitrated.

F. In the event of arbitration, the parties agree that all means of discovery including, but not limited to, depositions and interrogatories will be afforded to the parties involved in the arbitration, and the appointed arbitrator shall have the authority to impose sanctions against either party for failing to comply with the rules of discovery as provided under the Nevada Rules of Civil Procedure.

G. The Contractor shall proceed with the Work during any pending arbitration, court or other dispute proceedings, unless otherwise mutually agreed upon in writing. Arbitration conducted in accordance with this provision shall take place in Clark County, Nevada.

GC.4 FIRE PREVENTION

Contractor shall conform to all Federal, State, and local laws and regulations pertaining to burning, fire prevention, and control within or adjacent to the project. Necessary precautions to avoid and eliminate fire hazards shall be the responsibility of the Contractor.

All tarpaulins used for any purpose during construction of any work shall be made of material resistant to fire, water, and weather and shall bear UL labels. Lighting of any fires on premises is strictly forbidden.

Contractor shall provide portable fire extinguishers compatible with the hazard of each work area and shall instruct its personnel in their location and use. Wherever welding and burning are conducted, inflammable materials shall be protected and a fire watch shall be provided by Contractor to be present during the burning and welding operation to ensure that protective measures are taken and no fires result from such operation. The fire watch shall have fire extinguisher equipment readily available and know-how for proper use.

GC.5 INDEPENDENT CONTRACTOR

Contractor represents that it is fully experienced and properly qualified to perform the class of Work provided for herein, and that it is properly licensed, equipped, organized and financed to perform such Work. The Contractor shall act as an Independent Contractor and not as an agent of the Owner in performing the Contract. The Contractor shall maintain complete control over its employees and all of its subcontractors. Nothing contained in this Contract or any subcontract awarded by Contractor shall create any contractual relationship between any such subcontractor and Owner. Contractor shall perform all Work in accordance with its own methods subject to compliance with the Contract.

GC.6 GOVERNING ORDER OF BIDDING & CONTRACT DOCUMENTS

A. The Bidding and Contract Documents include various divisions, sections, and conditions, which are essential parts for the work to be provided by the Contractor. A requirement occurring in one is as binding as though occurring in all. They are intended to be complementary and to describe and provide for a complete work. In case of discrepancy, the following order of precedence will govern:

1) Contract Summary
2) Addenda
3) Instructions to Bidder
4) General Conditions
5) Technical Specifications
6) Drawings
7) Referenced Standards

B. Change Orders will take precedence over any of the above. Detailed plans shall have precedence over general plans.

EXHIBIT 2

HARRISON, KEMP & JONES
ATTORNEYS AT LAW

WILL KEMP
KIRK R. HARRISON
J. RANDALL JONES
WILLIAM L. COULTHARD*
RICHARD F. SCOTTI**
JENNIFER C. POPICK

KRISTIN H. COGBURN
MELANIE A. ELLS**
P. KYLE SMITH

A LIMITED LIABILITY PARTNERSHIP
WELLS FARGO TOWER
3800 HOWARD HUGHES PARKWAY
SEVENTEENTH FLOOR
LAS VEGAS, NEVADA 89109
hkj@hkj-law.com

TELEPHONE
(702) 385-6000

FACSIMILE
(702) 385-6001
(702) 385-1234

*Also licensed in Idaho
**Also licensed in California

December 21, 2005

John Randall Jefferies
FENNEMORE CRAIG, P.C.
3003 North Central Avenue, Suite 2600
Phoenix, Arizona 85012-2913

Via Fax: (602) 916-5513

Re: City of Las Vegas/APCO Contract
Washington Buffalo Park

Dear Mr. Jefferies:

I am writing to correct some mis-statements in your letter today to Arbitrator Haug.

Yesterday, you, Kirk Harrison and I conducted a telephone conference call regarding the process of selecting the arbitrators. In that conference call you agreed to withdraw your objection to the City's designation of Arbitrator James Olson. However, your letter mis-states the discussion regarding the permissibility of ex parte communications with the party-appointed arbitrators. The agreement that we reached on ex parte communications was very limited. We merely agreed that until we had a further conference call on this issue, the parties shall not engage in substantive ex parte communications. We expressly agreed that the parties may communicate ex parte with the arbitrators regarding the process of selecting the third arbitrator. We also expressly agreed to confer again later about the permissibility of substantive ex parte communications. Although you stated that you oppose any substantive ex parte discussions, Kirk and I expressly reserved any opinion on the issue, and specifically told you that we had to consult with our client and get back to you. Ultimately we might agree with your position, but we have not been able to check with our client. Senior Litigation Counsel Bill Henry has been away on vacation, and we will not be able to consult with him until after the first of the new year.

As you may know, pursuant to the Code of Ethics for Arbitrators in Commercial Disputes (2004), party-appointed arbitrators who are not required by contract or other applicable authority to serve as neutrals may engage in substantive ex parte discussions with the parties who appointed them. We

need to discuss whether the party-appointed arbitrators are required to serve as neutrals, and what role, if any, the party-appointed arbitrators are to have in resolving this issue if the parties are unable to agree.

Very truly yours,

HARRISON, KEMP & JONES, LLP

Richard F. Scotti, Esq.

RFS:mh

cc: Nevada Arbitration Association (via fax: *822-1018*)
James R. Olson, Esq. (via fax: *383-0701*)
William Haug, Esq. (via fax: *602-277-5595*)
Senator Richard Bryan (via fax: *671-2479*)
William P. Henry, Esq. (via fax: *386-1749*)

Group Send Report

Time : 12-22-2005 15:50
Tel line : 7023056001
Name : HARRISON, KEMP & JONES, LLP,

Job number : 791

Date : 12-22 15:34

Document pages : 002

Start time : 12-22 15:34

End time : 12-22 15:50

Successful

Fax number

☎8221018
☎3830701
☎16022775595
☎3861749

Unsuccessful

Fax number | Pages sent

☎6712749 | 000

Job number : 791 *** SEND FAILED ***

HARRISON, KEMP & JONES
ATTORNEYS AT LAW

WILL KEMP
KIRK B. HARRISON
J. RANDALL JONES
WILLIAM L. COULTHARD*
RICHARD F. SCOTTI**
JENNIFER C. FOPICK
KRISTEN H. COGBURN
MELANIE A. ELLS**
F. KYLE SMITH

A LIMITED LIABILITY PARTNERSHIP
WELLS FARGO TOWER
3800 HOWARD HUGHES PARKWAY
SEVENTEENTH FLOOR
LAS VEGAS, NEVADA 89109
hkj@hkj-law.com

TELEPHONE
(702) 385-6000

FACSIMILE
(702) 385-6001
(702) 385-1334

*Also licensed in Idaho
**Also licensed in California

December 21, 2005

John Randall Jefferies
FENNEMORE CRAIG, P.C.
3003 North Central Avenue, Suite 2600
Phoenix, Arizona 85012-2913

Via Fax: (602) 916-5513

Re: City of Las Vegas/APCO Contract
Washington Buffalo Park

Dear Mr. Jefferies:

I am writing to correct some mis-statements in your letter today to Arbitrator Haug.

Yesterday, you, Kirk Harrison and I conducted a telephone conference call regarding the process of selecting the arbitrators. In that conference call you agreed to withdraw your objection to the City's designation of Arbitrator James Olson. However, your letter mis-states the discussion regarding the permissibility of ex parte communications with the party-appointed arbitrators. The agreement that we reached on ex parte communications was very limited. We merely agreed that until we had a further conference call on this issue, the parties shall not engage in substantive ex parte communications. We expressly agreed that the parties may communicate ex parte with the arbitrators regarding the process of selecting the third arbitrator. We also expressly agreed to confer again later about the permissibility of substantive ex parte communications. Although you stated that you oppose any substantive ex parte discussions, Kirk and I expressly reserved my opinion on the issue, and specifically told you that we had to consult with our client and get back to you. Ultimately we might agree with your position, but we have not been able to check with our client. Senior Litigation Counsel Bill Henry has been away on vacation, and we will not be able to consult with him until after the first of the new year.

As you may know, pursuant to the Code of Ethics for Arbitrators in Commercial Disputes (2004), party-appointed arbitrators who are not required by contract or other applicable authority to serve as neutrals may engage in substantive ex parte discussions with the parties who appointed them. We

EXHIBIT 3

HARRISON, KEMP & JONES
ATTORNEYS AT LAW

WILL KEMP
KIRK R. HARRISON
J. RANDALL JONES
WILLIAM L. COULTHARD*
RICHARD F. SCOTTI**
JENNIFER C. POPICK

KRISTIN H. COGBURN
MELANIE A. ELLS**
P. KYLE SMITH

A LIMITED LIABILITY PARTNERSHIP
WELLS FARGO TOWER
3800 HOWARD HUGHES PARKWAY
SEVENTEENTH FLOOR
LAS VEGAS, NEVADA 89109
hkj@hkj-law.com

TELEPHONE
(702) 385-6000

FACSIMILE
(702) 385-6001
(702) 385-1234

*Also licensed in Idaho
**Also licensed in California

December 22, 2005

James R. Olson, Arbitrator
Rawlings, Olson, Cannon, Gormley
& Desruiseaux
9950 West Cheyenne Avenue
Las Vegas, Nevada 89129

William F. Haug, Arbitrator
Jennings, Haug Cunningham, LLP
2800 North Central Avenue, Suite 1800
Phoenix, Arizona 85004-1049

RECEIVED
DEC 23 2005
ACTION cc: Joe ✓

Re: City of Las Vegas/APCO Contract
Washington Buffalo Park

Dear Arbitrators Olson and Haug:

Enclosed for your review and files is a copy of AAA's *Code of Ethics for Arbitrators in Commercial Disputes Summary of Recent Changes*. If you have any questions regarding the enclosed document, please do not hesitate to call me.

Very truly yours,

HARRISON, KEMP & JONES, LLP

Richard F. Scotti, Esq.

RFS:mh
Enclosure

cc: John Randall Jefferies, Esq. (*Via Fax: (602) 916-5513)*

EXHIBIT 4

McDONALD·CARANO·WILSON LLP

Thomas R.C. Wilson

Reply to: Reno

February 7, 2008

John R. Jefferies, Esq.
Fennemore Craig, P.C.
3003 North Central Avenue, Suite 2600
Phoenix, Arizona 85012-2913

Re: *City of Las Vegas/APCO*

Dear Mr. Jefferies:

I received via facsimile your letter of February 13, 2008, today, to me requesting that I confirm my acknowledgment during our telephone conference yesterday that "all of the arbiters knew and understood that they were at all times to act as neutral arbitrators despite their designation by a party."

I wish this letter to serve as confirmation of my acknowledgment during that telephone conference that to my knowledge arbiters Haug and Olson knew and understood that they were at all times to act as neutral arbitrators despite their designation by a party in this arbitration. I was designated to serve as the third arbiter by the other two arbitrators Messers Haug and Olson. My own understanding was that I was to act at all times as a neutral arbitrator.

Thank you.

Very truly yours.

Thomas R.C. Wilson

TRCW:hlm
231076.1

Cc: William Haug, Esq.
James Olson, Esq.
Randall Jones, Esq.
Richard Scotti, Esq.

RECEIVED JRJ
FEB 15 2008
ACTION___ cc: JDE RDS

McDONALD·CARANO·WILSON

To:	Richard Scotti, Esq.	(702) 385-6001
	Randall Jones, Esq.	(702) 385-6001
	John R. Jefferies, Esq.	(602) 916-5513
	Bill Haug, Esq.	(602) 277-5595
	Jim Olson, Esq.	(702) 383-0701
From:	Thomas R. C. Wilson McDonald Carano Wilson LLP (775) 788-2000 (775) 788-2020 Fax Number	
Date:	February 15, 2008	
Re:	*APCO v. City of Las Vegas*	
Documents Sent:	Correspondence	Client # 12254-1

You should receive (4) page(s), including this cover page.

If you do not receive all of the pages, please call Holly at 775.326.4318

COMMENTS:

X Via Facsimile only - no hard copy to follow
____ Via Facsimile - Hard copy to follow via regular U.S. mail
____ Via Facsimile - hard copy to follow via overnight delivery
____ Via Facsimile - hard copy to follow via hand-delivery
____ Via Facsimile - hard copy to follow via email

Notes:

PERSONAL AND CONFIDENTIAL: THE INFORMATION CONTAINED IN THIS TRANSMISSION AND ANY ATTACHMENT(S) INCLUDED WITH IT IS CONFIDENTIAL, TRANSMITTED BASED UPON A REASONABLE EXPECTATION OF PRIVACY AND INTENDED ONLY FOR THE EXCLUSIVE USE OF THE NAMED RECIPIENT. IT MAY CONTAIN INFORMATION THAT IS A TRADE SECRET, PROPRIETARY, PROTECTED BY THE ATTORNEY WORK PRODUCT DOCTRINE, SUBJECT TO THE ATTORNEY-CLIENT PRIVILEGE, OR IS OTHERWISE PROTECTED AGAINST UNAUTHORIZED USE OR DISCLOSURE. IN ACCORDANCE WITH ABA FORMAL OPINIONS 92-368 AND 94-382, ANY DISCLOSURE, DISTRIBUTION, COPYING OR USE OF THIS INFORMATION BY ANYONE OTHER THAN THE INTENDED RECIPIENT, REGARDLESS OF ADDRESS OR ROUTING, IS STRICTLY PROHIBITED. IF YOU HAVE RECEIVED THIS TRANSMISSION IN ERROR, PLEASE NOTIFY US IMMEDIATELY BY TELEPHONE COLLECT AND RETURN THE ORIGINAL MESSAGE TO US AT 241 RIDGE STREET, RENO, NV 89501 VIA THE US POSTAL SERVICE. WE WILL REIMBURSE YOU FOR POSTAGE. THANK YOU.

McDONALD·CARANO·WILSON LLP

Thomas R.C. Wilson

Reply to: Reno

February 15, 2008

Via Facsimile and Email

John R. Jefferies, Esq.
Fennemore Craig, P.C.
3003 North Central Avenue, Suite 2600
Phoenix, Arizona 85012-2913

J. Randall Jones, Esq.
Richard F. Scotti, Esq.
Harrison, Kemp, Jones & Coulthard, L.L.P.
Wells Fargo Tower
3800 Howard Hughes Parkway
Seventeenth Floor
Las Vegas, Nevada 89169

Re: ***APCO Construction v. The City of Las Vegas***
Nevada Arbitration Association Case No. 05-108

Gentlemen:

I received a copy of William Haug's letter to you dated February 15, 2008. I believe his letter to you is fair and accurate based upon my understanding of the circumstances and our conversations about them subsequently.

I do want to emphasize clearly that Bill Haug, Jim Olson and I, from the beginning of this arbitration, believed that we all were neutral arbitrators regardless of the party who appointed the arbitrator. Mr. Haug and Mr. Olson have followed that principle through out the arbitration hearings and during any discussions or conversations we may have had relevant to this arbitration proceeding.

Sincerely,

Thomas R.C. Wilson

TRCW:hlm
231248.2
cc: William F. Haug, Esq.
James R. Olson, Esq.

JH&C
JENNINGS, HAUG
& CUNNINGHAM, LLP
LAWYERS

2800 North Central Avenue
Suite Eighteen Hundred
Phoenix, Arizona 85004-1049
602-234-7800
Facsimile 602-277-5595

William F. Haug
602-234-7806
wfh@jhc-law.com

February 15, 2008

John R. Jefferies
Fennemore Craig, PC
3003 N. Central Ave., Suite 2600
Phoenix, AZ 85012-2913

J. Randall Jones
Richard F. Scotti
Harrison, Kemp, Jones & Coulthard, L.L.P.
Wells Fargo Tower
3800 Howard Hughes Parkway
Seventeenth Floor
Las Vegas, Nevada 89169

Re: **APCO Construction v. The City of Las Vegas**
Nevada Arbitration Association Case No. 05-108

Gentlemen:

I want to follow-up with both parties on e-mails and telephone conferences which we have had over the past few days regarding the City's Motion to Conditionally Disqualify me as an Arbiter in these proceedings. First, I and the other Arbiters, have always believed we were neutral in these proceedings and had agreed as such that we would not have any ex-party contacts with either the party who appointed us or the other party. We have steadfastly followed this commitment in an effort to be fair and impartial in these proceedings and will continue to do so as long as we serve as Arbiters for you.

The comment I made to Mr. Jefferies was not an ex-party comment, as it was made in the presence of Mr. Scotti, his paralegal, and the City's representative, Mr. Larry Walker. I did respond to Mr. Jones' comment on the record, but my comment was taken out of context with what was said. I did not believe at the time it required further response because it did not relate to any issues upon which the Panel would be asked to make an award. It appears that both parties did not understand the context in which my statement was made.

My comment was made in response to statements made by both Mr. Jones and Mr. Jefferies regarding the legal issues relating to the disqualification of Mr. Olson. Since Mr. Jones had not cited any legal authority to support his position, I was simply suggesting to Mr. Jefferies that he provide his legal authorities to the City so we could bring this matter of disqualification to a quick conclusion. My comment was not made in connection with any public record's request nor was it made in response to any comment made by Mr. Henry.

JENNINGS, HAUG
& CUNNINGHAM, L.L.P.

Since Mr. Jefferies was raising the disqualification issue, I thought it was appropriate to suggest to him that he provide to the City his legal authorities on the disqualification issue. I hope this letter will assist you in resolving any issues relating to my qualification.

Very truly yours,

William F. Haug

William F. Haug

WFH/ja
cc: Thomas R. C. Wilson
James R. Olson
1784-26

EXHIBIT 5

FEB-12-2008 13:42 FROM- T-181 P.001/003 F-241



NEVADA
ARBITRATION
ASSOCIATION

610 S. 10TH STREET
LAS VEGAS, NEVADA 89101
T:(702) 737-7334 F:(702) 360-1258
www.NVADR.ORG

RECEIVED
FEB 12 2008
ACTION CC: JOE
SUBS

Facsimile Transmittal

To: John Randall Jefferies, Esq.
FENNEMORE CRAIG, P.C.

Fax: 602-916-5513

From: Susan Wood, Arbitration Coordinator

Phone: 702-737-7334

Date: February 12, 2008

Re: APCO Construction v The City of Las Vegas
NAA Case No.: 05-108

Pages: 3

Attached please find a letter from Nevada Arbitration Association with regard to the above-referenced matter, for your records. A hard copy will be sent via First Class Mail

NOTICE: The information contained in this transmission is confidential and may be subject to the attorney-client privilege or other legal privileges. It is intended only for the use of the individual named above. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please notify us immediately by telephone, collect, at (702) 737-7334, and return the original communication to us via the U.S. Postal Service. We will reimburse you for postage. Thank you.

NEVADA
ARBITRATION
ASSOCIATION

610 S. 10th Street
Las Vegas, Nevada 89101
(702) 737-7334 : (702) 380-1258
www.NVADR.org

February 12, 2008

SENT VIA FACSIMILE (602) 916-5513

John Randall Jefferies, Esq.
FENNEMORE CRAIG, P.C.
3003 North Central Avenue, Suite 2600
Phoenix, Arizona 85012-2913

Re: Nevada Arbitration Association
APCO Construction v. City of Las Vegas

Dear Mr. Jefferies:

We are in receipt of your letter dated February 1, 2008, wherein you have formally requested that Nevada Arbitration Association ("NAA") disqualify Arbitrator James Olson, Esq., as an Arbitrator in the above-referenced matter for not disclosing his law firm's association with the City of Las Vegas. Although your correspondence suggests that an issue may exist pertaining to the untimely disclosures by James Olson, NAA is neither qualified to make this decision, nor has the jurisdiction to render an opinion on this decision as outlined below.

NAA has been informed that the three (3) Arbitrators chosen by the parties on this case are Thomas R.C. Wilson, Esq., William Haug, Esq., and James Olson, Esq. As you are aware, APCO selected Mr. Haug, The City of Las Vegas selected Mr. Olson and together the parties selected Mr. Wilson. None of these Arbitrators are or ever have been on the panel of Arbitrators established and maintained by NAA as stated in Rule 33 of the *Construction, Commercial and Voluntary Arbitration Rules for Nevada Arbitration Association.*

After discussing this matter with counsel, it has been determined that NAA is not jurisdictionally or legally qualified to determine the facts of this matter and render a decision and judgment based on the evidence presented by the parties. As NAA wishes for all the parties to have a fair decision rendered by someone who is qualified to review the information and determine the facts of the matter, we have three (3) options which we believe the parties should consider in an effort to remedy this situation.

The first remedy would be for the parties to stipulate to dismiss the Arbitrator in question;

The second remedy would be for the parties to request a leave from the current Arbitration proceedings and formally file a Motion to Disqualify with the District Court of Nevada and obtain an Order from the Court directing Nevada Arbitration Association to act by either the disqualification of the Arbitrator or whatever other remedy they deem appropriate; or

The third remedy would be for NAA to appoint a neutral party/Arbitrator who is qualified to meet with the parties, determine the facts of the matter and render a decision on this issue only. Each party would be responsible for payment to NAA for the appointed person's time and expenses.

NAA firmly believes that all of the parties are entitled to a fair and unbiased Arbitration and we regret that this action has come up at this stage of the Arbitration proceedings. We hope that upon further consideration, the parties together will revisit this matter and come to a mutually agreeable decision so that you may continue to work toward the resolution of the matters before the Arbitration Panel.

If you would like to discuss this matter further with us, please do not hesitate to contact our office. We do request that you inform us immediately once the parties have had a chance to discuss the above-referenced options and decide how they wish to proceed.

Very truly yours,

NEVADA ARBITRATION ASSOCIATION

Susan M. Wood

Susan M. Wood,
Arbitration Coordinator

/smw

cc: Thomas R.C. Wilson, Esq.
William Haug, Esq.
James Olson, Esq.
Joseph Pelan
Gordon Welch
Randall Jones, Esq.
Richard F. Scotti, Esq.

ORIGINAL

10

133 80

0016

Christopher H. Byrd, Esq.
Nevada Bar No. 1633
MORSE & MOWBRAY
300 S. Fourth St. #1400
Las Vegas, Nevada 89101
Telephone: (702) 384-6340

John Randall Jefferies
FENNEMORE CRAIG, P.C.
Nevada Bar No. 3512
Arizona Bar No. 011542
Fennemore Craig
3003 North Central Avenue
Suite 2600
Phoenix, Arizona 85012-2913
Telephone: (602) 916-5000

Attorneys for Petitioner
Asphalt Products Corp.,
dba APCO Construction

FILED

JUN 6 4 00 PM '05

Shirley B. Parraguirre
CLERK

DISTRICT COURT

CLARK COUNTY, NEVADA

ASPHALT PRODUCTS CORP., a Nevada corporation, d/b/a APCO CONSTRUCTION,

Petitioner,

v.

THE CITY OF LAS VEGAS, a political subdivision of the State of Nevada;

Respondent.

CASE NO.: A505047
DEPT NO.: X

(Exempt from Arbitration: Action seeking extraordinary relief)

VERIFIED PETITION FOR WRIT OF MANDAMUS PURSUANT TO NRS 239.011

COMES NOW the Petitioner, **Asphalt Products Corp., a Nevada corporation, dba APCO Construction** ("APCO"), by and through its attorneys Morse & Mowbray and Fennemore Craig, P.C., and hereby moves this Honorable Court to issue a writ of mandamus compelling the Respondent to produce the various public records and related

CLERK OF THE COURT
JUN 06 2005
COUNTY CLERK

documents as set forth in this prayer for relief. This petition is brought pursuant to NRS 34.160, 239.010, and 239.011. Petitioner declares that it has no plain, speedy or adequate remedy at law to compel the Respondent to produce the records sought.

PARTIES

1. Petitioner APCO is a Nevada corporation doing business in Clark County, Nevada.

2. Respondent the City of Las Vegas is a political subdivision of the State of Nevada.

FACTS

3. On or about January 3, 2004, the City contracted with APCO to perform the work required on the Washington Buffalo Park Project in Las Vegas (the "Project"). The Project is a large sports and recreation development that includes the construction of certain soccer fields and a tennis court complex.[1]

4. Prior to contracting with APCO, the City entered into a Professional Services Agreement with Stantec Architecture, Inc. whereby Stantec agreed to design and serve as the architect on the Project.[2]

5. The Stantec contract provides that the City owns all documents generated by Stantec in connection with the Project. More specifically, Article 7.1, entitled "Ownership of Documents," provides:

> The Construction Documents and other documents prepared by the *Architect/Consultant* for this for this Project are instruments of the *Architect/Consultant's* service for use by the City of Las Vegas with respect to this Project and, unless otherwise provided, the *Architect/Consultant* shall be deemed the author of these documents and shall retain all common law, statutory and other reserved rights, including copyright. However, **the documents prepared as instruments of service are the property of the City except as prohibited by law. The reports, plans, design concepts, information, data and similar documents which are given, prepared or assembled by the *Architect/Consultant* or any other consultants and subcontractors under this Agreement shall not be made available to any individual or organization without the prior written consent of the City** except for presentations, awards, or

[1] See the Declaration of Joe Pelan attached hereto as Exhibit 1.
[2] A true and correct copy of the Stantec Contract is attached hereto as Exhibit 2.

publication through the media. City shall have access to such documents as needed. In the event of the termination of this AGREEMENT, prior to the completion and stamping of construction documents, the City reserves the right to engage a new *Architect/Consultant* to redraw such documents.[3]

6. The City also entered into a construction management agreement with TJ Consulting whereby the latter agreed to act, and has in fact so served, as the City's representative on the Project during construction.[4]

7. The TJ Consulting contract provides that the City owns all documents generated by TJ Consulting in connection with the Project. Specifically, Section 8.04 of that contract, entitled "Ownership of Documents," provides: "[a]ny and all plans, drawings, specifications, studies and other documents (including magnetic media) prepared or assembled by the Construction Manager or any of its subcontractors which are related to the performance of this Agreement are deemed to be property of the City."[5]

8. APCO has not yet finished the Project. During construction, various issues, claims and disputes have arisen between the City and APCO concerning the quality of the City's design documents, the manner in which the City and its consultants have administered the Project, City and architect changes, and changed conditions, among other things. APCO has retained Construction Claims and Management Consulting, LLC ("CCMC") to investigate and analyze APCO's potential claims against the City. Accordingly, CCMC has acted as APCO's authorized agent in requesting Project information from the City.[6]

9. As APCO's representative, CCMC has on several occasions requested that the City make available for review and copying documents associated with the Project. These requests included documents produced and/or received by the City, Stantec, or TJ Consulting.[7]

---

[3] See Exhibit 2 (bold emphasis supplied; all other emphasis in original).
[4] A true and correct copy of the TJ Consulting Contract is attached hereto as Exhibit 3.
[5] Id.
[6] See Pelan Declaration attached hereto as Exhibit 1.
[7] Id.

10. On or about February 25, 2005, CCMC made verbal and written requests to the City for documents related to the Project. This request was memorialized in an email from Jo Ann Williams of the Office of the City Clerk on February 25, 2005.[8]

11. On or about March 7, 2005, CCMC sent correspondence to the City making additional requests for public records in connection with the Project.[9]

12. On or about March 24, 2005, CCMC sent correspondence to the City again requesting all documents related to the Project.[10]

13. To date, the City has produced a limited amount of public information concerning the Project. CCMC's review of that information has confirmed that the records produced represent only a fraction of the documentation and information that would typically be generated on a project of this size ($35,000,000). In addition, CCMC is informed and believes that the electronic data provided by the City is incomplete or altered. Despite repeated requests, the City has not produced all information generated by its agents on the Project.[11]

14. In response to APCO's further inquiries, on or about March 26, 2005, TJ Consulting sent APCO a letter stating that, "[a]ll documents related to Washington Buffalo Park are on public record with the City of Las Vegas. I suggest that you contact the City for any information you may desire. TJ Consulting staff is not authorized to provide you any information, either written or verbally, without the consent of the City. I suggest you speak with the City on this matter."[12]

15. Based upon the March 26 letter from TJ Consulting, APCO is informed and believes that the City has not produced all TJ Consulting documents in its possession nor has it authorized TJ Consulting to provide APCO access to its Project related records.

[8] See Exhibit 4.
[9] See Exhibit 5.
[10] See Exhibit 6
[11] See the Declaration of Greg Frehner attached as Exhibit 7.
[12] See Exhibit 8.

16. APCO is informed and believes that the City also has refused to produce all documents in its possession that were generated by Stantec or to authorize Stantec to provide APCO with access to Stantec's Project related records and information.

17. On or about April 25, 2005, counsel for APCO sent a letter to the City and the City Attorney's Office, once again seeking to obtain the requested records. In addition, APCO requested that the City provide the legal support for its purported position that it was not obligated to produce the records generated for and on behalf of the City with regard to the Project.[13]

18. On or about May 4, 2005, the City Attorney's Office responded in letters dated April 27 and May 4 confirming that it was not going to produce all requested records. Notably, the City failed to provide any legal support for its position, which necessitated this action.[14]

19. In the April 27, 2005 correspondence, the City Attorney stated that, "[r]ecords generated by non-governmental entities become Public Records of the City of Las Vegas only when they are acquired by this government and thereafter retained pursuant to an approved retention schedule for the purposes of performing our public duties," and that under such definition, the records requested by APCO were not public records, because, "unless those documents come into our possession and are retained, they cannot be regarded as Public Records under Nevada law." The City's position is not consistent with relevant case law or the spirit of NRS § 239.010.

POINTS AND AUTHORITIES

A. Mandamus is the Appropriate Remedy

20. In Nevada, writs of mandate are governed by NRS 34.150, et seq. These statutes provide, among other things, that an aggrieved party may obtain a writ of mandate, upon affidavit, when an inferior state tribunal, corporation, board or person fails to legally and properly comply with the dictates of their offices.[15] Specifically, NRS

[13] See Exhibit 9.
[14] See Exhibit 10.
[15] See NRS § 34.170; Nova Horizon, Inc. v. City Council of Reno, 105 Nev. 92, 769 P.2d 721 (1989).

34.160 authorizes the District Court to compel the performance of an act which the law otherwise requires:

> The writ may be issued by the supreme court, a district court or a judge of the district court, to compel the performance of an act which the law especially enjoins as a duty resulting from an office, trust or station; or to compel the admission of a party to the use and enjoyment of a right or office to which he is entitled and from which he is unlawfully precluded by such inferior tribunal, corporation, board or person.

Writs of mandate are appropriate where there is no "plain, speedy and adequate remedy in the ordinary course of law."[16]

21. In analyzing NRS 34.160 and its accompanying provisions, the Nevada Supreme Court has consistently ruled that a writ of mandate is appropriate where a public official has failed to perform an act that the law requires.[17] Accordingly, mandamus is the appropriate procedural remedy to compel the production of public records under NRS 239.010, et seq.[18]

B. The Nevada Public Records Act Requires Providing Access to All of the Requested Documents

22. The Nevada Public Records Act, NRS 239.010, is clear and powerful:

> **All public books and public records of a governmental entity**, the contents of which are not otherwise declared by law to be confidential, **must be open at all times during office hours to inspection by any person.**[19]

23. As observed by the Nevada Supreme Court, "[t]he purpose of the Act is to ensure the accountability of government to the public by facilitating public access to vital information about government activities."[20] As noted by the Nevada Supreme Court, "[t]his statute plainly provides that public records must be available for inspection, unless the records are declared by law to be confidential. Thus, the relevant inquiry is whether these records are

---

[16] NRS § 34.170.
[17] See, e.g., Nova Horizon, 105 Nev. 92, 768 P.2d at 724; State, ex rel Johns v. Gragson, 89 Nev. 478, 515 P.2d 65 (1973); Henderson v. Henderson Auto Wrecking, 77 Nev. 118, 359 P.2d 743 (1961).
[18] DR Partners v. Bd. Of County Comm'rs, 6 P.3d 465 (Nev. 2000).
[19] NRS § 239.010(1) (emphasis supplied).
[20] DR Partners v. Bd. of County Comm'rs, 116 Nev. 616, 621, 6 P.3d 465, 468 (2000).

confidential."[21] The governmental agency at all times bears the burden of establishing why the given records are not subject to disclosure.[22] The City has not and cannot assert any confidentiality exception to the disclosure requirements for the Project records. The records at issue relate to the design and administration of a public construction project and are critical to APCO's presentation of its requests for additional compensation.

24. The Public Records Act also makes clear that the governmental agency itself does not need to possess the records for them to be considered "public records." Specifically, NRS 239.010(3) provides that, "[a]n officer, employee or **agent** of a governmental entity who has custody of a public record shall not refuse to provide a copy of that public record in a readily available medium because he has already prepared or would prefer to provide the copy in a different medium." As such, documents in the possession of an agent of a governmental entity are considered "public records."

25. If a governmental entity denies access to public records, the relief available under NRS 239.011 shall be granted expeditiously:

> If a request for inspection or copying of a public book or record open to inspection and copying is denied, the requester may apply to the district court in the county in which the book or record is located for an order permitting him to inspect or copy it. The court shall give this matter priority over other civil matters to which priority is not given by other statutes. If the requester prevails, he is entitled to recover his costs and reasonable attorney's fees in the proceeding from the governmental entity whose officer has custody of the book or record.[23]

APCO is entitled to its fees and costs incurred in this matter.

C. A Governmental Entity Does Not Need to Possess Records for the Records to be "Public Records"

26. While what constitutes a "public record" within the meaning of the Public Records Act is not expressly defined, the great weight of authority across the country provides that where a third party is acting on behalf of a governmental entity, all records

[21] City of Reno v. Reno Gazette Journal, 119 Nev. 55, 63 P.3d 1147, 1149 (2003).
[22] D.R. Partners, 116 Nev. At 621, 6 P.3d at 468.
[23] NRS § 239.011.

generated in furtherance of that purpose are "public records" and are subject to disclosure. This is true even where the third party is and has at all times been in actual physical possession of those documents.

27. The Ohio Supreme Court's decision in State ex rel. Cincinnati Enquirer v. Krings[24] is instructive. In Krings, the Hamilton County Board of Commissioners (the "Board") was authorized to construct a football stadium. The Board contracted with Getz to work as project manager, and TBMD to work as construction manager on the project. Under their respective contracts, Getz was required to advise TBMD on the development of cost reports, their frequency, the extent of detail, and the distribution of reports. TBMD was required to identify variances between actual and budgeted or estimated costs, advise the Board and the architect of steps necessary to meet the contract price, maintain cost-accounting records on all work performed, and prepare daily logs of construction activities.

28. A newspaper requested that the County allow it to inspect various records relating to cost overruns at the project, and the Board provided the newspaper with various documents in its possession and referred the newspaper to TBMD for further documents. TBMD refused to permit access the documents, stating that the internal business documents of a contactor were not public documents. The newspaper sought and obtained a writ of mandamus and the cause came before the Ohio Supreme Court on TBMD and Getz's appeal.

29. The Ohio Supreme Court affirmed, holding that the documents were public records, even though a private entity generated and was responsible for their maintenance. The court observed that Getz and TBMD were acting within the scope of their contractual obligations to the Board:

> **In these contracts, TBMD and Getz were obligated to prepare records related to construction costs for the publicly funded stadium, the board and the county had the right to monitor their performance under the contracts, and the board was authorized to access records in order to monitor their performance.** In fact, in certain circumstances, Getz had a

[24] 758 N.E.2d 1135 (Ohio 2001).

> contractual duty to act as the county's agent regarding construction costs, including attending cost meetings on behalf of the county and advising the construction manager, i.e., TBMD, on cost reports. And Getz had a further duty to monitor costs against the plan and report to the county. TBMD specifically agreed to act to further the board's interests, to provide access to cost-accounting records, and to record pertinent project information as the board required. **These provisions are sufficiently broad to establish a right of access on the part of the county to TBMD and Getz's records concerning cost overruns on the public construction project.** As the Enquirer notes, it is significant that there is no evidence that either Krings or any representative of the county had been refused access to these records after requesting them from TBMD or Getz.[25]

30. The Ohio Supreme Court went on to note that a public agency was not entitled to conceal information from the public by delegating its public duties to a private entity:

> Moreover, as in State ex rel. Gannett Satellite Info. Network v. Shirey (1997), a public office contracted with private entities for a public purpose: to construct a publicly funded stadium, an undertaking of enormous, unquestioned public importance. As we held therein, **governmental entities cannot conceal information concerning public duties by delegating these duties to a private entity. By undertaking to exercise its statutorily and historically supported authority to construct Paul Brown Stadium for specified public purposes, the board of county commissioners invoked the concomitant duty to provide public access, via proper records requests, to records relating to that construction.**[26]

31. Similarly, in International Brotherhood of Electrical Workers Local 68 v. Denver Metropolitan Major League Baseball Stadium District,[27] the general contractor ("MBM") responsible for construction of the Coors Baseball Stadium received pre-qualification documents and bid proposal packages from various subcontractors. Although MBM kept custody and control of the documents, the stadium district had access to the documents for review prior to interviewing the final candidates for subcontracts. The international brotherhood ("IBEW") submitted a request to the stadium district for documents relating to the award of the electrical subcontract to Riviera, and received incomplete and heavily redacted documents in response.

---

[25] Id. 758 N.E.2d at 1139-40 (emphasis supplied). A copy of this and all foreign decisions are attached to the Court's copy of this petition.

[26] Id. 93 Ohio St.3d at 659, 758 N.E.2d at 1140 (citations omitted) (emphasis supplied).

[27] 880 P.2d 160, 162 (Co. App. 1994).

32. On an appeal from a district court determination that the documents at issue were "public records," Riviera argued that the district court erred because the documents were never in the actual possession of the stadium district. The appellate court rejected this contention, noting that, "[w]e agree with IBEW that the documents are nonetheless public records because they were used by the Stadium District in the exercise of its official functions."[28] In reaching this conclusion, the appellate court noted that, "the documents at issue, while never in the actual personal control or custody of any employee or officer of the Stadium District, were maintained by MBM in such a manner as to give the Stadium District full access to the documents. . . **Thus, that the records were not made or kept by the Stadium District is not determinative and the record supports the trial court's factual determination that the documents were public records in the custody of the Stadium District.**"[29]

33. Likewise, in MacKenzie v. Wales Township,[30] two townships contracted with the city of Port Huron to prepare property tax notices for mailing to property owners in their respective townships. Using paper tax documents provided by the townships, Port Huron created magnetic computer tapes containing the pertinent tax information on each individual property owner. Port Huron then returned the paper tax documents and retained the tapes. The plaintiff, a real estate broker, requested a copy of the tapes and both townships refused.[31]

34. The townships contended that the tapes were not public records because they neither created nor possessed the tapes. The appellate court rejected this argument, holding that, "[w]hile defendants did not create or have physical possession of the tapes, it may be reasonably inferred that they used the tapes, albeit indirectly, in performing an official function; thus, those tapes fall within the statutory definition of a 'public record.'"[32]

---

[28] Id.
[29] Id. (emphasis supplied).
[30] 635 N.W.2d 335, 336 (Mich. App. 2001).
[31] Id., 635 N.W.2d at 336.
[32] Id. 635 N.W.2d at 338.

35. These decisions confirm that records possessed by third parties in connection with services rendered at the direction or on behalf of a governmental entity are public records for disclosure purposes. See also; Forum Pub. Co. v. Fargo,[33] (applications and records disclosing names and qualifications of applications for city chief of police, though in possession of third-party private consulting firm to whom city had delegated initial screening process, were part of personnel records of city and were public records within meaning of state open-record law); Baytown Sun v. City of Mont Belvieu,[34] (city had contractual right of access to information regarding salaries of employees of management contractor for city-owned recreation complex, and thus, such salary information was 'public information' under public information act); Concerned Ratepayers Ass'n v. Public Utility Dist. No. 1 of Clark County, Wash.,[35] (document in possession of contractor which contained contractor's technical specifications for turbine to be used in proposed electrical power plant, and which was reviewed, evaluated, and referred to by county public utility district in connection was used by district and was a public record for purposes of public disclosure act).

36. In addition, when a public entity receives documents from third parties that prepared them in connection with services rendered at the direction of a governmental entity, such documents clearly are public records when the governmental entity takes possession of them. See e.g., Sapp Roofing Co., Inc. v. Sheet Metal Workers' Intern. Ass'n, Local Union No. 12,[36] (private contractor's payroll records which were in possession of school district for work performed pursuant to roofing contract were public records, as records evidenced a disbursement by the school district); Laborers Int'l Union v. Aberdeen,[37] (copies of private contractor's payroll records filed with a city pursuant to a public contract constituted a public record, subject to disclosure under the state's public disclosure act).

[33] 391 N.W.2d 169 (N.D. 1986).
[34] 145 S.W.3d 268 (Tex. App. 2004).
[35] 983 P.2d 635) (Wash. 1999).
[36] 713 A.2d 627 (1998).
[37] 642 P.2d 418 (1982).

37. In this case, records generated and/or maintained by Stantec, TJ Consulting, and their subconsultants are clearly public records within the meaning of NRS 239.010. The City has a clearly defined ownership interest in the Project records, which obviously includes a right of access, review and possession.

38. As noted above, the TJ Consulting contract specifically provides that all documents "prepared or assembled by the Construction Manager or any of its subcontractors which are related to the performance of this Agreement are deemed to be property of the City."[38]

39. Similarly, the Stantec contract provides that, "[t]he Construction Documents and other documents prepared by the Architect/Consultant for this for this Project are instruments of the Architect/Consultant's service for use by the City of Las Vegas with respect to this Project and . . . the documents prepared as instruments of service are the property of the City except as prohibited by law."[39]

40. Second, all Project related records, regardless of whether they were generated by the City or its consultants or in the City's possession, clearly were prepared as part of the City's official business in designing and constructing the Project. Indeed, APCO has only requested those documents that were prepared in connection with the Project.

41. Third, neither TJ Consulting nor Stantec are permitted to provide APCO with access to the Records without the City's authorization. Specifically, the March 26, 2005 correspondence from TJ Consulting attached hereto as Exhibit H clearly states that, "TJ Consulting staff is not authorized to provide you any information, either written or verbally, without the consent of the City. I suggest you speak with the City on this matter."[40] In that same correspondence, TJ Consulting also stated that "[a]ll documents related to Washington Buffalo Park are on public record with the City of Las Vegas." APCO has received certain documents from the City that were generated by TJ Consulting. The records,

[38] See TJ Consulting Contract submitted as Exhibit 3, at Section 8.04.
[39] See Stantec Contract submitted as Exhibit 2, at Article 7.1.
[40] See Exhibit 8.

however, are demonstrably incomplete. This leads to one of two conclusions: (i) either the City is in possession of certain TJ Consulting records that it has not yet produced; or (ii) TJ Consulting's statement that all documents related to the Project were on record with the City was inaccurate. In either event, APCO is entitled to and needs a ruling from this Court resolving this issue.

42. Similarly, the Stantec contract provides that, "[t]he reports, plans, design concepts, information, data and similar documents which are given, prepared or assembled by the Architect/Consultant or any other consultants and subcontractors under this Agreement shall not be made available to any individual or organization without the prior written consent of the City. . ."[41]

43. Despite this, the City maintains that the Records are not public, and refuses to either provide them to APCO, or grant APCO access to the documents in Stantec or TJ Consulting's possession.

44. As noted by the Ohio Supreme Court in Krings, "**governmental entities cannot conceal information concerning public duties by delegating these duties to a private entity. By undertaking to exercise its statutorily and historically supported authority to construct Paul Brown Stadium for specified public purposes, the board of county commissioners invoked the concomitant duty to provide public access, via proper records requests, to records relating to that construction.**"[42]

45. Likewise, the City here cannot conceal information concerning its public duties by delegating those duties to Stantec or TJ Consulting. By undertaking to develop, design, and build the Project, the City has a corresponding duty to provide public access to all records related thereto. By refusing to do so, the City is acting to conceal public records without any legitimate purpose.

PRAYER FOR RELIEF

Accordingly, Petitioner respectfully requests the Court to:

a. Conduct an expedited hearing on the instant matter, as provided in NRS

[41] See Stantec Contract submitted as Exhibit 2, at Article 7.01.
[42] 93 Ohio St.3d at 659, 758 N.E.2d at 1140 (citations omitted) (emphasis supplied).

239.011;

b. Order Respondent to produce all records related to the Project, whether they are maintained in written or electronic form, and whether they are in the City's or any of its consultants' possession;

c. Award Petitioner its attorneys fees and costs; and

d. Grant such other relief as justice demands.

DATED this 6th day of June, 2005.

MORSE & MOWBRAY

By _____

Christopher H. Byrd, Esq. - #1633
300 S. Fourth St. #1400
Las Vegas, Nevada 89101
(702) 384-6340

John Randall Jeffries, Esq. - #3512
Fennemore Craig
3003 N. Central Ave., Ste. 2600
Phoenix, Arizona 85012
(602) 916-5000

Attorneys for Petitioner
ASPHALT PRODUCTS CORP.,
dba APCO CONSTRUCTION

///

VERIFICATION

I, the undersigned, **JOE PELAN,** under penalties of perjury, declare that I am the Project Manager of APCO Construction, the Petitioner named in the foregoing VERIFIED PETITION FOR WRIT OF MANDAMUS PURSUANT TO NRS 239.011, and know the contents thereof; that the pleading is true of my own knowledge, except to those matters stated on information and belief, and that as to such matters, I believe them to be true.

DATED this 6th day of June, 2005.

JOE PELAN

SUBSCRIBED and SWORN TO before me this 6th day of June, 2005.

Notary Public, State of Nevada

NOTARY PUBLIC
ANGELINA M. MARTINEZ
STATE OF NEVADA - COUNTY OF CLARK
MY APPOINTMENT EXP. MARCH 3, 2009
No: 05-95343-1

1667863.3/99031.020

Contractor Performance Evaluation

Overall Rating: **3.09**

Contractor:	**APCO**	
Project Name:	**Centennial Hills Park Phase 3**	
Plan Check Number:	**C-0363-06**	
Bid Number:	**06.15341.03-LED**	
P.O. Number:		
Award Amount:	**$12,091,896.00**	
Change Order Amount:	**$456,238.00**	3.8% of Award
Original Contract Term:	**365** calendar days	
Additional Days Granted:	**43** calendar days	11.8% of Term
Days Late:	calendar days	0.0% of Term
Substantial Completion Date:	**07/02/08**	
Final Payment Date:	**TBD**	#VALUE! day Close Out

An overall rating of **less than 3** but no less than 2.5 will result in a **3 month** bidding suspension.

An overall rating of **less than 2.5** but no less than 2 will result in a **6 month** bidding suspension.

An overall rating of **less than 2** will result in a **12 month** bidding suspension.

An overall rating of **4 or higher** will result in a **bonus payment of 1/2%** of the contract award amount, but no more than $20,000. (Contract award amount AND completed construction value must be at least $500,000 to be eligible.)

Type an X in the appropriate box below.

Construction Project Representative

Gary Barr	Excellent	Good	Standard	Deficient	Failing	No Opinion
Responsiveness		X				
Reason: Average responses to field conditions.						
Expertise		X				
Reason: Subs appeared to have good expertise in their work.						
Team Player		X				
Reason: Willing to participate in resolving issues.						
Claims & Change Orders			X			
Reason: Not responsive in a timely manner.						
Schedule		X				
Reason: Maintained schedule with due consideration for the design errors and omissions in the contract documents.						
Quick Close Out			X			
Reason: Not responsive in a timely manner.						
Quality		X				
Reason: Most work was of reasonable quality with good responses for items to be redone.						
Other Comments: Overall good work for final product provided.						

Type an X in the appropriate box below.

Construction Management

Jacobs	Excellent	Good	Standard	Deficient	Failing	No Opinion
Responsiveness			X			

Consultant, *when utilized*

Reason: Untimely responses on all phases of construction						
Expertise			X			
Reason: Change of site general foreman effected the quality of workmanship on site						
Team Player				X		
Reason: Willing to be very slow at helping out with job issues						
Claims & Change Orders				X		
Reason: Unable to receive the change orders in a reasonable time frame						
Schedule				X		
Reason: Never received the monthly schedule updates. Therefore, subs unable to determine job progress						
Quick Close Out				X		
Reason: Not responsive in a timely manner						
Quality			X			
Reason: Final project was of good quality but issues still remain unresolved						
Other Comments: APCO left unfinished projects on site be completed at the City of Las Vegas' expense						

Type an X in the appropriate box below.

Purchasing & Contracts *(Email to Contract Specialist)*

Name	Excellent	Good	Standard	Deficient	Failing	No Opinion
Labor Laws			X			
Reason: No labor issues during construction.						
EOCP Compliance			X			
Reason: No Disadvantaged suppliers selected. Strong effort to acquire. Documentation incomplete on good faith effort form						
Other Comments:						

Type an X in the appropriate box below.

Prime Design Consultant

Chris Largham	Excellent	Good	Standard	Deficient	Failing	No Opinion
Responsiveness					X	
Reason: Repeated requests for submittals and credits due went without response. Completion of project has been very poor. See other comment below.						
Compliance to Docs			X			
Reason:						
Cooperation				X		
Reason: On multiple occasions discussions were held to clarify intent, give direction, etc however the follow through did not happen.						
Other Comments: Substantial completion was give in July, as of October punch list is still not completed.						

Type an X in the appropriate box below.

OAS: Building Department *(Email to Tom Gage, Not Applicable to CE offsite projects)*

Randy Hunter	Excellent	Good	Standard	Deficient	Failing	No Opinion
Building Inspection		X				
Reason:						
MPE Inspection			X			
Reason: Some elec work was covered w/o inspection which then had to be opened up for inspection						

Other Comments:

Type an X in the appropriate box below.

CE: Construction Management Coordinator or *OAS:* Project Manager & Designer

Mike Ahlert	Excellent	Good	Standard	Deficient	Failing	No Opinion
Teamwork			X			
Reason: Joe Pelan, Jerry Belt and Charlie worked hard to assist the City by team building efforts.						
Submittals			X			
Reason:						
Complete at Opening			X			
Reason: Contractor worked hard to get the inspections finaled in order assist the City with Grand Opening Date. However the Park was not complete (IE the interpetive						
Quality			X			
Reason:						
Other Comments:						

Type an X in the appropriate box below.

Control Specialist

Leray Acosta	Excellent	Good	Standard	Deficient	Failing	No Opinion
Affect on Budget			X			
Reason:						
Affect on Schedule			X			
Reason:						
Other Comments:						

Type an X in the appropriate box below.

Section/Division Superintendent or Manager

Name	Excellent	Good	Standard	Deficient	Failing	No Opinion
Easy to Work With		X				
Reason: Were able to resolve many issues						
Timely Conclusive Finish			X			
Reason:						
Value Received		X				
Reason: Good project - good response from residents						
Other Comments:						

Type an X in the appropriate box below.

Construction Project Representative

Warranty Issues to date	Excellent	Good	Standard	Deficient	Failing	No Opinion
Responsiveness		X				
Reason:						
Quality of Repairs		X				
Reason:						
Other Comments: Good responses in taking care of critical issues.						

LAS VEGAS SUN

So sue us, you can still work for us

Joe Schoenemannn

Mon, Dec 17, 2007 (7:06 a.m.)

Two years ago, after learning that each of 23 tennis courts at the new Washington Buffalo Park was cracked even before it opened, city staff did not want the city to work again with Asphalt Paving Corp., the courts' general contractor.

The City Council ignored that recommendation, however, and allowed APCO to bid for $19.1 million worth of work on the Centennial Hills Community Center. APCO did not win that contract. But shortly after, APCO filed a $7 million claim against the city over the $29.7 million Washington Buffalo Park job.

During the past year, APCO has bid twice on city projects and both times the City Council awarded the contracts - worth a total of $13.2 million - to the company, unanimously and without question.

The oddity of those early 2007 votes became apparent only two weeks ago when City Council members expressed strong reservations about APCO, wondering aloud whether the city had to keep doing business with a company that is suing it.

"Why allow them to bid if they are suing us?" Councilman Gary Reese asked.

City Attorney Brad Jerbic replied that the city has an obligation "to award to the lowest responsive and responsible bidder."

He added, however, that two years earlier, city staff declared that APCO was "not a responsible bidder and should be disqualified for the Centennial Hills project."

"We thought they should be denied," he said. "The City Council (voted to let APCO bid) after we teed it up."

Reese's question stemmed from a request by Jerbic's office for $800,000 more - bringing its legal tab to date in the APCO claim to a whopping $2.3 million - for outside attorneys and experts in defense against APCO's $7 million claim.

That is the amount the company contends it is owed because of delays and construction changes caused by the city during construction of the Stacy and Amanda Darling Memorial Tennis Center. The city filed a counterclaim, saying the tennis court repairs would cost about $7 million.

The case between APCO and the city will be decided by an arbitrator. If the city loses, city attorneys told the City Council, APCO is likely to ask the city to pay its legal fees, which could be an additional $2 million.

While City Council members carefully questioned the city's legal staff about the cost of the fight against APCO and whether the city still had to do business with APCO, Mayor Oscar Goodman abstained from voting because of his ties with APCO executives. Goodman holds a 4 percent stake in Apex Business

Park, which is partly owned by APCO employees.

Given those ties, why did he vote in favor of the two city contracts with APCO within the past year?

In both cases - on Jan. 3 and April 18 - the City Council voted unanimously to award the contracts to APCO. Asked about those votes, Goodman first insisted he did not vote on the items. When told they were part of a consent agenda - in which several items are lumped together and the council, including the mayor, is asked to vote for all of them simultaneously - the mayor said he did not remember voting on them.

"If I did, it was certainly an oversight on my part," he said.

Goodman's staff later clarified the situation, saying that APCO submitted no disclosure forms for its 2007 bids. Had those forms been provided, it would have revealed the potential conflict.

"As a result of the lack of documentation, the mayor was unaware of the conflict," said Diana Paul, senior public information officer.

Bill Henry, the city's senior litigation counsel, blamed attorneys for APCO for the high legal costs, which the city initially thought would not surpass $1 million.

"Every tactical choice made by lawyers for APCO, whatever their motivation is, and I wouldn't speculate to that, (has) resulted in increasing the expense to the city and also to APCO," Henry said.

At the council meeting, Goodman said he would likely be able to broker a deal between the city and APCO if his intervention did not constitute an ethical violation. But the mayor later said Jerbic informed him that ethical considerations barred him from intervening.

archive



GREENSPUN
INTERACTIVE

© Las Vegas Sun, 2009, All Rights Reserved. Job openings. Published since 1950. Contact us to report news, errors or for advertising opportunities.

Chair Buck and Trustee Montandon each stated that they agreed with the City Manager and Chair Buck asked that the item be placed as an action item on the Board's next agenda so that they could revise their action of November 25, 2005.

4. Update on the construction of the Aliante Library.

ACTION: UPDATE GIVEN

Director Laruy told the Board that the original completion date for the Aliante Library was January 25, 2006. Subsequently, it was extended in writing to February 25, 2006, at APCO's request. When it was clear that APCO would not finish the project by February 25, Director Laruy asked when they would be done. Their project manager, Joe Pelan, said that if she would give him until March 10, 2006, the project would be complete. The completion date was then extended again, in writing, until March 10, 2006. As the project was not even close to being completed on March 10, liquidated damages were instituted as of March 11, 2006, at $2,000 per day per the contract.

She stated that even today, the project is not complete and the Library District is incurring charges of approximately $500 per week for storage of shelving and furniture that cannot be delivered to the building.

Director Laruy also thanked Trustee Montandon for placing a call to APCO Construction's Golden Welch in an effort to bring the project to completion.

Bob Garlow, Project Manager, reported that APCO had scheduled a walk through for the purpose of developing a punch list on March 21, 2006. The architects, Mr. Garlow and several of the pertinent consultants and inspectors arrived and it was clear that APCO was nowhere near ready. The City's team instead developed a construction completion list which has been sent to APCO Construction and Golden Welch.

Mr. Garlow spoke of the lack of performance, poor workmanship and the lack of attention to detail and stated he has repeatedly discussed these issues with APCO's project superintendent.

He further informed the Board that there has been a problem with the application of the anti graffiti coating for the exterior block. The coating was applied to a large portion of the building prior to being properly cleaned resulting in an unacceptable appearance. After that was done the general superintendent for APCO, Billy Platt, stated at a recorded meeting that the resulting appearance of the exterior building was not up to APCO standards and they would do whatever they had to do to make it right. It was agreed that they would have to sandblast the coating from the building prior to reapplication. Mr. Garlow stated that a few days ago he received a letter from APCO revisiting this issue and asking the City to pay for the sandblasting.

Mr. Garlow went on to say that the project specifications permit liquidated damages for failure to adhere to the completion date and allow for the assessment of further damages for any other costs the City incurs.

Chair Buck informed the Board that Pardee has a check for the Library District in the amount of $5,000 which should arrive next week.

5. **Discussion and action on the construction of a library on Alexander and Martin Luther King.**

ACTION: NO ACTION TAKEN

Director Laruy stated that the City Manager has recommended the inclusion of $4 million in the FY 2006/2007 budget toward the planning and construction of a library on the Library District's property on Alexander and Martin Luther King.

City Manager Rose said that he has spoken with Commissioner Tom Collins who has expressed his interest in partnering to build a library on that site. He will continue to pursue this matter with Commissioner Collins.

6. **District Library Director's report**

Director Laruy reported that the Grand Opening for the Aliante Library has been scheduled for Tuesday, May 23, 2006 at 4:30 p.m.

She went on to say that on Saturday, February 25 area children were invited to cast their hand print in a plaster column in the children's room at the Aliante Library. It was very successful and over 75 children participated.

Director Laruy reported that we will again sponsor an Easter Egg Hunt on Saturday, April 15, 2006 at 10:00 a.m. at the Main Branch and invited the Board Members and their families to attend.

She further stated that the Las Vegas-Clark County Library District has changed their automation system and that we no longer have access to their computer system. This has resulted in requiring materials be returned to the library systems where they were borrowed.

PUBLIC FORUM

Bob Borgersen, 7617 Island Rail Drive, North Las Vegas, noticed that the trash enclosures were closed when he approached the library and thanked Chair Buck for taking action on the matter. He also stated that there is a security guard posted at the Aliante Library during the evening hours.

ADJOURNMENT

The meeting was adjourned at 5:40 p.m.

ATTACHMENT 6
LIST OF COMPLETED PROJECTS

FORM A: Bidder's Project Experience

Project Name: Aliante Library

Project Address: 2400 W. Deer Springs Way, Las Vegas, NV 89084

Owner's Name: City of North Las Vegas

Owner's Point of Contact: Bob Garlow

Phone Number: (702)633-1974

Project Description: This Project consists of the construction of a 15,000 S.F. single story branch Library to be located at Deer Springs Way, east of Aliante Parkway, within the Aliante development in the City of North Las Vegas.

Award Amount $4,680,804.00

Year Completed: 2006

Was this project completed late? ☐ YES ☒ NO

Did the contract contain liquidated damages or penalty clauses? ☒ YES ☐ NO

If yes, were damages assessed? ☐ YES ☒ NO

What was the amount assessed? _____

Were any judgments entered pertaining to this project? ☐ YES ☒ NO

BID PROPOSAL PAGE

ATTACHMENT 6
LIST OF COMPLETED PROJECTS

Bidder: APCO Construction

Bidders must respond to each of the below questions.

1. Does the Bidder or its Superintendent have experience in restoration of historic buildings completed in accordance with the US Secretary of Interior's Standards for the Treatment of Historic Properties?

   ☒ YES ☐ NO*

   If the Bidder has the experience, then complete Form B. If the Superintendent has the experience, then complete Form A for the Bidder and Form C for the Superintendent.

   * If neither the Bidder nor its Superintendent has the required experience, then refer to ITB 13.02 concerning Determination of Responsible.

2. Has the bidder failed to perform any contract as a result of causes within the control of the bidder or a subcontractor or supplier of the bidder?

   ☐ YES ☒ NO

3. Has the bidder failed to perform any portion of the Work that caused the Owner and/or others, (i.e., the surety company, etc.) to exercise its right to complete the Work in the contract?

   ☐ YES ☒ NO

4. Has the bidder been involved in any failure to complete or breach of contract for any reason including, customer-directed suspensions or disbarments/disqualifications?

   ☐ YES ☒ NO

5. Has the bidder been disciplined or fined by the State Contractors' Board or another state or federal agency for conduct that relates to the ability of the bidder to perform the Work required by the City for this Project?

   ☐ YES ☒ NO

6. Has the bidder been convicted of a violation for discrimination in employment?

   ☐ YES ☒ NO

BID PROPOSAL PAGE

Nevada State Contractors Board
2310 Corporate Circle, Suite 200 Henderson NV 89074 (702)486-1100 Fax:(702)486-1190 Investigations:(702)486-1110
9670 Gateway Drive, Suite 100 Reno NV 89521 (775)688-1141 Fax:(775)688-1271 Investigations:(775)688-1150
www.nscb.state.nv.us

License Search Details

Press "Previous Record" to view the previous record in the list

Press "Next Record" to view the next record in the list.

Press "Search Results" to return to the search results list screen.

Press "New Search Criteria" to revise your existing search criteria or enter new search criteria.

Press "New Search" to select a different search.

License Number: **0062666**

Current Date: 06/12/2009 11:02 AM *(mm/dd/yyyy)*

Business Primary Name:	**AOKI NODA LOGISTICS LLC DBA**	License Monetary Limit:	**$4,200,000.00**
Fictitious Business Name:	**COGENT ELECTRIC**		
Business Address:	**5725 S VALLEY VIEW** **# 10** **LAS VEGAS, NV 89118**		
Phone Number:	**(702)614-0759**		
Status:	**Suspended, No Bond**		
Status Date:	**06/08/2009** (mm/dd/yyyy)		
Origin Date:	**04/05/2006** (mm/dd/yyyy)		
Expiration Date:	**04/30/2010** (mm/dd/yyyy)		
Business Type:	**Limited Liability Company**		
Classification(s):	**C-2 - ELECTRICAL CONTRACTING** **C-2D - LOW VOLTAGE**		

Bond expired 6/6/09

Principal Name	Relation Description
AOKI, YOKO	**Member**

Indemnitor Name	Effective Date of Indemnification (mm/dd/yyyy)	Date Indemnification Removed (mm/dd/yyyy)
AOKI, YOKO	**06/04/2008**	

Bonds

Bond Type:	**Surety Bond**
Bond Number:	**41022988**

Bond Agent:	**CLERICO, LAURI**
Surety Company:	**PLATTE RIVER INSURANCE COMPANY**
Bond Amount:	**$30,000.00**
Effective Date:	**03/30/2006** (mm/dd/yyyy)
Cancellation Date:	**06/06/2009** (mm/dd/yyyy)

One Time Raise in Limits (Past 1 Year Only)

Date Approved (mm/dd/yyyy)	Project Type	Project Name	Project Location	Bid Date (mm/dd/yyyy)	Approval Amount
07/24/2008		**MIA T-3 BUILDING 2152**	**LAS VEGAS, NV**	**05/21/2008**	**$5,200,000.00**

The information contained on these pages are provided as a courtesy and may not reflect recent changes or updates. Neither the completeness nor accuracy is guaranteed. The Nevada State Contractors Board shall have no liability or responsibility for loss and damages arising from the information provided or retrieved from these pages.

Previous Record | Search Results | New Search Criteria | New Search

2009-06-12 11:02:18 AM

Nevada State Contractors Board
2310 Corporate Circle, Suite. 200 Henderson NV 89074 (702)486-1100 Fax: (702)486-1190 Investigations: (702)486-1110
9670 Gateway Drive, Suite 100 Reno NV 89521 (775)688-1141 Fax: (775)688-1271 Investigations: (775)688-1150
www.nscb.state.nv.us

License Search Details

Press "Previous Record" to view the previous record in the list

Press "Next Record" to view the next record in the list.

Press "Search Results" to return to the search results list screen.

Press "New Search Criteria" to revise your existing search criteria or enter new search criteria.

Press "New Search" to select a different search.

License Number: **0062666**

Current Date: 06/12/2009 11:01 AM *(mm/dd/yyyy)*

Business Primary Name:	**AOKI NODA LOGISTICS LLC DBA**	License Monetary Limit:	**$4,200,000.00**
Fictitious Business Name:	**COGENT ELECTRIC**		
Business Address:	**5725 S VALLEY VIEW** **# 10** **LAS VEGAS, NV 89118**		
Phone Number:	**(702)614-0759**		
Status:	**Suspended, No Bond**		
Status Date:	**06/08/2009** (mm/dd/yyyy)		
Origin Date:	**04/05/2006** (mm/dd/yyyy)		
Expiration Date:	**04/30/2010** (mm/dd/yyyy)		
Business Type:	**Limited Liability Company**		
Classification(s):	**C-2 - ELECTRICAL CONTRACTING** **C-2D - LOW VOLTAGE**		

Principal Name	Relation Description
AOKI, YOKO	**Member**

Indemnitor Name	Effective Date of Indemnification (mm/dd/yyyy)	Date Indemnification Removed (mm/dd/yyyy)
AOKI, YOKO	**06/04/2008**	

Bonds

Bond Type:	**Surety Bond**
Bond Number:	**41022988**

Bond Agent:	**CLERICO, LAURI**
Surety Company:	**PLATTE RIVER INSURANCE COMPANY**
Bond Amount:	**$30,000.00**
Effective Date:	**03/30/2006** (mm/dd/yyyy)
Cancellation Date:	**06/06/2009** (mm/dd/yyyy)

One Time Raise in Limits (Past 1 Year Only)

Date Approved (mm/dd/yyyy)	Project Type	Project Name	Project Location	Bid Date (mm/dd/yyyy)	Approval Amount
07/24/2008		**MIA T-3 BUILDING 2152**	**LAS VEGAS, NV**	**05/21/2008**	**$5,200,000.00**

The information contained on these pages are provided as a courtesy and may not reflect recent changes or updates. Neither the completeness nor accuracy is guaranteed. The Nevada State Contractors Board shall have no liability or responsibility for loss and damages arising from the information provided or retrieved from these pages.

Next Record | Search Results | New Search Criteria | New Search

2009-06-12 11:01:05 AM

January 7, 2009

Ms. Gaylene J. Potter
Southern Nevada Bid Depository
1550 Western Avenue
Las Vegas, NV 89102

Re: Clark County Bid No. 601272-08
Family Courts Building Remodel

Dear Ms. Potter,

This letter is to inform you that we have been unable to agree on terms and conditions of a subcontract with the low bidder for electrical work on the above referenced project. Specifically, Cogent Electric is unable to provide a payment and performance bond for their work and has refused to provide a personal guarantee which meets our requirements.

On November 25, 2008, upon receiving the bid results from the bid depository, we telephoned Cogent Electric to inquire whether they would be able to provide a payment and performance bond for their work. They responded that they could not provide a bond in 2008 but could provide a bond beginning in 2009. Based upon that information we included their quotation in our proposal and listed them as low bidder.

Unfortunately Cogent is not able or willing to honor this agreement and therefore we are unable to enter into a subcontract with them. Cogent Electric has voluntarily withdrawn their bid (see attached). We are currently negotiating with several other subcontractors in an effort to mitigate our losses due to the failure of this subcontractor to honor their proposal.

We hereby request that Cogent Electric be prohibited from bidding through the bid depository until such time that they can demonstrate the ability to honor their commitments.

Please let me know if you agree with this request.

Sincerely yours,

Steve Brooke
Executive Vice President

Encl.

Steve Brooke

From: Diana Cox [dianac@cogentnetworks.com]
Sent: Monday, January 05, 2009 7:25 AM
To: Wayne Davenport
Cc: Steve Brooke; 'Donna Bradley'
Subject: RE: Family Court Project

Wayne,

Do to the transition of this company at the present time Ms. Yoko Aoki is unable to supply her personal financials. If this will impact the job we regret to inform you that we will withdraw our bid on this project.

Thanks,

Diana Cox
Cogent Electric
5725 S Valley View #10
Las Vegas, NV 89118
PH:702-614-0759
FAX:702-702-616-2897

-----Original Message-----
From: Wayne Davenport [mailto:WayneD@jaynescorp.com]
Sent: Wednesday, December 31, 2008 2:15 PM
To: Diana Cox
Subject: RE: Family Court Project

Diana - thank you for this information. When we accept a personal guarantee we need to have copies of the guarantor's financial statements. In this case the guarantor is Yoko Aoki and so we will need a copy of those personal financials. Thanks, Wayne

-----Original Message-----
From: Diana Cox [mailto:dianac@cogentnetworks.com]
Sent: Wednesday, December 31, 2008 12:32 PM
To: Wayne Davenport
Subject: Family Court Project

Wayne,

Per Steve Brooks instruction I am enclosing the personal guarantee and a copy of our Financial report thru November 2008. If you have any further questions please do not hesitate to call me. Have a Safe New Year.

Thanks,

Diana Cox
Cogent Electric
5725 S Valley View #10
Las Vegas, NV 89118
PH:702-614-0759
FAX:702-702-616-2897



Helix Electric

Constructors Engineers

FAX TRANSMITTAL

TO: Nancy Paolino DATE: 6-8-09

ATTN: _____ FAX# 739-1724

FROM: Victor Fuchs/Kathi McCain RE: Family Courts Bldg. Remodel

TOTAL # OF PAGES : 3 INCLUDING THIS SHEET

MESSAGE: _____

SIGNED: _____

3078 E. Sunset Rd., Suite 9 • Las Vegas, NV 89120 • Tel: (702) 732-1188 Fax: (702) 699-5743
License #0053810

GENERAL AFFIDAVIT

State of Nevada
County of Clark

BEFORE ME, the undersigned Notary, Virginia Classick
[name of Notary before whom affidavit is sworn], on this 11th *[day of month]* day of February *[month]*, 2009, personally appeared Cadwell Collins *[name of affiant]*, known to me to be a credible person and of lawful age, who being by me first duly sworn, on (his) *[his or her]* oath, deposes and says:

Per the conversation I had on the afternoon of 5th of February with Donna Bradley Vice President of Cogent Electric, she alluded to the difficulty and frustration she was having with the owners of her company not allowing their local office in procurring performance and payment bond. In addition Donna identified that Cogent electric had lost nearly 6 million dollars in work in the past months, due to the fact of not being to supply a PP bond. She apologized about the situation and noted to keep them in mind for projects that would not require a bond so Cogent would bid.

[set forth affiant's statement of facts]

Cadwell Collins
[signature of affiant]

Cadwell Collins
[typed name of affiant]

4052 Dean Martin Drive LV NV 89103
[address of affiant, line 1]

[address of affiant, line 2]

Subscribed and sworn to before me, this 11th *[day of month]* day of February *[month]*, 2009.

[Notary Seal:]

VIRGINIA M. CLASSICK
Notary Public State of Nevada
No. 07-4645-1
My appt. exp. Aug. 22, 2011

Virginia Classick
[signature of Notary]

Virginia Classick
[typed name of Notary]

NOTARY PUBLIC

My commission expires: August 22, 2011.

GENERAL AFFIDAVIT

State of Nevada
County of Clark

BEFORE ME, the undersigned Notary, Virginia Classick
[name of Notary before whom affidavit is sworn], on this 11th *[day of month]* day of February *[month]*, 2009, personally appeared Linda Newsted *[name of affiant]*, known to me to be a credible person and of lawful age, who being by me first duly sworn, on _____ *[his or her]* oath, deposes and says:

On February 3, 2009 I called Donna Bradley from Cogent Electric to verify that she will be bidding Las Vegas Museum and to ensure we (Flagship) was on the list to recieve a bid proposal from her. She explained that she wouldn't be bidding because she couldn't bond the project due to other projects.

[set forth affiant's statement of facts]

Linda Newsted
[signature of affiant]

Linda Newsted
[typed name of affiant]

4052 Dean Martin Drive LV, NV 89103
[address of affiant, line 1]

[address of affiant, line 2]

Subscribed and sworn to before me, this 11th *[day of month]* day of February *[month]*, 2009.

[Notary Seal:]

VIRGINIA M. CLASSICK
Notary Public State of Nevada
No. 07-4645-1
My appt. exp. Aug. 22, 2011

Virginia Classick
[signature of Notary]

Virginia Classick
[typed name of Notary]

NOTARY PUBLIC

My commission expires: Aug 22, 2011.

SPECIALTY WORK QUALIFICATION FORM
ORNAMENTAL PAINTING

1. Bidder: APCO Construction

☐ Bidder self-performing ☒ Specialty Subcontractor Performing

Subcontractor Name: Wallternatives Richard Nieto

Ornamental Painting: Spec Section 09920

Historic Painting Supervisor
with National Decorating Service
2210 Camden Court
Oakbrook, IL 60523
Attn: Mr. Alex Hart Phone (630) 571-8110

2. EXPERIENCE

List at least 1 project successfully completed similar in type or scope as the work specified above in the past ten years.

Project Name: Improvements/Repairs to St. Patrick Catholic Church

Street: 718 W. Adams Street

City: Chicago

State: Illinois

Zip: 60661

Project Description: Restoration painting to restore painted surfaces to their original condition and patching surfaces after heating, cooling and electrical had been added including updating handicap accessilility and structural work. Please find additional information of work performed on attached pages.

Year Completed: 2002

Client/Building Owner: Archdiocese of Chicago

Contact name: Roger Hughes

Telephone number: (312) 831-9362

Email: rogerh@oldstpats.org

Architect of Record: Booth/Hansen AIA

Contact name: Larry Booth

Telephone number: (312) 869-5000

Email: bh@boothhansen.com

Joe Pelan

From: laguna0ne@aol.com
Sent: Tuesday, May 05, 2009 8:51 AM
To: Joe Pelan
Subject: Fwd: , .St. Patrick's Church, Chicago, Ill.

-----Original Message-----
From: Alex Hart <alex@nationaldecoratingservice.com>
To: laguna0ne@aol.com
Sent: Mon, 4 May 2009 5:58 pm
Subject: Re: , .St. Patrick's Church, Chicago, Ill.

Yes that is correct

> ---- Original Message ----
> **From:** laguna0ne@aol.com
> **To:** alex@nationaldecoratingservice.com
> **Cc:** rmursell@apcoconstruction.com
> **Sent:** Monday, May 04, 2009 4:19 PM
> **Subject:** , .St. Patrick's Church, Chicago, Ill.
>
> Richard Nieto work for National Decorating on the St. Patrick's Church in Chicago, Ill. as a supervisor in the years 2001-02, please just respond by acknowledging this e-mail. thanks

A Great Credit Score is 750 or Higher. See Your 3 CREDIT SCORES FREE - Online!

A Good Credit Score is 700 or Above. See yours in just 2 easy steps!

Lucille Henderson

From: Robert Mather [rmath@WRLdesign.com]
Sent: Friday, April 03, 2009 8:24 AM
To: Kathy Rainey; Sam Tolman
Cc: Lucille Henderson; Erin Umberger
Subject: RE: Additional Information

All:

I spoke to Larry Booth of Booth/Hansen Architects in Chicago regarding the renovations to St. Patrick's Church as a follow up on the credentials for Richard Neito as requested by Lucille yesterday. He did not recall Richard, or any other specific person with National Decorating Services, but did say that they did a great job.

After reviewing the additional materials sent yesterday by Lucille, it would appear that Mr. Neito meets the requirements of the specifications for the Ornamental Painting Sub-Contractor.

Regarding the additional information on Sherry Thomas, if her general contracting company was closed in 1993, the project listed would have to have been done more than 10 years ago. She may be great and capable of doing the general superintendent duties, but strictly following the criteria, her work as a superintendent at an ornamental painting and plaster sub-contractor during the 10 year period requirement would not qualify her as a general contractor superintendent, even if she had that experience before the 10 year minimum. This is a tough call.

Bob

From: Kathy Rainey [mailto:krainey@LasVegasNevada.GOV]
Sent: Thursday, April 02, 2009 3:25 PM
To: Sam Tolman; Robert Mather
Cc: Lucille Henderson
Subject: FW: Additional Information

Additional information from Flagship on their superintendent for your review

From: Nancy Paolino [mailto:NPaolino@fscc.nceusa.com]
Sent: Thursday, April 02, 2009 2:49 PM
To: Kathy Rainey
Subject: Additional Information

Kathleen:
s requested, please find an additional project reference for Sherry Thomas and supplemental information that further highlights Sherry's qualifications.

Please do not hesitate to contact me, if additional information is required.

Regards.

'ANCY PAOLINO
, ice President

npaolino@fscc.nceusa.com
www.flagship-construction.com

FLAGSHIP CONSTRUCTION CO.
4052 Dean Martin Drive
Las Vegas, NV 89103
P (702) 739-1722
F (702) 739-1724

CONFIDENTIALITY STATEMENT: This message (including any attachments) is intended only for the use of the addressee and may contain information that is privileged and confidential. If you are the intended recipient, further disclosures are prohibited without proper authorization. If you are not the intended recipient or an authorized representative of the intended recipient, the use, dissemination or reproduction of this communication is prohibited and may be a violation of federal or state laws and regulations. If you have received this transmission in error, please destroy all copies of the message and its attachments and notify the sender immediately.

@2008