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City of Las Vegas Redevelopment Agency
Council Chambers • 400 East Stewart Avenue
Phone - 229-6011 [Voice] 386-9108 [TDD]

MINUTES

Meeting of
February 25, 1999
10:00 AM

(Following the morning session of the City Council Meeting)

Called To Order: 10:20 AM
Adjourned: 11:58 AM

REDEVELOPMENT AGENCY

PRESENT ABSENT EXCUSED

CHAIRMAN JAN LAVERTY JONES

☐ ☐ ☒

MEMBER MICHAEL J. McDONALD - VICE-CHAIRMAN

☒ ☐ ☐

MEMBER ARNIE ADAMSEN

☒ ☐ ☐

MEMBER GARY REESE

☐ ☐ ☒

MEMBER LARRY BROWN

☒ ☐ ☐

VIRGINIA VALENTINE, EXECUTIVE DIRECTOR

☒ ☐ ☐

BRADFORD R. JERBIC, CITY ATTORNEY

☒ ☐ ☐

BARBARA JO RONEMUS, SECRETARY

☒ ☐ ☐

APPROVED BY REFERENCE: ~~XXXXXXXXXXXX~~ June 14, 1999
~~XXXXXXXXXXXX~~

ATTEST:

SECRETARY

CHAIRMAN

102✓

REDEVELOPMENT AGENCY

RECESSED MEETING OF

FEBRUARY 25, 1999

City of Las Vegas

AGENDA & MINUTES

Page 1

COUNCIL CHAMBERS • 400 EAST STEWART AVENUE

ITEM

ACTION

I. CALL TO ORDER

CALLED TO ORDER BY VICE CHAIRMAN McDONALD AT 10:20 A.M.

PRESENT: VICE CHAIRMAN McDONALD and MEMBERS ADAMSEN and BROWN

EXCUSED: CHAIRMAN JONES and MEMBER REESE

ALSO PRESENT: VIRGINIA VALENTINE, Executive Director, BRAD JERBIC, City Attorney, and BARBARA JO RONEMUS, Secretary

(10:20)

1-1

IV. NEW BUSINESS

BROWN - APPROVED as recommended - UNANIMOUS with JONES and REESE excused

B. DISCUSSION AND POSSIBLE APPROVAL OF A THIRD AMENDMENT TO THE DISPOSITION AND DEVELOPMENT AGREEMENT BY AND BETWEEN THE CITY OF LAS VEGAS REDEVELOPMENT AGENCY AND WORLD ENTERTAINMENT CENTERS, L.L.C.

MIKE FORCHE, City Centre Development Corporation (CCDC), stated the CCDC is recommending a third amendment to the Disposition and Development Agreement (DDA) between the subject parties. The amendment involves the exchange of up to five shared systems from the Agency's garage scope of work to World Entertainment Centers' retail scope of work. These systems include utility taps, fire sprinkler system, and core circular stair, and if deemed necessary by the Agency, four exit stairs, decorative elements in the core area, and water or damp-proofing on the plaza deck.

It is more efficient for the Agency to allocate these responsibilities to World Entertainment Centers due to the economies of scale and project management considerations, and to ensure that the garage and retail component are coordinated properly.

The Agency will retain the right to review or revise the design and perform inspections before any payment is made. There is no fiscal impact, for it only involves the shifting of work to the General Contractor. He recommended approval.

COUNCILMAN ADAMSEN questioned the transfer of the sale of the air rights. MR. FORCHE responded that presently there is a \$9 million letter of credit posted. Payment will be deducted from the developer's purchase price of the land in return for the work, so there is no exchange of cash and it will all be deducted from the Air Rights Parcel.

There was no further discussion.

(10:20 - 10:24)

1-3

REDEVELOPMENT AGENCY

RECESSED MEETING OF

FEBRUARY 25, 1999

City of Las Vegas

AGENDA & MINUTES

Page 2

COUNCIL CHAMBERS • 400 EAST STEWART AVENUE

ITEM

ACTION

D. DISCUSSION AND POSSIBLE ACTION TO AWARD BID NUMBER 99.1730.20, BLOCK 34 PARKING GARAGE STRUCTURE, TO THE LOWEST RESPONSIVE AND RESPONSIBLE BIDDER AND APPROVE A CONSTRUCTION CONFLICT AND CONTINGENCY AMOUNT OF TEN PERCENT (10%) OF THE TOTAL BID PRICE ESTIMATED AT \$14,300,000

BROWN - Motion to award the bid to Granite Construction, as the lowest, responsive, responsible bidder - UNANIMOUS with JONES and REESE excused

NOTE: A previous motion by Brown, carrying unanimously, to award the bid to Granite Construction contingent upon its offer of indemnity was rescinded by a motion for reconsideration made by McDonald which also carried unanimously.

APPEARANCES:

CITY ATTORNEY BRAD JERBIC

DENNIS ANDERSON, City Engineer

ATTORNEY ROGER WIRTH, Jolley, Urga, Wirth & Woodbury, appeared representing M.J. Dean Construction

ATTORNEY STANLEY PARRY, Curran & Parry, appeared representing Granite Construction

RICHARD BUNTING, Area Manager, Granite Construction

EDDIE RIGGS, Secretary/Treasurer, Granite Construction

CITY MANAGER VIRGINIA VALENTINE

TOM McGOWAN, citizen of Las Vegas

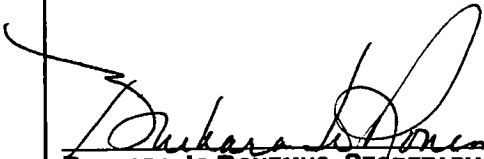
NOTE: A verbatim transcript is made a part of the final minutes.

NOTE: A short recess was taken from 11:19 to 11:23 a.m.

(10:24 - 11:55/11:56-11:58)

1-106

THE MEETING ADJOURNED AT 11:55 A.M., WAS RECONVENED AT 11:56 A.M. TO RECONSIDER ITEM D, AND THEN ADJOURNED AGAIN AT 11:58.


BARBARA JO RONEMUS, SECRETARY

CITY OF LAS VEGAS
REDEVELOPMENT AGENCY
Las Vegas, Nevada
CONSTRUCTION CONTRACT

BID NUMBER 991730.20

DATE of CONTRACT FEBRUARY 25, 1999

NAME AND ADDRESS OF CONTRACTOR

Granite Construction
4044 S. Industrial Rd.
Las Vegas, Nv 89103

INDIVIDUAL ☐ PARTNERSHIP ☐
CORPORATION, INCORPORATED IN THE STATE ☒
OF CALIFORNIA

CONTRACT DESCRIPTION

Furnish all plant, labor, tools, equipment, and materials necessary for the construction of: **Neonopolis Garage Structure** all in strict accordance terms, conditions, and specifications of **Formal Bid 99.1730.20**, and **Granite Construction Company** response to the Invitation to Bid.

AMOUNT OF CONTRACT (Express in words and figures)

Eleven Million Four Hundred Ninety-Nine Thousand Four Hundred Ninety-Nine and 00/100 Dollars

\$11,499,499.00

It is expressly understood and agreed that the "Amount" of Contract" stated above is based upon bid estimates only and may be increased or decreased as provided in the Contract documents.

THIS CONTRACT, entered into this date by the Redevelopment Agency, hereinafter called the Agency, and the Individual, Partnership, or Corporation named above, hereinafter called Contractor, witnesseth that the parties hereto do mutually agree as follows:

STATEMENT OF WORK. The Contractor shall furnish all plant, labor, tools, equipment and material necessary to perform the work described for the amount stated above in strict accordance with contract documents, all of which are incorporated herein by reference:

Formal Bid 99.1730.20

Contract Drawings No. 1671.00- Date: November 25, 1998

INCLUDING PAYMENT OF PREVAILING WAGES FOR PERIOD 10/1/98 THROUGH 9/30/99

CONTRACTOR WARRANTIES - The Contractor hereby warrants he:

1. Is familiar with requirements of the contract.
2. Has investigated the site and satisfied himself regarding the character of work and local conditions that may affect it or its performance.
3. Is satisfied that the work can be performed and completed as required in the contract.
4. Accepts all risks directly or indirectly connected with the performance of the contract.
5. Warrants that there has been no collusion between him and the other bidders on the contract.
6. He has not been influenced by any statement or promise other than those contained in the contract documents.
7. Is experienced and competent to perform the contract.
8. Verifies all personal statements in the proposal to be true.
9. Is familiar with all general and special laws, ordinances, and regulations that may affect the work, its performance, or those persons employed therein.
10. Is familiar with tax and labor regulations and with rates of pay that will affect the work.

WORK TO BE STARTED

AS SPECIFIED IN THE WRITTEN NOTICE TO PROCEED.

WORK TO BE COMPLETED

Substantial Completion **October 12, 1999** &
Finally Complete within 70 Calendar Days thereafter.

LIQUIDATION DAMAGES. Liquidation damages as provided in the Instruction to Bidders in the following amounts:
Substantial Completion Three Thousand dollars (\$3,000) and Final Completion One Thousand dollars (\$1,000) per day for each day after the original completion date, or applicable extension thereof as provided for in the Bid documents, that completion of the work is delayed.

ALTERATIONS: The following changes were made in this contract before it was signed by the parties hereto:

Acknowledge Addendum #1 - January 22, 1999

Acknowledge Addendum #2 - January 22, 1999

Acknowledge Addendum #3 - January 29, 1999

Acknowledge Addendum #4 - February 1, 1999

In witness whereof, the parties hereto have executed this contract as of the date entered on the first page hereof

CITY OF LAS VEGAS
REDEVELOPMENT AGENCY

By

(Mayor)

Attest

(City Clerk)

CONTRACTOR Granite Construction ~~INC~~ COMPANY

(Name of Contractor)

By

(Signature)

R.C. Allbritton, Vice President

(Title)

Attest

Michael Futch, (Secretary)

Approved as to form:

Robert S. Sloan 3-3-99
Date

INSTRUCTIONS

1. The full name and business address of the Contractor must be inserted in the space provided on the face of the form. The Contractor shall sign in the space provided above with his usual signature and type or print name under all signatures to the contract and bonds.
2. An officer of a corporation, a member of a partnership, or an agent signing for the Supplier shall place his signature and title after the word "By" under the name Contractor. A contract executed on behalf of a corporation shall be attested by the secretary or an assistant secretary thereof. A contract executed by an attorney or agent on behalf of the Contractor shall be accompanied by two authenticated copies of his power of attorney, or other evidence of his authority to act on behalf of the Contractor.

BOND NO: 8155-73-31

Premium: \$59,623.00

PERFORMANCE BOND

BOND NUMBER 8155-73-31
DATE EXECUTED 3/1/99

IMPORTANT: SURETY COMPANIES EXECUTING BONDS MUST BE LICENSED TO ISSUE SURETY BY THE STATE OF NEVADA INSURANCE DIVISION PURSUANT TO NEVADA REVISED STATUTE 683A.090 AND ISSUED BY AN APPOINTED AGENT PURSUANT TO NEVADA REVISED STATUTE 683A.280. NOTE: INDIVIDUAL SURETY BONDS ARE NOT ACCEPTABLE.

KNOW ALL MEN BY THESE PRESENTS, That we, the CONTRACTOR AND SURETY, are held and firmly bound unto the City of Las Vegas, Nevada, hereinafter referred to as the City, in the penal sum *Eleven Million, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators and successors, and assigns, jointly and severally, firmly by these presents.

*Four Hundred Ninety-nine thousand
Four Hundred Ninety-Nine Dollars & 00/100s.

THE CONDITION OF THIS OBLIGATION IS SUCH, That whereas the CONTRACTOR entered into a certain contract with the City, to perform all work required under the Bidding Schedule(s), Bid No 99.1730.20, of the City's specifications, entitled Neonopolis Garage Structure

NOW THEREFORE, if said CONTRACTOR shall well and truly perform and fulfill all the undertakings, covenants, terms and conditions and agreements of said contract during the original term of said contract, then this obligation shall be null and void, otherwise it shall remain in full force and effect.

PROVIDED, that any modifications in the work to be done or the materials to be furnished, which may be made pursuant to the terms of said Contract, shall not in any way release either said Contractor or said Surety thereunder, nor shall any extensions of time granted under the provisions of said Contract release either said Contractor or said Surety, and notice of such modifications or extensions of the Contract is hereby waived by said Surety.

SIGNED this 1st day of MARCH, 1999

Countersigned resident agent in Nevada.
Pursuant to Nevada Revised Statute 680a.300:

A & H Insurance Inc
(Resident Agent)

Lic #12
(State of Nevada, License Number)

Dennis M. Stg
(Appointed Agent Name)

By: [Signature]
(Signature)

Address: 2110 E Flamingo #300

LJ. NJ 07059

Telephone: 702-735-1933

(SEAL AND NOTARIAL ACKNOWLEDGMENT OF SURETY)

GRANITE CONSTRUCTION COMPANY
(Principal Contractor)

R.C. Albritton, Vice President
(Authorized Representative and Title)

By: [Signature]
(Signature)

Surety: FEDERAL INSURANCE COMPANY
68A.180
(State of Nevada, License Number)

Kathleen Kenan, Attorney-in-Fact
(Appointed Agent Name)

By: Kathleen Kenan
(Signature)

Address: 15 Mt. View Road

Warren, NJ 07059

Telephone: (908) 903-2000

ISSUING COMPANY MUST HOLD CERTIFICATES OF AUTHORITY AS ACCEPTABLE SURETY ON FEDERAL BONDS AND AS ACCEPTABLE REINSURING COMPANY WITH LISTING IN THE DEPARTMENT OF TREASURY, FISCAL SERVICE, (DEPARTMENT OF CIRCULAR "570", CURRENT REVISIONS).

STATE OF CALIFORNIA

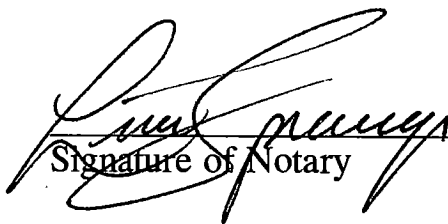
COUNTY OF Santa Cruz

On March 1, 1999 before me, the undersigned notary public,

personally appeared Kathleen Kenan

☒ personally known to me OR ☐ proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.



Signature of Notary



Bond No: 8155-73-31.

LABOR AND MATERIAL PAYMENT BOND

Premium included in perf. bond

BOND NUMBER 8155-73-31
DATE EXECUTED 3/1/99

IMPORTANT: SURETY COMPANIES EXECUTING BONDS MUST BE LICENSED TO ISSUE SURETY BY THE STATE OF NEVADA INSURANCE DIVISION PURSUANT TO NEVADA REVISED STATUTE 683A.090 AND ISSUED BY AN APPOINTED AGENT PURSUANT TO NEVADA REVISED STATUTE 683A.280. NOTE: INDIVIDUAL SURETY BONDS ARE NOT ACCEPTABLE.

KNOW ALL MEN BY THESE PRESENTS, That we, the CONTRACTOR AND SURETY, are held and firmly bound unto the City of Las Vegas, Nevada, hereinafter referred to as the City, in the penal sum *Eleven Million for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators and successors, and assigns, jointly and severally, firmly by these presents.

*Four Hundred Ninety-Nine Thousand
Four Hundred Ninety-Nine & 00/100s.

THE CONDITION OF THIS OBLIGATION IS SUCH, That whereas the CONTRACTOR entered into a certain contract with the City, to perform all work required under the Bidding Schedule(s), Bid No. 99.1730.20, of the City's specifications, entitled Neonopolis Garage Structure

NOW THEREFORE, if said CONTRACTOR, fails to pay for any materials, equipment, or other supplies, or for rental of same, used in connection with the performance of work contracted to be done, or for amounts due under applicable State Law for any work or labor thereon, said Surety will pay for the same in an amount not exceeding the sum specified above and in the event suit is brought upon this bond, a reasonable attorney's fee to be fixed by the court. This bond shall insure to the benefit of any persons, companies or corporations entitled to file claims under applicable State Law.

PROVIDED, that any modifications in the work to be done or the materials to be furnished, which may be made pursuant to the terms of said Contract, shall not in any way release either said Contractor or said Surety thereunder, nor shall any extensions of time granted under the provisions of said Contract release either said Contractor or said Surety, and notice of such modifications or extensions of the Contract is hereby waived by said Surety.

SIGNED this 1st day of MARCH, 19 99

Countersigned resident agent in Nevada.
Pursuant to Nevada Revised Statute 680a.300:

A. H. Insurance Inc.
(Resident Agent)

License
(State of Nevada, License Number)

Dennis M. Smith
(Appointed Agent Name)

By: [Signature]
(Signature)

Address: 2110 E. Flamingo #300
Las Vegas, NV 89119

Telephone: 702-735-1933

(SEAL AND NOTARIAL ACKNOWLEDGMENT OF SURETY)

GRANITE CONSTRUCTION COMPANY
(Principal Contractor)

R.C. Albritton, Vice President
(Authorized Representative and Title)

By: [Signature]
(Signature)

Surety: FEDERAL INSURANCE COMPANY
68A.180
(State of Nevada, License Number)

Kathleen Kenan, Attorney-in-Fact
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STATE OF CALIFORNIA

COUNTY OF Santa Cruz

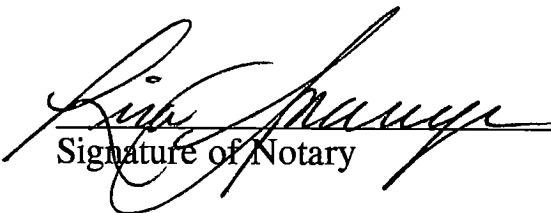
On March 1, 1999 before me, the undersigned notary public,

personally appeared Kathleen Kenan

☒ personally known to me OR ☐ proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.




Signature of Notary

GUARANTEE BOND

Bond NO: 8155-73-31

Premium included in perf. bond.

BOND NUMBER 8155-73-31

DATE EXECUTED 3/1/99

IMPORTANT: SURETY COMPANIES EXECUTING BONDS MUST BE LICENSED TO ISSUE SURETY BY THE STATE OF NEVADA INSURANCE DIVISION PURSUANT TO NEVADA REVISED STATUTE 683A.090 AND ISSUED BY AN APPOINTED AGENT PURSUANT TO NEVADA REVISED STATUTE 683A.280. NOTE: INDIVIDUAL SURETY BONDS ARE NOT ACCEPTABLE.

GUARANTEE for GRANITE CONSTRUCTION COMPANY P.O. BOX 50085 Watsonville, CA 95077-5085
(Name and Address of Prime Contractor)

We hereby guarantee that the Neonopolis Garage Structure, which we have constructed, has been completed in accordance with the plans and specifications; that the work as constructed will fulfill the requirements of the guaranties included in the Contract Documents. We agree to repair or replace any or all of the work together with any other adjacent work which may be damaged in so doing, that may prove to be defective in workmanship or materials within a period of one year from the date of acceptance of the above-named work by the City of Las Vegas, State of Nevada, without expense whatsoever to the City of Las Vegas ordinary wear and unusual abuse or neglect are exempted.

In the event of our failure to comply with the above-mentioned conditions within five (5) calendar days after being notified in writing by the City of Las Vegas, State of Nevada, we collectively or separately, do hereby authorize the City of Las Vegas to proceed to have said defects repaired and made good at our expense and we will honor and pay the costs and charges therefore upon demand. When correction of work is started, it shall be carried through to completion.

Date of Completion _____

SIGNED this 1st day of MARCH, 1999

Countersigned resident agent in Nevada.
Pursuant to Nevada Revised Statute 680A.300:

A. H. INSURANCE INC.
(Resident Agent)

License # 12
(State of Nevada, License Number)

Dennis M. Smith
(Appointed Agent Name)

By: [Signature]
(Signature)

Address: 2110 E. Flamingo # 30
L. V. N. V.

Telephone: 702-735-1933

Telephone: 702-735-1933
(Local Agent)

Telephone: _____
(Bonding Company)

(SEAL AND NOTARIAL ACKNOWLEDGMENT OF SURETY)

GRANITE CONSTRUCTION COMPANY
(Principal Contractor)

R. C. Allbritton, Vice President
(Authorized Representative and Title)

By: [Signature]
(Signature)

Surety: FEDERAL INSURANCE COMPANY
68A.180
(State of Nevada, License Number)

Kathleen Kenan, Attorney-in-Fact
(Appointed Agent Name)

By: [Signature]
(Signature)

Address: 15 Mt. View Road
Warren, NJ 07059

Telephone: (908) 903-2000

ISSUING COMPANY MUST HOLD CERTIFICATES OF AUTHORITY AS ACCEPTABLE SURETY ON FEDERAL BONDS AND AS ACCEPTABLE REINSURING COMPANY WITH LISTING IN THE DEPARTMENT OF TREASURY, FISCAL SERVICE, (DEPARTMENT OF CIRCULAR "570", CURRENT REVISIONS).

STATE OF CALIFORNIA

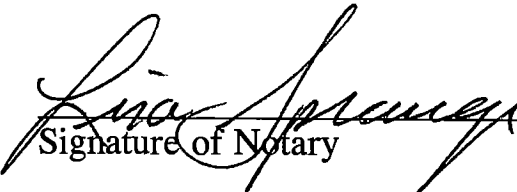
COUNTY OF Santa Cruz

On March 1, 1999 before me, the undersigned notary public,

personally appeared Kathleen Kenan

☒ personally known to me OR ☐ proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.



Signature of Notary





**POWER
OF
ATTORNEY**

**Federal Insurance Company
Vigilant Insurance Company
Pacific Indemnity Company**

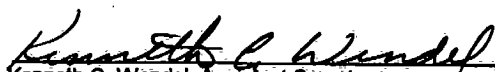
**Attn.: Surety Department
15 Mountain View Road
Warren, NJ 07059**

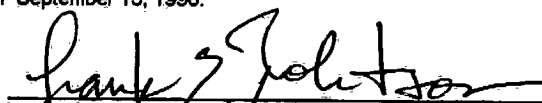
Know All by These Presents, That **FEDERAL INSURANCE COMPANY**, an Indiana corporation, **VIGILANT INSURANCE COMPANY**, a New York corporation, and **PACIFIC INDEMNITY COMPANY**, a Wisconsin corporation, do each hereby constitute and appoint Kathleen Kenan, R.C. Allbritton, William L. Elkins, Lisa Sprauge and Jigisha Desai of Watsonville, California -----

each as their true and lawful Attorney-in-Fact to execute under such designation in their names and to affix their corporate seals to and deliver for and on their behalf as surety thereon or otherwise, bonds and undertakings and other writings obligatory in the nature thereof (other than bail bonds) given or executed in the course of business, and any instruments amending or altering the same, and consents to the modification or alteration of any instrument referred to in said bonds or obligations on behalf of **GRANITE CONSTRUCTION INCORPORATED AND ALL SUBSIDIARIES ALONE OR IN JOINT VENTURE** -----

in connection with bids, proposals or contracts to or with the United States of America, any State or political subdivision thereof or any person, firm or corporation. The execution of such bond or obligation by such Attorney-in-Fact in the Company's name and on its behalf as surety thereon or otherwise, under its corporate seal, in pursuance of the authority hereby conferred shall, upon delivery thereof, be valid and binding upon the Company.

In Witness Whereof, said **FEDERAL INSURANCE COMPANY**, **VIGILANT INSURANCE COMPANY**, and **PACIFIC INDEMNITY COMPANY** have each executed and attested these presents and affixed their corporate seals on September 15, 1998.

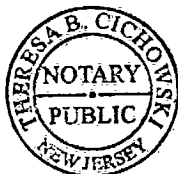

Kenneth C. Wendel, Assistant Secretary


Frank E. Robertson, Vice President

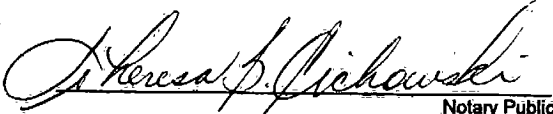
STATE OF NEW JERSEY }
County of Somerset } ss.

On September 15, 1998, before me, a Notary Public of New Jersey, personally came Kenneth C. Wendel, to me known to be Assistant Secretary of **FEDERAL INSURANCE COMPANY**, **VIGILANT INSURANCE COMPANY**, and **PACIFIC INDEMNITY COMPANY**, the companies which executed the foregoing Power of Attorney, and the said Kenneth C. Wendel being by me duly sworn, did depose and say that he is Assistant Secretary of **FEDERAL INSURANCE COMPANY**, **VIGILANT INSURANCE COMPANY**, and **PACIFIC INDEMNITY COMPANY** and knows the corporate seals thereof, that the seals affixed to the foregoing Power of Attorney are such corporate seals and were thereto affixed by authority of the By-Laws of said Companies; and that he signed said Power of Attorney as Assistant Secretary of said Companies by like authority; and that he is acquainted with Frank E. Robertson, and knows him to be Vice President of said Companies; and that the signature of Frank E. Robertson, subscribed to said Power of Attorney is in the genuine handwriting of Frank E. Robertson, and was thereto subscribed by authority of said By-Laws and in deponent's presence.

Notarial Seal



THERESA B. CICHOWSKI
Notary Public, State of New Jersey
No. 0014101
Commission Expires July 27, 2001


Notary Public

CERTIFICATION

Extract from the By-Laws of **FEDERAL INSURANCE COMPANY**, **VIGILANT INSURANCE COMPANY**, and **PACIFIC INDEMNITY COMPANY**:

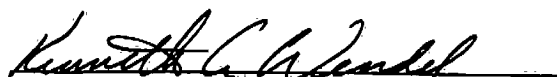
"All powers of attorney for and on behalf of the Company may and shall be executed in the name and on behalf of the Company, either by the Chairman or the President or a Vice President or an Assistant Vice President, jointly with the Secretary or an Assistant Secretary, under their respective designations. The signature of such officers may be engraved, printed or lithographed. The signature of each of the following officers: Chairman, President, any Vice President, any Assistant Vice President, any Secretary, any Assistant Secretary and the seal of the Company may be affixed by facsimile to any power of attorney or to any certificate relating thereto appointing Assistant Secretaries or Attorneys-in-Fact for purposes only of executing and attesting bonds and undertakings and other writings obligatory in the nature thereof, and any such power of attorney or certificate bearing such facsimile signature or facsimile seal shall be valid and binding upon the Company and any such power so executed and certified by such facsimile signature and facsimile seal shall be valid and binding upon the Company with respect to any bond or undertaking to which it is attached."

I, Kenneth C. Wendel, Assistant Secretary of **FEDERAL INSURANCE COMPANY**, **VIGILANT INSURANCE COMPANY**, and **PACIFIC INDEMNITY COMPANY** (the "Companies") do hereby certify that

- (i) the foregoing extract of the By-Laws of the Companies is true and correct,
- (ii) the Companies are duly licensed and authorized to transact surety business in all 50 of the United States of America and the District of Columbia and are authorized by the U. S. Treasury Department; further, Federal and Vigilant are licensed in Puerto Rico and the U. S. Virgin Islands, and Federal is licensed in American Samoa, Guam, and each of the Provinces of Canada except Prince Edward Island; and
- (iii) the foregoing Power of Attorney is true, correct and in full force and effect.

Given under my hand and seals of said Companies at Warren, NJ this 1st day of MARCH, 19 99.




Kenneth C. Wendel, Assistant Secretary

IN THE EVENT YOU WISH TO NOTIFY US OF A CLAIM, VERIFY THE AUTHENTICITY OF THIS BOND OR NOTIFY US OF ANY OTHER MATTER, PLEASE CONTACT US AT ADDRESS LISTED ABOVE, OR BY
Telephone (908) 903-3485 Fax (908) 903-3656 e-mail: surety@chubb.com

ACORD™ CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YY)
02/26/99

PRODUCER

McSHERRY & HUDSON
P.O. BOX 2690
WATSONVILLE, CA 95077
(831) 724-3841 FAX: 724-7574

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.

COMPANIES AFFORDING COVERAGE

COMPANY
A AMERICAN CASUALTY CO OF READING, PA
COMPANY
B TRANSCONTINENTAL INSURANCE COMPANY
COMPANY
C WESTCHESTER FIRE INSURANCE COMPANY
COMPANY
D

INSURED

GRANITE CONSTRUCTION COMPANY
P.O. BOX 50085
WATSONVILLE, CA 95077-5085

COVERAGES

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED, NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

CO LTR	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS
A	GENERAL LIABILITY	GL 1 8419 2180	10/1/97	10/1/00	GENERAL AGGREGATE \$10,000,000
	☒ COMMERCIAL GENERAL LIABILITY				PRODUCTS - COMP/OP AGG \$ 2,000,000
	☐ CLAIMS MADE ☒ OCCUR				PERSONAL & ADV INJURY \$ 2,000,000
	☒ OWNER'S & CONTRACTOR'S PROT				EACH OCCURRENCE \$ 2,000,000
	☒ XCU Hazards and Broad Form Property Damage Included				FIRE DAMAGE (Any one fire) \$ 2,000,000
	☒ Contractual Liability Per ISO Form CG 0001 (11/88)				MED EXP (Any one person) \$ NIL
A	AUTOMOBILE LIABILITY	BUA 1 8419 2213	10/1/97	10/1/00	COMBINED SINGLE LIMIT \$2,000,000
	☒ ANY AUTO				BODILY INJURY (Per person) \$
	☐ ALL OWNED AUTOS				BODILY INJURY (Per accident) \$
	☐ SCHEDULED AUTOS				PROPERTY DAMAGE \$
	☒ HIRED AUTOS				
	☒ NON-OWNED AUTOS				
	GARAGE LIABILITY				AUTO ONLY - EA ACCIDENT \$
	☐ ANY AUTO				OTHER THAN AUTO ONLY:
					EACH ACCIDENT \$
					AGGREGATE \$
C	EXCESS LIABILITY	CUP 184192258	10/1/97	10/1/00	EACH OCCURRENCE \$2,000,000
	☒ UMBRELLA FORM				AGGREGATE \$2,000,000
	☐ OTHER THAN UMBRELLA FORM				\$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY				WC STATUTORY LIMITS OTH-ER
	THE PROPRIETOR/PARTNERS/EXECUTIVE OFFICERS ARE: ☐ INCL ☐ EXCL				EL EACH ACCIDENT \$
					EL DISEASE - POLICY LIMIT \$
					EL DISEASE - EA EMPLOYEE \$
C	OTHER EXCESS LIABILITY	XLS 310753	10/1/98	10/1/99	EACH OCC \$6,000,000 AGG \$6,000,000

DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/SPECIAL ITEMS

JOB #216-569 NEONOPOLIS GARAGE STRUCTURE - BID NO. 99-1730-20-RC
THE REDEVELOPMENT AGENCY AND CITY OF LAS VEGAS ARE NAMED ADDITIONAL INSURED AS IT PERTAINS TO THIS PROJECT ONLY PER ENDORSEMENT ATTACHED

CERTIFICATE HOLDER

CITY OF LAS VEGAS, GENERAL SERVICES DEPT, PURCHASING/CONTRACTS DIVISION, CITY HALL, FIRST FLOOR
400 E. STEWART AVENUE
LAS VEGAS, NV 89101-2986

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING COMPANY WILL ENDEAVOR TO MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO MAIL SUCH NOTICE SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE COMPANY, ITS AGENTS OR REPRESENTATIVES.

AUTHORIZED REPRESENTATIVE

[Signature]

McSHERRY & HUDSON



EMPLOYERS
INSURANCE COMPANY
OF NEVADA

CERTIFICATE OF INSURANCE

Issued Date (MM/DD/YY)

12-14-98

REPRESENTATIVE:

LAS VEGAS REGIONAL OFFICE
7180 POLLOCK DRIVE
LAS VEGAS, NV 89119

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS
NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND,
EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.

COMPANY:

EMPLOYERS INSURANCE COMPANY OF NEVADA

INSURED:

GRANITE CONSTRUCTION COMPANY
PO BOX 50085
WATSONVILLE, CA 95077

THIS EMPLOYER ALSO DOES BUSINESS AS:

PROJECT NAME: ALL NEVADA JOBS

This is to certify that all employees of the above-named insured are covered under the Nevada workers' compensation policy number shown in (A) below, which became effective on the date shown (B). This certificate will remain in force until the expiration date (C) or until you have been notified otherwise.

A. POLICY NUMBER

B. POLICY EFFECTIVE DATE (MM/DD/YY)

C. POLICY EXPIRATION DATE (MM/DD/YY)

NWC-063998-08

01-01-99

01-01-00

This does not relieve you of the responsibility of premium payment on this subcontractor in the event he fails to pay premium while working for your business. In order to clear this subcontractor for final payment, contact this office for a final certificate. When you receive the final certificate, retain it in your file until the Employers Insurance Company of Nevada audits your policy.

Section 616B.789 of the Nevada Administrative Code will be used in determining the prime contractor's responsibility for insuring the uninsured sole owner or each uninsured partner.

NRS 616B.600 requires all out-of-state contractors who are working on construction projects in Nevada to cover their employees under Nevada worker' compensation insurance or self-insurance.

Any out-of-state contractors meeting the definition of NRS 624 working temporarily in Nevada must obtain Nevada workers' compensation insurance prior to the start of any project.

Nevada employers planning to work temporarily out of Nevada should contact the workers' compensation authority in the state where the work is to be performed, prior to the start of any project, to assure compliance with the states' laws.

The individual(s) specifically identified below have coverage and are insured under this certificate.

CERTIFICATE HOLDER

LAS VEGAS - CITY OF
400 S LAS VEGAS BLVD
LAS VEGAS, NV 89101

WARNING: This certificate does not absolve the prime contractor from potential liability for, but not limited to, the premium costs, associated penalties, claims and deductibles for any employee acquired through an employee leasing agreement.
PRINTED BY CKPETERS ON 12/14/98 AT

PRODUCER
Willis Corroon of California Insurance Services
444 Market Street
Suite 1600
PO Box 193995
San Francisco CA 94119-3995
(415) 981-0600
Camille Hurley

21678

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.

COMPANIES AFFORDING COVERAGE

COMPANY A Continental Casualty Company

COMPANY B

COMPANY C

COMPANY D

INSURED

GRANITE CONSTRUCTION COMPANY
P.O. Box 50085
Watsonville CA 95077

COVERAGES

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED, NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

CO LTR	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS
	GENERAL LIABILITY ☐ COMMERCIAL GENERAL LIABILITY ☐ CLAIMS MADE ☐ OCCUR ☐ OWNER'S & CONTRACTOR'S PROT				GENERAL AGGREGATE \$ PRODUCTS-COMP/OP AGG \$ PERSONAL & ADV INJURY \$ EACH OCCURRENCE \$ FIRE DAMAGE (Any one fire) \$ MED EXP (Any one person) \$
	AUTOMOBILE LIABILITY ☐ ANY AUTO ☐ ALL OWNED AUTOS ☐ SCHEDULED AUTOS ☐ HIRED AUTOS ☐ NON-OWNED AUTOS				COMBINED SINGLE LIMIT \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE \$
	GARAGE LIABILITY ☐ ANY AUTO				AUTO ONLY - EA ACCIDENT \$ OTHER THAN AUTO ONLY: \$ EACH ACCIDENT \$ AGGREGATE \$
	EXCESS LIABILITY ☐ UMBRELLA FORM ☐ OTHER THAN UMBRELLA FORM				EACH OCCURRENCE \$ AGGREGATE \$ \$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY THE PROPRIETOR/ PARTNERS/EXECUTIVE OFFICERS ARE: ☐ INCL ☐ EXCL				WC STATUTORY LIMITS ☐ OTH-ER ☐ EL EACH ACCIDENT \$ EL DISEASE-POLICY LIMIT \$ EL DISEASE-EA EMPLOYEE \$
A	OTHER Bkt Builder's Risk	191279927	01-MAY-1998	01-MAY-1999	Direct Risk of Physical Loss * Amount of Contract on Certificate

DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/SPECIAL ITEMS

SEE ATTACHED

CERTIFICATE HOLDER

City of Las Vegas, General Services Dept.
Purchasing & Contracts Division
City Hall, First Floor
400 E. Stewart Ave.
Las Vegas NV 89101

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING COMPANY WILL ENDEAVOR TO MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO MAIL SUCH NOTICE SHALL IMPOSE NO OBLIGATION OR LIABILITY

ON ANY KIND UPON THE COMPANY, ITS AGENTS OR REPRESENTATIVES.
AUTHORIZED REPRESENTATIVE

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADDITIONAL INSURED — OWNERS, LESSEES OR CONTRACTORS (FORM B)

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART.

SCHEDULE

Name of Person or Organization:

THE REDEVELOPMENT AGENCY AND
CITY OF LAS VEGAS ARE NAMED
ADDITIONAL INSURED AS IT
PERTAINS TO THIS PROJECT ONLY

JOB #216-569

NEONOPOLIS GARAGE STRUCTURE
BID NO. 99-1730-20-RC

(If no entry appears above, information required to complete this endorsement will be shown in the Declarations as applicable to this endorsement.)

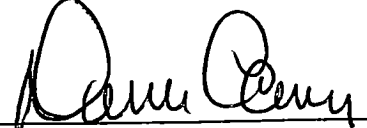
WHO IS AN INSURED (Section II) is amended to include as an insured the person or organization shown in the Schedule, but only with respect to liability arising out of "your work" for that insured by or for you.

IT IS AGREED THAT THIS INSURANCE SHALL OPERATE AS PRIMARY INSURANCE AND NO OTHER INSURANCE SHALL BE CALLED ON TO CONTRIBUTE TO A LOSS HEREUNDER.

THIS INSURANCE POLICY WILL NOT BE CANCELLED, LIMITED OR NON RENEWED UNTIL THIRTY (30) DAYS AFTER RECEIPT BY THE ADDITIONAL INSURED NAMED ABOVE OF A WRITTEN NOTICE OF SUCH CANCELLATION, REDUCTION OF COVERAGE OR NON RENEWAL. SAID NOTICE TO BE SENT BY CERTIFIED MAIL RETURN RECEIPT REQUESTED.

IT IS FURTHER AGREED THAT THE INSURANCE AFFORDED BY THIS POLICY APPLIES SEVERALLY AS TO EACH INSURED EXCEPT THAT THE INCLUSION OF MORE THAN ONE INSURED SHALL NOT OPERATE TO INCREASE THE LIMIT OF THE COMPANY'S LIABILITY AND THE INCLUSION HERE- UNDER OF ANY PERSON OR ORGANIZATION AS AN INSURED SHALL NOT AFFECT ANY RIGHT WHICH SUCH PERSON OR ORGANIZATION WOULD HAVE AS A CLAIMANT IF NOT SO INCLUDED.

McSHERRY & HUDSON

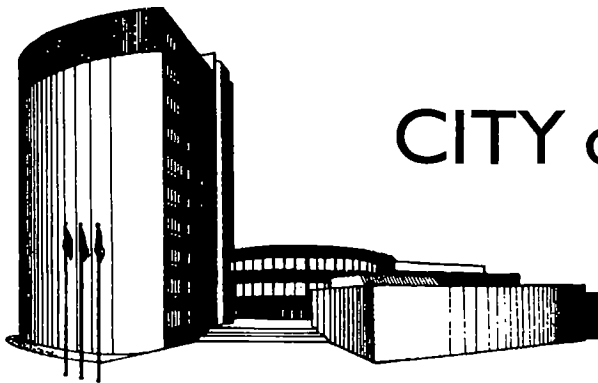
By: 

Date: 2/26/99 mr

MAYOR
JAN LAVERTY JONES

COUNCILMEN
ARNIE ADAMSEN
MICHAEL J. McDONALD
GARY REESE
LARRY BROWN

CITY MANAGER
VIRGINIA VALENTINE



CITY of LAS VEGAS

RECEIVED

FEB 22 1999

February 17, 1999
GRANITE CONSTRUCTION
COMPANY LAS VEGAS

Via Facsimile (696-1091) and U. S. Mail

Mr. Edward G. Riggs
Granite Construction Company
Las Vegas Operations
P. O. Box 96715
Las Vegas, NV 89193

Re: *Letter of Protest*
Bid #99.1730.20-RC
Neonopolis Garage Structure

Dear Mr. Riggs:

The City of Las Vegas has reviewed your written protest received by means of facsimile on February 4, 1999, concerning the validity of the lowest and second lowest bids submitted for the above-referenced project. After considering the merits of that protest, staff is going to recommend to the City Council the rejection of the bids submitted by the lowest and second lowest bidder, and the award of the project to your company.

Although the City Council acting as the Governing Board of the Redevelopment Agency previously approved the pre-award of this contract, the matter has been placed on the agenda of the Redevelopment Agency for the meeting scheduled for February 22, 1999, for consideration of the award of this project and, hopefully, confirmation of staff's recommendation.

You are invited to attend that meeting to make any presentation you feel may be necessary prior to a decision being made by the Agency Board concerning the award of this contract.

Very truly yours,


VIRGINIA VALENTINE
City Manager

VV:RSS:vb
cc: Mark Vincent
Robert Crutchfield



F:\DEPOT\FILELOGS\GNS\99-002\RIGGS.LTR

CLV 7009
3810-015-6/98

400 E. STEWART AVENUE • LAS VEGAS, NEVADA 89101-2986
(702) 229-6011 (VOICE) • (702) 386-9108 (TDD)

#D

City of Las Vegas

GENERAL SERVICES
DEPARTMENT
PURCHASING & CONTRACTS
DIVISION
CITY HALL, 1ST FLOOR
400 E. STEWART AVENUE
LAS VEGAS, NEVADA 89101-2986
(702) 229-6231
FAX (702) 384-9964
TDD (702) 386-9108
www.ci.las-vegas.nv.us/bids.html



RALPH SHACKELFORD
DIRECTOR

JANET DIAMBROSIO-SMITH
ACTING PURCHASING MANAGER

ROBERT L. CRUTCHFIELD, SR.
CONTRACTS SPECIALIST

**INVITATION TO BID
BID NO.99.1730.20-RC
NEONOPOLIS GARAGE STRUCTURE**

SCOPE OF WORK: WORK WILL BE PERFORMED IN BLOCK 34 NEONOPOLIS PROJECT IN THE AREA BOUNDED BY FREMONT STREET TO THE SOUTH, FOURTH STREET TO THE WEST, OGDEN AVENUE TO THE NORTH AND LAS VEGAS BOULEVARD TO THE EAST. THE WORK WILL GENERALLY CONSIST OF EXCAVATION, SOIL NAILING SYSTEM, SUBSURFACE DRAINAGE AND FOUNDATION FOR STRUCTURE. CONSTRUCTION AND FINISHING, READY FOR OPERATION OF TWO-LEVEL BELOW GRADE PARKING GARAGE, COMPLETE WITH FINISHES, MECHANICAL, PLUMBING, PERMANENT DEWATERING SYSTEM AND ELECTRICAL SERVICES.

The estimated monetary range of the project is: \$13,500,000 to \$14,000,000.

PWP-CL-1999-362

MANDATORY PRE-BID ATTENDANCE

If your firm intends to submit a bid for the attached project, your attendance at the Pre-bid Conference is required, pursuant to the Resolution adopted by the City Council on October 12, 1998.

Failure to do so will result in your bid being deemed non-responsive and it will be returned to you un-opened. Further, no protest will be considered should your firm fail to attend the mandatory Pre-bid Conference.

A copy of the Resolution is available upon request.

MANDATORY PRE-BID CONFERENCE: Will be held on January 14, 1999 at, 10:30 a.m. in the Purchasing and Contracts Division Conference Room, First Floor, City Hall Complex, 400 East Stewart Avenue. The purpose of this conference is to discuss the specifications and any prospective bidders concerns and the City of Las Vegas' Minority, Women-Owned and Disabled Veterans' Business Enterprise Policy. A site walk-through will immediately follow the mandatory pre-bid conference.

MAYOR
JAN LAVERTY JONES

COUNCILMEN
ARNIE ADAMSEN, MICHAEL J. MCDONALD,
GARY REESE, LARRY BROWN

CITY MANAGER
VIRGINIA VALENTINE

#1

CLARK COUNTY
INVITATION TO BID

Fax To
642-5793
ATTN: Eddie

CONTRACT NO. 635
NEW GROUND TRANSPORTATION CENTER

DESCRIPTION OF WORK

A. The Project consists of:

1. Construction of a nine level parking garage of approximately 2,144,000 square feet (slab-on-grade of approximately 244,000 square feet and supported floors of approximately 1,900,000 square feet). The slab-on-grade will be bituminous pavement and the supported floors will be cast-in-place, post-tensioned concrete. A metal sun screen for the roof of the building is included. The new garage will have a central core elevator tower with two stairs, an express ramp on the west side and an express helix on the east side. The new garage will be connected to the existing Baggage Claim Building and parking garage by two pedestrian bridges with moving walkways and four vehicle bridges. A Parking Operations Office of approximately 3,600 square feet will be located on the south side of the new garage. Adjacent to this office will be an Exit Plaza with canopy and concrete islands. The Project includes all architectural, civil, structural, mechanical, and electrical work required for a complete and workmanlike job.
2. Modifications to the existing parking garage consisting of new signs, new bollards, painting, and new lighting (an add alternative). The work includes all required architectural, structural, mechanical, and electrical work for a complete and workmanlike job.
3. Modifications to the existing Departures Roadway and the relocation of two of the existing terminal stair towers.
4. Signage Renovation in the Existing Terminal Facilities shall consist of furnishing and installing new signs, replacement of sign faces from existing illuminated suspended and fascia signs with new faces, messages, graphics and materials, relocation of existing signs, painting of existing illuminated suspended and fascia sign enclosures and supports, refurbishing damaged existing sign enclosures, providing temporary signs to replace existing signs taken down for painting and/or fixing, and providing all required electrical and structural supports for the new and

HE

BID

McCARRAN INTERNATIONAL AIRPORT

TIME:

CONTRACTOR acknowledges that OWNER has allowed for sufficient time for it to complete the Work in the time specified. The undersigned CONTRACTOR agrees that, if awarded the Contract hereunder, it shall commence the Work to be performed under the Contract on the date set by the OWNER in its written Notice to Proceed, continuing the Work with diligence and shall complete the entire Work per ATTACHMENT NO. TWO TO BID, MILESTONE and LIQUIDATED DAMAGES DATA. Separable portions of the Work may be subject to milestone dates as established and described in the above named attachment to this Bid. The undersigned agrees that, if awarded the Contract, it will complete said separable portions of Work in accordance with such milestone dates.

If the undersigned is notified of the acceptance of its Bid, it agrees to execute, within ten (10) days, a Contract for the above Work.

The undersigned certifies that it has examined and is fully familiar with all the provisions of the Contract Documents.

Respectfully Submitted,

MEADOW VALLEY CONTRACTORS, INC.

(Name of Bidder)

P.O. BOX 121

MOAPA, NV 89025

(702) 864-2575

(Address & Telephone of
Bidding Firm)

BY: Kenneth D. Nelson

(Signature of Authorized KENNETH D. NELSON
Signatory)

VICE PRESIDENT

(Title)

12-22-94

(Date)

NEVADA STATE CONTRACTOR DATA:

Bidder's License No.: 19258

Classification: A GENERAL ENGINEERING

Monetary Limit UNLIMITED

02/25/99

09:39

702 642 5793

MAX RIGGS CONST.

001

*** ACTIVITY REPORT ***

RECEPTION OK

TX/RX NO.

4442

CONNECTION TEL

702 2614120

CONNECTION ID

START TIME

02/25 09:38

USAGE TIME

01'29

PAGES

2

RESULT

OK



ASSOCIATED GENERAL CONTRACTORS LAS VEGAS CHAPTER

4052 S. Industrial Road

*

Las Vegas, Nevada 89103

*

(702) 796-9986

*

Fax (702) 796-1629

February 25, 1999

Steve Shoup
Granite Construction Co.
4044 S. Industrial Road
Las Vegas, NV 89103

Dear Steve:

It is the opinion of the Associated General Contractors, Las Vegas Chapter, that Granite Construction Company, as a General Engineering Contractor with an "A" license is qualified to bid and construct the Neonaupolus parking structure for the following reasons:

1. Over 50% of the project is the civil work, i.e.: excavation and French drains;
2. The "A" General Engineering license covers piers, foundations and structures among other things; and,
3. The State Contractors Board, by their own admissions, at the hearing Tuesday, February 23, 1999 has in the past allowed General Engineering Contractors with an "A" license to build parking structures.

If you should have any further questions or if I can be of any further assistance please feel free to contact me.

Sincerely,

Dana Wiggins
Labor Relation Director

#D

CURRAN & PARRY
ATTORNEYS AT LAW

QUAIL PARK II, SUITE C-23
601 SOUTH RANCHO DRIVE
LAS VEGAS, NEVADA 89106

WILLIAM P. CURRAN
STANLEY W. PARRY

LYNN KIRSCH
JOHN W. BURGE
J. LYNN JOHNSON

TELEPHONE
(702) 471-7000

FACSIMILE
(702) 471-7070

February 25, 1999

City of Las Vegas
Redevelopment Agency
400 East Stewart Avenue
Las Vegas, Nevada 89101

Dear Council members:

The issue presently before the Council is whether Granite Construction Company ("Granite") is a responsible bidder of the Neonopolis garage structure project ("the project"), Bid No. 99.1730.20-RC. The City of Las Vegas awarded Granite this project after determining that it was the lowest responsible bidder, but Granite's status as lowest responsible bidder was called into question when the issue of whether this project could be awarded to a contractor with a Classification A General Engineering license was raised.¹

In determining the responsibility of a bidder, "the governing body or its authorized representative shall consider the possession of and limit on any required license and may consider the financial responsibility, experience, adequacy of equipment and ability of the bidder to complete performance." NRS 332.085. While the "required license" criterion is subject to dispute, it is beyond dispute that Granite satisfies all other criteria used for determining the responsibility of a bidder. Indeed, Granite is a nationally recognized, \$1.5 billion annual revenue contractor that is engaged primarily in civil work. While its primary Nevada office has always been based in Reno, Granite has done a substantial amount of work in Southern Nevada in past years. In addition, Granite is currently in the process of acquiring Max Riggs Construction and anticipates that it will become a much more active participant in the Southern Nevada construction market in the future.

Accordingly, the only basis for determining that Granite is not a responsible bidder on the project is a finding that Granite does not possess the required license. The Contractors' Board ("the Board") considered the issue of whether the project could be performed by a contractor with a Classification A General Engineering license, but it chose not to render an opinion and submitted the issue to this office for determination. The Board refrained from making a decision because it felt

¹ Until very recently, Granite possessed a Classification AB General Building and General Engineering license. However, Granite let its AB license expire in October 1998. Granite currently possesses a Classification A General Engineering license and is in the process of renewing its AB license. The renewal of Granite's AB license should be completed in about two weeks.

it was not in a position to determine the precise nature of the project and thus could not decide the license required to perform the project.

Based on the Board members' statements at the hearing, the Board appeared to agree on the legal question of the type of license that is required for a specific type of project. There seemed to be a consensus among the Board members that if the project was for the construction of a foundation, this work could only be performed by a Classification A or A/B licensed contractor. If the project was for the construction of a parking garage structure, it could be performed by a Classification A, B or A/B licensed contractor. Finally, if the project was for the construction of a building to house persons and chattels, this work could only be performed by a Classification B or A/B licensed contractor.

Thus, the Board appeared to agree as to which license is required to perform a particular job, but it could not determine the precise nature of this project; that is the Board could not decide whether this project was for a foundation, a parking structure or a building. Accordingly, the Council must make a factual finding -- based on the bid specifications and the work required to fulfill the project -- as to the exact nature of the project. If the Council finds that the project is for the construction of a parking garage structure or a foundation, a Classification A license is a proper license for the project. If, however, this office finds that the project is for the construction of a building to house persons and chattels, an A license is arguably inadequate.

Based on the bid specifications, the most reasonable characterization of the project is for the construction of an underground parking garage structure. The bid itself is entitled "Neonopolis Garage Structure." Further, the "Scope of Work" section reads, in pertinent part, as follows: "The work will generally consist of excavation, soil nailing system, subsurface drainage and foundation for structure. Construction and finishing, ready for operation of two-level below grade parking garage, complete with finishes, mechanical, plumbing, permanent dewatering system and electrical services."

Thus, the Council should find that the project is for a parking garage structure. Such a project can be performed by a Classification A licensed contractor. Based on Board members' statements at the hearing, the Board appeared to agree that a project for a parking garage structure could be performed by a Classification A licensed contractor. In fact, one Board member even stated that the Board had previously held that an A licensed contractor could construct a parking garage. The Board's apparent conclusion, that a Classification A licensed contractor can construct a parking garage structure, was derived from a reasonable interpretation of the applicable regulations.

NAC 624.140, "Classification A: General engineering," states the following: "The board will grant to qualified applicants a license in the branch of general engineering. The board

designates such a license as a classification A license. A person who holds a 'classification A' license may perform the work described in subsection 2 of NRS 624.215." NRS 624.215(2) states in pertinent part: "A general engineering contractor is a contractor whose principal contracting business is in connection with fixed works, including . . . bridges . . . piers and foundations and structures" A parking garage structure falls within 624.215(2)'s work description because it is a "structure" which includes "bridges," "piers," and "foundations." Thus, it is a reasonable reading of the statute that a Classification A licensed contractor can construct a parking garage structure.

The project can also be characterized as a project which requires the construction of a foundation. Indeed, in the next phase of the Neonopolis project, a building will be constructed upon the parking garage structure. This interpretation of the project is supported by the bid specification and statements of the City Engineer. In pertinent part, the "Scope of Work" section of the bid states: "The work will generally consist of excavation, soil nailing system, subsurface drainage and foundation for structure." In addition, the City Engineer admitted at the hearing that the project was intended to function as the foundation for a building that would eventually be built on top of the parking garage structure.²

Again, based on the Board members' statements at the hearing, the Board appeared to agree that a Classification A licensed contractor could perform a project for the construction of a foundation. This interpretation is also supported by the language of NRS 624.215(2), which states that a general engineering contractor's business includes "foundations."

Regardless of how one characterizes the project, it is evident from the bid specifications and from the work required to fulfill the project that the project can be performed by a Classification A licensed contractor. The work that is required to fulfill the project, in accordance with the bid specifications, falls entirely within the work authorized under the subclassifications of a Classification A General Engineering license.

The project clearly involves the following Classification A subclassifications:

- 1) Subclassification 4, "Bridges": this project involves the installation and construction of bridges, which are fabricated of concrete and are designed for use by moving traffic, and of foundations, piers, culverts and roadways to the bridges. See NAC 624.150(4).
- 2) Subclassification 5, "Diamond and Core Drilling": this project involves the obtainment, by core drilling, of concrete, soil and rock. See NAC 624.150(5).

² The City Engineer also stated that he viewed the parking garage structure as a cohesive part of the building phase of the Neonopolis project, despite the fact that the parking garage structure/foundation phase of the Neonopolis project was bid separately.

3) Subclassification 7, "Excavating and Grading": this project involves the digging, movement and placement of earth material, with tools and machines, to perform excavating, grading and trenching operations. See NAC 624.150(7).

4) Subclassification 12, "Excavating, Grading, Trenching, and Surfacing": this project involves the mixing, fabrication and placement of pavement and surfaces consisting of concrete products. See NAC 624.150(12).

5) Subclassification 9, "Piers and Foundations": this project involves the excavation, drilling, compacting, pumping and sealing necessary to construct piers, piles, footings and foundations. See NAC 624.150(9).

6) Subclassification 15, "Sewers, Drains and Pipes": this project involves the laying of pipe for drains and irrigation. See NAC 624.150(15).

7) Subclassification 16, "Paving of Streets, Driveways and Parking Lots": this project clearly involves examination, excavation, grading, and compacting in the application of asphalt to parking lots. See NAC 624.150(16).

8) Subclassification 21, "Fencing and Guardrails": this project involves the assembling, cutting, shaping, fabricating and installing of metal fencing, guardrails, signs and nonelectric markers. See NAC 624.150(21).

9) Subclassification 22, "Unclassified": this project involves work of a specialty which is supported by Granite's knowledge and experience in its trade and craft and which is not included in the other Classification A subclassifications. See NAC 624.150(22).

Thus, the work that is required to fulfill the project falls entirely within the work authorized under the Classification A subclassifications. Accordingly, it is evident that the project can be performed by a Classification A General Engineering licensed contractor.

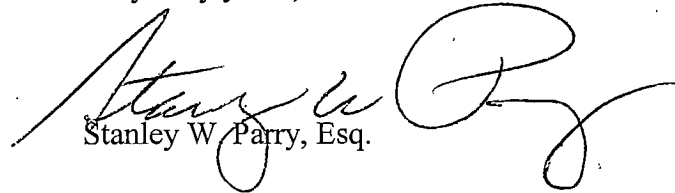
At the hearing, the Board also considered whether the project should be characterized as a building which houses persons and chattels, rather than as a parking garage structure or a foundation. The Board seemed to agree that if the project were a building, it could not be performed under an A license. The Board entertained this idea, that the project could be conceptualized as a building, based on the City Engineer's statement that the City of Las Vegas considered the parking garage structure/foundation to be one part of a cohesive structure that included the building to be built above it. The City Engineer also emphasized that visitors of the future building would pass through the parking garage, and the garage would include offices for parking attendants.

The Board refrained from making a factual finding that the project constituted a building, probably because such a characterization of the project is ludicrous based on the law and the facts. The bid specification is solely for a two-level below grade parking garage. The project -- as it was bid -- has nothing to do with the building that will eventually rest above this garage. In fact, the building that will eventually be constructed as part of the next phase of the Neonopolis

project will be completed through an entirely separate bid by the developer and not the City of Las Vegas. Thus, while the project bid by the City of Las Vegas might anticipate the eventual construction of a building, this project was bid as a discrete project to construct a parking garage structure and foundation. The project does not require the construction of any buildings; it only requires a contractor that can build a parking garage structure and foundation, which can be done by a Classification A licenced contractor.³

For the foregoing reasons, a Classification A General Engineering license is a proper license for this project and Granite is thus the lowest responsible bidder on the project.

Very truly yours,



Stanley W. Parry, Esq.

³ The fact that the parking garage might temporarily "house" parking attendants does not mandate a Classification B license. Many of the works described under NRS 624.215(2) may be occupied by workers or attendants -- e.g., harbors, railroads, tunnels, airports, bridges, refineries, chemical plants, industrial plants, and power plants.

JONES VARGAS

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KIRK B. LENHARD
KEVIN M. STOLWORTHY
STEPHEN M. RICE
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SCOTT M. SCHOENWALD
PATRICK J. SHEEHAN
DIANA L. SULLIVAN
ERIC W. SWANIS
SANDRA D. TURNER
STACEY A. UPSHON
CANOL L. WETZEL
ANNE J. WILLIAMS
CHRIS V. VERGENSEN

CLIFFORD A. JONES (RETIRED)
GEORGE L. VARGAS (1909 - 1983)
JOHN G. BANTLETT (1910 - 1983)
LOUIS HEAD DIXON (1918 - 1983)
GARY T. FOREMASTER (1933 - 1983)

February 25, 1999

Writer's Direct Line
(702) 862-3379

Bradford R. Jerbic, Esq.
City Attorney
Las Vegas City Attorney's Office
400 East Stewart Avenue
9th Floor, City Hall
Las Vegas, Nevada 89101

VIA FAX 386-1749

Re: Block 34

Dear Brad:

This office is legal counsel for World Entertainment Centers, LLC, the developer of the Neonopolis project (the "Developer"). As you know, the Developer has entered into a lease with Mann Theatres as the anchor for the project. That lease contains substantial penalties for the Developer's failure to deliver the completed project on time.

The Mann lease establishes an "Autumn Target Period" which expires on the Friday prior to Thanksgiving of the year 2000 and a "Summer Target Period" which commences on May 15th of the following year. The current schedule calls for the Neonopolis project to be completed the week prior to Thanksgiving of the year 2000, the last day of the Autumn Target Period. If the project is not completed on schedule, the Mann Theatres tenant will not be obligated to pay its base rent (\$100,000 per month) until May 15 of 2001, for a total loss of more than \$550,000. The tenant would be obligated to pay a percentage rent from the time the project is completed until the start of the Summer target period. That percentage rent is projected to be \$10,000 per month.

Delays will also result in a significant increase in the carrying costs of the project and day for day delays in the commencement of rent under the leases for the 150,000 square feet of leaseable space which is not included in the theatre premises (such rent is now estimated to be in excess of \$22,000 per day).

To date, the Redevelopment Agency and the Developer have cooperated to overcome extraordinary hurdles to keep the project on schedule. The Developer is now relying upon the timely completion of the subterranean parking garage by the Agency. Delays in the construction of the garage will cause delays in the construction of the retail element of the Neonopolis project and severe economic damage to the Developer.

RENO OFFICE

100 WEST LIBERTY STREET RENO, NEVADA 89501 TELEPHONE (775) 786-5000 TELECOPIER (775) 786-1177

H D

Bradford R. Jerbic, Esq.

City Attorney

February 25, 1999

Page 2

If you have any questions whatsoever concerning the foregoing, please call me.

Very truly yours,

JONES VARGAS



Stephen M. Rice

SMR/hds

cc: Robert M. Gorlow

BID PROPOSAL

Place: CITY OF LAS VEGAS, NEVADA

Date: JANUARY 27, 1999

Bid No. 99.1730.20-RC

Bid of M.J. Dean Construction, Inc, (hereinafter called Bidder)*

Corporation*, organized and existing under the laws of the State

of Nevada, doing business as: M.J. Dean Construction, Inc

The Bidder, in compliance with your invitation for bids for the construction of Neonopolis Garage Structure having examined the plans and specifications with related documents and the site of the proposed work, and being familiar with all of the conditions surrounding the construction of the proposed project including the availability of materials and labor, hereby proposes to furnish all labor, materials, and supplies, and to construct the project in accordance with the Contract Documents, of which this proposal is a part.

Bidder hereby agrees to commence work under this Contract on a date to be specified in written "Notice to Proceed" of the Owner and to fully complete the project in accordance with the Specifications set forth in the Bid Documents. Bidder further agrees to pay liquidated damages in accordance with the Contract document..

Bidder acknowledges receipt of the following addenda:

Addendum No.

#1
#2
#3
#4

Bidders Signature

William Moore
William Moore
William Moore
William Moore

Date Acknowledged

1/22/99
1/22/99
1/29/99
2/1/99

Enclosed herewith are:

- Bid Security
- Subcontractor Listing/ Supplier Listing
- Affidavit for Best Bid Preference per NRS 338.147

Bidder agrees to perform all the work described in the specifications and shown on the plans, for the following prices:

*Insert the correct word: corporation, partnership, or individual, as applicable.

The prices reflected on the Bid Form shall include all labor, materials, tools, equipment, overhead, profit, and insurance necessary to cover the finished work of the several kinds called for.

The Bidder understands that the ~~Owner reserves the right to reject any or all bids and to waive any informalities in the bidding.~~

The Bidder agrees that his bid shall be good and may not be withdrawn for a period of sixty (60) calendar days after the scheduled time for opening bids.

The Bidder is placed on notice that there are specific funding limitations which require that the expenditure of funds to complete this project be disbursed over the duration of the entire project at regular intervals based on the original time of completion reflected in the Bid Documents and NOT sooner. The successful Bidder will be required to submit a progress schedule and traffic barricading plan five (5) working days prior to the preconstruction meeting which reflects a completion date in accordance with the original completion time. There shall be no additional compensation due the successful bidder for early completion.

Upon receipt of the City's written Notice of Award Letter, the Bidder will execute the formal contract attached within five (5) calendar days and deliver to the City, that Contract Form, Insurance and Bonds as required.

IF THE BIDDER DOES NOT PROVIDE THESE SUBMITTALS ON OR BEFORE THE 5TH CALENDAR DAY, HE WILL PAY OVER TO THE CITY THE AMOUNT OF ONE THOUSAND (\$1,000) DOLLARS PER CALENDAR DAY AS LIQUIDATED DAMAGES.

William Moore
SIGNATURE OF BIDDER

M.J. DEAN CONSTRUCTION INC.
LEGAL NAME OF FIRM

WILLIAM MOORE
NAME OF BIDDER (PRINT OR TYPE)

702-873-1947
TELEPHONE NUMBER

702-873-7857
FAX NUMBER

5541 S. CAMERON ST
ADDRESS OF FIRM

32338
NEVADA STATE CONTRACTOR'S LICENSE NO.

LAS VEGAS NV 89117 B
CITY, STATE, ZIP CODE CLASSIFICATION

UNLIMITED
MONETARY LIMITATION IF ANY

TODAY'S DATE: 2-3-99

CLV - BUSINESS LICENSE NO.: C12-00692-2-047738

☐ **CLAIM FOR PREFERENCE UNDER NRS 338.147**
AFFIDAVIT ATTACHED

FOR INFORMATIONAL PURPOSES ONLY

Is this firm a Minority, Women or Disadvantaged Business Enterprise?
☐ NO ☐ YES. If Yes, Specify ☐ MBE ☐ WBE ☐ DVBE.

Has this firm been certified as a Minority, Women or Disabled Veterans Business Enterprise by any Governmental Agency? ☐ NO ☐ YES. If yes, Specify

Government Agency: _____
Date of Certification: _____

INSTRUCTIONS TO BIDDERS

IB.1 BIDDING PROCEDURES

A. MANDATORY PREBID CONFERENCE

A Mandatory Prebid Conference will be held on January 14, 1999 at 10:30 a.m. in the Purchasing and Contracts Division Conference Room, First Floor, City Hall Complex, 400 East Stewart Avenue. The purpose of this conference is to discuss the specifications and any prospective bidders concerns and the City of Las Vegas' Minority, Women-Owned and Disabled Veterans' Business Enterprise Policy.

Any prospective bidder wishing to submit a bid must attend the Mandatory Prebid Conference. Any firm that submits a bid but fails to attend the Mandatory Prebid Conference will be deemed a non-responsive bidder, and the bid submitted will be returned unopened. Furthermore, no protest will be considered from a firm that fails to attend the Mandatory Prebid Conference. A site walk-through will immediately follow the mandatory pre-bid conference.

B. DESIGNATED CONTACTS

1. The designated contact for questions pertaining to the special provisions or drawings is James Mee of Kitchell C.E.M., telephone number (602) 266-1970
2. For any further information on this Invitation to Bid, contact Robert L. Crutchfield, Sr., telephone number (702) 229-6231

C. CONTRACT DRAWING

The Contract Drawings have the title, drawing number and date as follows:

CONTRACT DRAWING TITLE:	<u>NEONOPOLIS FREMONT STREET</u> <u>EXPERIENCE GARAGE</u>
CONTRACT DRAWING NUMBER:	<u>1671.00</u>
CONTRACT DRAWING DATE:	<u>11/25/98</u>

The Contract Drawings do not purport to show all the details of the work. They are intended to illustrate the character and extent of the performance desired under the contract, therefore, they may be supplemented or revised from time to time, as the work progresses, by the Engineer or (subject to approval of the Engineer) by the Contractor. Drawings revisions and/or additional drawings or sketches will be made and furnished the Contractor if they are deemed necessary to adequately illustrate the work. All such supplementary and revised drawings, those which do not change the contract amount, automatically become a part of this contract.

Five (5) sets of the Contract Drawings and Specifications will be provided the Contractor without charge upon the signing of the contract. Additional copies or prints may be obtained at the cost of reproduction.

D. INTERPRETATIONS AND ADDENDA

Bidders shall take no advantage of any apparent error or omission in the bidding documents. In the event the Bidders discover such an error or omission, they shall immediately notify the City. The City will then make such corrections and interpretations as may be deemed necessary for fulfilling the intent of the bidding documents through the issuance of an Addenda.

If it becomes necessary to revise any part of this bid, a written addendum will be provided to all Bidders. City is not bound by any oral representations, clarifications, or changes made in the written specifications by City's employees, unless such clarification or change is provided to Bidders in written addendum form from the Purchasing and Contracts Division.

Addenda shall be sent by either mail, certified mail, faxed, picked up, or delivered to all who are known by the Director of General Services to have received a complete set of Bidding Documents.

Prior to submission of the Bid, each Bidder shall ascertain that it has received all Addenda issued. The Bidder shall acknowledge receipt of Addenda by completing the acknowledgment space provided on the Bid Form.

E. BID PREPARATION AND SUBMISSION

1. Bid proposals are to be submitted on the "BID" forms provided or copies thereof, and manually signed by pen by an officer or the principal submitting the bid. All figures must be written in ink or typewritten. Figures written in pencil or erasures are not acceptable. Any interlineation, alteration or erasure must be initialed in ink by a person authorized to bind the Bidder to a Contract. If the person making said interlineation, alteration or erasure is not the same person who signs the Bid Proposal, such person must write his/her signature and print his/her name and title on each page of the Bid Proposal where initials appear. Written delegation of signature authority to an agent acting in behalf of the principal must accompany the sealed bid and cannot contain any language which states the principal retains final approval of acceptance of any of the terms, conditions, specifications, and/or finalized contract.
2. Each bid must be submitted in a sealed envelope prominently marked on the lower left side as follows:

SEALED BID

BID INVITATION NO: 99.1730.20-RC

OPENING: January 27, 1999 at 3:00 p.m.
(DATE AND TIME)

COMPANY NAME: _____

Failure to do so may result in a premature opening of, post-opening of, or failure to open, that bid. Bids must be delivered prior to the 3:00 p.m. on the date specified to the following address:

Office of The City Clerk
1st Floor, City Hall Complex
400 East Stewart Avenue
Las Vegas, Nevada 89101

3. If forwarded by mail, the sealed envelope containing the bid must be enclosed in another envelope addressed as specified. Mailed bids must be received by the City Clerk prior to the closing time for receipt of bids to receive consideration. **FACSIMILE BIDS WILL NOT BE ACCEPTED NOR CONSIDERED.**
4. Any bidder may modify his bid by telegraphic communication at any time prior to the scheduled closing time for receipt of bids, provided such telegraphic communication is received by the City prior to the closing time, and provided further, the City is satisfied that a written confirmation of the telegraphic modification over the signature of the bidder was mailed prior to the closing time. The telegraphic communication shall not reveal the bid price but should provide the addition or subtraction or other modification so that the final prices or terms will not be known by the City until the sealed bid is opened. If written confirmation is not received within two (2) days from closing time, no consideration will be given to the telegraphic modification.

F. **DOCUMENTS NECESSARY FOR SUBMITTAL**

~~The Bid Form, Addenda, Bid Security, and all stipulated attachments, together comprise the Bid, and all shall be included in the sealed envelope. Omission of or failure to complete any portion of the required documents at the time of Bid Opening may be cause to reject the entire bid.~~

G. **BID SECURITY**

1. Each Bid shall be accompanied by a bid security (in the form of, at Bidder's option, a Cashier's check, Certified Check, Money Order, or Bid Bond in favor of the City) in the amount of Five Percent (5%) of the bid amount, pledging that the Bidder will within ten (10) days after Notice of Award, enter into a contract with the City on the terms stated in his Bid and will furnish bonds or the faithful performance of the Contractor and the payment of all obligations arising thereunder. **Bonds issued by an individual surety are not acceptable to The City of Las Vegas.** Should the Bidder refuse to enter into such Contract or fail to furnish such bonds, the amount of the bid security may be forfeited to the City as liquidated damages, not as penalty. All checks and money orders must indicate the Payee as City of Las Vegas and reflect the complete bid number. Failure to enclose a bid guarantee with the sealed bid in the amount of five percent (5%) of the total bid shall be cause for rejection of that bid without consideration.
2. Surety companies executing bonds must be licensed to issue surety by the State of Nevada Insurance Division pursuant to Nevada Revised Statute 683A.090 and issued by an appointed agent pursuant to Nevada Revised Statute 683A.280.

3. If a Bidder chooses to provide a bid security in the form of a Cashier's Check, Certified Check or Money Order, a 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 bid bond, it may be issued for five percent (5%) of the aggregate amount of all Lots submitted.
4. The Bond shall be written on either a standard Bid Bond form and the attorney-in-fact who executes the bond on behalf of the surety shall affix to the bond a certified and current copy of his power of attorney.
5. The City will have the right to hold the bid security of the three apparent low Bidders until (a) the Contract has been executed and bonds have been furnished, or (b) the specified time has elapsed so that Bids may be withdrawn, or (c) all Bids have been rejected.

H. LATE BIDS

Any bid which arrives after the scheduled opening date and time will be returned unopened to the bidder.

I. IRREGULAR BID

A bid shall be considered irregular for the following reasons, any one or more of which may be cause for rejection:

1. If the bid form furnished by the City is not used or is altered.
2. If there are unauthorized additions, conditional or alternate bids, or irregularities of any kind which may tend to make the bid incomplete, indefinite or ambiguous as to its meaning, or give the bidder submitting the same a competitive advantage over other bidders.
3. If the individual bid items of a prospective bidder's bid are unbalanced in the sense that the listed price of any bid item departs by more than twenty percent (20%) from the City's cost estimate for that item.

J. DISQUALIFICATION OF BIDDERS

Any one or more of the following may be considered as sufficient for the disqualification of a prospective bidder and the rejection of his bid or bids.

1. Evidence of collusion among prospective bidders. Participants in such collusion will receive no recognition as bidders for any future work of the City until such participant shall have been reinstated as a qualified bidder.
2. More than one bid for the same work from an individual, firm, or corporation under the same or different name.
3. Lack of competency, adequate machinery, plant and/or equipment as revealed by the financial statement and/or experience data sheet(s).
4. Unsatisfactory performance record as shown by past work for the City, judged from the standpoint of workmanship, progress, and quality of services/goods provided,

5. Uncompleted work which, in the judgment of the City, might hinder or prevent the prompt completion of additional work, if awarded.
6. Failure to pay or satisfactorily settle all bills due for labor and material on any contract(s) still outstanding at the time of the letting of the Invitation to Bid.
7. Failure to comply with any qualification requirement of the City.
8. Failure to list, if required, all subcontractors who will be employed by the bidder.
9. Failure of the prospective bidder to be properly licensed.
10. Any other reason to be determined in good faith to be in the best interests of the City.
11. Failure to attend the Mandatory Prebid Conference.

In the case of rejection of all bids, the City reserves the right to advertise for new bids or to proceed to do the work otherwise if, in the judgment of the City Council, the best interest of the City will be promoted thereby.

K. QUANTITIES

The quantities given on the contract drawings or indicated by the unit bid items are approximate quantities and are intended to illustrate scope of work. The Contractor shall be responsible for verifying the exact quantities involved.

L. COMPENSATION

The Total Bid Price shall cover all work required by the Contract Documents. All costs in connection with the proper and successful completion of the work, including furnishing all materials, equipment, supplies, and appurtenances; providing all construction equipment, and tools; and performing all necessary labor and supervision to fully complete the work, shall be included in the unit and lump sum prices bid. All work not specifically set forth as a pay item in the Bid Form shall be considered a subsidiary obligation of the Contractor and all costs in connection therewith shall be included in the prices bid.

M. LUMP SUM

The purpose of the Lump Sum Bid Breakdown shall serve the City of Las Vegas in two (2) distinct areas:

1. PRIOR TO AWARD OF BIDS:

The City of Las Vegas may request a lump sum bid breakdown for any or all item(s) reflected on the bid schedule as "LUMP SUM" for the purpose of determining an unbalanced bid. The analysis shall be conducted by the City using acceptable methods dictated by the industry.

2. AFTER AWARD OF BID:

The City of Las Vegas may request a Lump Sum breakdown for any or all item(s) reflected on the bid schedule as "LUMP SUM" for the purpose of making partial payments to the Contractor.

Under no circumstances may any bid item reflected as "LUMP SUM" or otherwise be increased or decreased by the Contractor as a result of the Lump Sum bid breakdown analysis.

Any or all of the prospective bidders may be required to prepare an itemized bid breakdown and it shall be the bidder's responsibility to verify the quantities as shown on the drawings before preparing his bid. The schedule as shown on the Contract Drawings does not constitute a complete outline of the work to be performed by the Contractor in accordance with the Contract Drawings and Specifications in their present form. This list is intended to include all major items, and the Lump Sum bid computed therefrom will be the maximum compensation for all work and materials whatsoever furnished by the Contractor in order to comply with the Contract Drawings and Specifications in their present forms, whether or not indicated in the approximate quantities or pertaining to the items of work listed therein. Compensation for work performed to correct latent conditions shall be in accordance with Section 104 of the Standard Specifications.

N. BIDDERS PREFERENCE

Bidders submitting a proposal to a public body for a public work shall bear the responsibility to ascertain the relevancy of the "preference for certain contractors" referenced in NRS 338.147. Bidders are hereby informed that the five (5) year period immediately preceding submission of the bid means the sixty (60) month period preceding the day the bid is opened.

Bidders claiming preference shall complete and submit with their Bid Proposal, the "Affidavit of Preferential Bidder Status". If required, the City may request the Bidder to furnish within twenty-four (24) hours a copy of receipts for tax(es) paid in accordance with NRS 338.147.

Failure to submit the affidavit with your bid or to submit documentation of tax(es) paid within twenty-four (24) hours, shall result in a waiver of any Bidder preference.

Note: Provisions of NRS 338.147 do not apply to any contract for a Public Work which is expected to cost less than \$250,000.

O. BIDDERS REPRESENTATION

1. Each Bidder by submitting his Bid represents that:

- a. He has read and understands the Bidding Documents and that his Bid is made in accordance therewith.
- b. He has visited the site and familiarized himself with the local conditions under which the work is to be performed

2. Nevada State Contractor's Board Licensing

Bidders for this Work must be qualified and licensed for this particular Work by the Nevada State Contractor's Board prior to the Bid Opening. Failure to comply shall result in rejection of the Bidder. Nevada Contractor's License type, number, and dollar limit must be indicated on the Bid Proposal page. Questions concerning license requirements shall be directed to the Nevada State Contractor's Board. The decision of the Nevada State Contractor's Board shall be final.

3. The Bidders and the successful Contractors and their Subcontractors shall comply with all provisions of Nevada Revised Statutes, Chapter 624 and Nevada Administrative Code, Chapter 624.

P. PREFERENTIAL EMPLOYMENT

All contractors shall comply with the preferential employment provisions of NRS 338.130 for contracts over Twenty Thousand Dollars (\$20,000). This law requires that, when the qualifications of applicants are equal, that preference be given: First, to honorably ~~discharged soldiers, sailors, and marines of the United States who are citizens of the State of Nevada;~~ second, to other citizens of the State of Nevada. If the provisions of NRS 338.130 are not complied with by the Contractor, this contract shall be void, and any failure or refusal to comply with any of the provisions of NRS 338.130 shall render this contract void.

Q. SUBCONTRACTING

The Contractor shall be bound by and comply with Nevada Revised Statute 338.144 to limit the practice of shopping for bids and shall provide a Subcontractors Listing with the submission of their Bid. The form must have the spaces filled in for each subcontractor which will be paid an amount exceeding five percent (5%) of the bid amount or Fifty Thousand Dollars (\$50,000), whichever is less.

Contractor shall verify prior to submitting their bid that all subcontractors specified are properly licensed. Substitutions of subcontractors specified in the bid shall comply with the requirements of Nevada Revised Statute 338.144.

Contractors are urged to utilize Minority, Women-Owned & Disabled Veterans Businesses as subcontractors and material suppliers **regardless of the amount/percentage of the contract.**

Should no firms be indicated on the Subcontractor Listing, the Contractor represents that all personnel performing services under any phases, shall be carried on the Contractor's payroll, or that the amount paid to a subcontractor is not within the amounts specified above.

Contractor agrees that he will assume responsibility for acts or omissions of subcontractors and of persons either directly or indirectly employed by them, as they are responsible for the acts or omissions of persons directly employed by the Contractor. Nothing contained in the contract documents shall create any contractual relationship between subcontractor and the City of Las Vegas.

The City reserves the right to request copies of any or all contracts that the successful Bidder may have with his subcontractor(s).

R. SUPPLIER INFORMATION

1. Contractors are urged to utilize Minority, Disadvantaged and Women-Owned Business Enterprises as suppliers. Do not duplicate a firms name if previously identified as a subcontractor.
2. Contractor shall provide the Supplier Listing with the submission of their Bid Proposal. This form will have the spaces filled in for each category, but no more than one firm will be identified for each category. If the successful Bidder plans to provide the work or material, then the space may have the word "SELF" or be left blank.
3. Contractor agrees that they will assume responsibility for acts or omissions of their supplier(s) and of persons either directly or indirectly employed by them, as they are for the acts or omissions of person directly employed by the Contractor. Nothing contained in the contract documents shall create any contractual relation between supplier(s) and City.
4. City reserves the right to request copies of any or all documents that the successful bidder may have with his supplier(s).

S. EQUAL OPPORTUNITY CONTRACTING POLICY

Minority business enterprises will be afforded full opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, creed, sex, or national origin in consideration for an award.

1. DEFINITIONS

- a) MINORITY BUSINESS ENTERPRISE (MBE) means a business which 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 minorities. Minority categories are NATIVE AMERICAN, BLACK/AFRICAN AMERICAN, ASIAN AMERICAN, AND HISPANIC AMERICAN.
- b) WOMEN-OWNED BUSINESS ENTERPRISE (WBE) means a business which 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.
- c) DISABLED VETERAN-OWNED BUSINESS ENTERPRISE (DVBE) means a business which 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 by the City of Las Vegas as a U.S. veteran of any era with a service-connected minimum disability of ten (10%), certified by the Department of Veterans Affairs.

2. CERTIFICATION AGENCIES

The City recognizes MBE's, WBE's, and DVBE's who are certified through the following agencies:

- a) CLARK COUNTY DEPARTMENT OF AVIATION: 261-5161
- b) NEVADA DEPARTMENT OF TRANSPORTATION (NDOT): (800) 267-1971

3. GENERAL

- a) A M/W/DVBE may participate as a prime contractor, sub-contractor, joint venture partner with a prime or sub-contractor, or as a vendor of materials and/or supplies. Only those sub-contractor(s) and suppliers contracting directly with or to be paid by the prime contractor may be credited toward the goals.
- b) A M/W/DVBE joint venture partner must be responsible for a clearly defined scope of work detailed separately from the work to be performed by the non-M/W/DVBE joint venture partner. In addition, an agreement signed by all parties, identifying the extent to which each joint venture partner shares in the Ownership, control, management, risk and profits of the joint venture must be submitted to the City of Las Vegas.
- c) A M/W/DVBE must perform a commercially useful function, i.e., must be responsible for the execution of a distinct element of the work and must carry out its responsibility by actually performing, managing, and supervising the work specified.
- d) The contractor shall not be entitled to payment for any work or material scheduled to be performed by an M/W/DVBE unless it is performed or supplied by the listed M/W/DVBE or by an approved substitution. See substitutions in paragraph F below.

CITY OF LAS VEGAS MBE/WBE/DVBE GOALS

- 1) The City of Las Vegas has adopted the following goals for MBE/WBE/DVBE participation and utilization.

Minority-owned Business Enterprise (MBE) 25%
Women-owned Business Enterprise (WBE) 5%
Disabled Veteran-owned Business Enterprise (DVBE) 2.5%

These percentage goals represent the value of sub-contracts and materials agreements awarded to M/W/DVBE's based on the total dollar value of the bid. Only sub-contractors and suppliers listed prior to bid opening may be counted toward the goals.

- 2) It is the bidder's responsibility to make a sufficient portion of the work available to sub-contractors and suppliers and to select those portions of the work and/or material needs consistent with M/W/DVBE availability.
- 3) It is the bidder's responsibility to make a good faith effort to meet the M/W/DVBE participation goals. If the bidder fails to meet the goals, information documenting the bidder's good faith efforts to achieve the goals must be completed prior to bidding. **M/W/DVBE commitments and good faith efforts made after bid opening will not be considered.**

- 4) Prior to award of any contract, the apparent low bidder's bid submission will be reviewed to determine if the City goals have been met. If goals have been achieved, the bidder will not be required to submit any information documenting their good faith efforts to meet the goals.
- 5) Certified M/W/DVBE prime contractors will receive credit toward the goals only for that portion of work to be completed by their own workforce and that of other certified M/W/DVBE's.
- 6) M/W/DVBE prime contractors are also expected to meet the goals for M/W/DVBE participation or to demonstrate a good faith effort to meet the goals.

A. GOOD FAITH EFFORT

- 1) Good faith efforts are defined as those which, given all relevant circumstances, a contractor actively and aggressively seeking to meet the goals would make. Efforts that are merely pro forma, are not good faith efforts to meet the goals, even if they are sincerely motivated, if, given all relevant circumstances, those efforts could not reasonably be expected to produce a level of participation to meet the goals. In evaluating good faith efforts, the following are some examples that the City will consider:
 - a) Whether the contractor attended any pre-bid conferences scheduled to discuss the City's Equal Opportunity Contracting Program goals and requirements for this project.
 - b) Whether the contractor advertised in general circulation, trade association, and minority, women, and disabled veteran-focus media concerning sub-contracting opportunities in time to allow opportunity for effective participation by M/W/DVBE firms.
 - c) Whether the contractor contacted the City's ²²⁹⁻²⁵⁵⁰ Minority Business Enterprise Division for a list of identified M/W/DVBE firms and the City's M/W/DVBE Resource List, and effectively used this information. *Left message 1/20 2-1-99*
 - d) Whether the contractor effectively used additional services of available: (i) minority, women, and disabled veteran community organizations; (ii) minority, women, and disabled veteran professional associations; (iii) minority, women, and disabled veteran trade associations; (iv) local, state and federal small business assistance offices; and (v) other organizations that provide assistance in the recruitment and placement of M/W/DVBE's.
 - e) Whether the contractor provided written notice to a reasonable number of specific M/W/DVBE firms in sufficient time to allow opportunity for effective participation in the contract.
 - f) Whether the contractor followed up initial solicitations of interest by contacting M/W/DVBE firms to determine with certainty whether they were interested.
 - g) Whether the contractor selected portions of work to be performed by M/W/DVBE firms in order to increase the likelihood of meeting the established goals, including, where appropriate, breaking down contracts into economically feasible units to facilitate M/W/DVBE participation.
 - h) Whether the contractor provided interested M/W/DVBE firms with access to plans and specifications and adequate information about the scope of services and other requirements of the contract.

- i) Whether the contractor negotiated in good faith with interested M/W/DVBE firms in order to arrive at a fair price, opting for negotiation in lieu of inviting bids.
 - j) Whether the contractor fairly determined the qualifications of interested M/W/DVBE firms using only the criteria specified in the bid documents.
 - k) Whether the contractor made efforts to assist interested M/W/DVBE firms in obtaining bonding, lines of credit, insurance, and/or meeting other governmental contracting requirements.
 - l) Whether the contractor documented legitimate reasons why the particular M/W/DVBE's he/she contacted, and did not utilize, were not qualified.
 - m) Other evidence to indicate compliance with the spirit of the City's Equal Opportunity Contracting Program.
2. This list is a guideline and is not meant to be exhaustive. The exercise of these good faith efforts does not necessarily establish a determination of compliance. In the determination of whether a potential contractor exercised good faith efforts to achieve the W/M/DVBE goals, the availability of qualified M/W/DVBE firms for the type of work involved on a particular contract will be considered.
3. In the event that a potential contractor has not achieved the M/W/DVBE participation goals, it may be entitled to receive an award of the contract if it exercises good faith efforts to achieve the goal, but is unable to do so.
4. Lack of good faith efforts will subject a potential qualified contractor's bid to additional scrutiny by the Minority Business Enterprise Division, and may cause the award process to be held in abeyance until an appropriate determination can be made.

B. PERFORMANCE AND SUBSTITUTION

- 1) The M/W/DVBE sub-contractors and suppliers listed by the contractor shall perform the work and supply the materials for which they are listed. Authorization to utilize other forces shall be requested for the following reasons:
- a) The listed M/W/DVBE, after having had a reasonable opportunity to do so, fails or refuses to execute a written contract, when such written contract, based on the general terms, conditions, plans, and specifications for the project, is presented by the contractor.
 - b) The listed M/W/DVBE becomes bankrupt or insolvent.
 - c) The listed M/W/DVBE fails or refuses to perform the sub-contracted work or furnish the listed materials.
 - d) The work performed by the listed sub-contractor is unsatisfactory and is not in substantial accordance with the plans and specifications, or the sub-contractor is substantially delaying or disrupting the progress of the work.
 - e) It would be in the best interest of the City of Las Vegas.

- 2) Before substitutions can be made, approval must be granted by the City Council. The award of the contract shall be deemed an approval of the listed subcontractors and the portions of the work to be sublet, and no changes or additions will be allowed without the City's written approval.

C. SUBMITTALS

- 1) If goals have been achieved, the apparent low bidder will not be required to submit any information documenting their good faith efforts to meet the goals.
- 2) If the apparent low bidder fails to meet the City's M/W/DVBE goals, documentation supporting their good faith efforts must be submitted **within five (5) working days after bid opening** to the City's Minority Business Enterprise Division. Such documentation must indicate all efforts expended under paragraph (A) of this section.

NOTE: PROSPECTIVE BIDDERS WISHING ADDITIONAL INFORMATION ON THE CITY'S EQUAL OPPORTUNITY CONTRACTING POLICY OR INFORMATION REGARDING MINORITY, WOMEN, AND DISABLED VETERAN CONTRACTORS MAY CONTACT THE MINORITY BUSINESS ENTERPRISE DIVISION AT (702) 229-2550.

IB.2 OPENING OF BIDS

A. BID OPENING

Bids will be opened and read publicly at the time and place indicated in the Invitation to Bid. Prospective bidders, their authorized agents and other interested parties are invited to be present. The total sum read shall be subject to the provisions of determination of the lowest bid paragraph.

B. MISTAKE IN BID

A request for withdrawal of a bid due to a purported error shall not be considered unless the same is filed in writing to the Purchasing and Contracts Division by the bidder within forty-eight (48) hours after opening thereof. Any such request shall contain a full explanation of any purported error and shall be supported by the original calculations on which the bid was computed, together with a certification and notarization thereon that such calculation is the original as prepared by the bidder or his agent.

C. WITHDRAWAL OF BID

Before Bid Opening

Bidders may request withdrawal of a posted, sealed bid prior to the scheduled bid opening time provided the request is submitted to the City Clerk's Office in writing, or an authorized representative presents himself with proper identification to the City Clerk's office and verbally requests that the bid be withdrawn.

After Bid Opening

No bids may be withdrawn for a period of sixty (60) calendar days after the date of bid opening. All responsive and responsible bids received are considered firm offers of the time period specified above and may be considered for award. The Bidder's offer will expire at the time specified above or when the successful Bidder provides the bonds, insurance, submittals and submits the executed Contract.

D. REJECTION OF BIDS

The City of Las Vegas reserves the right to waive any informality or irregularity in any Bid received, and to reject any and/or all Bids.

In the case of rejection of all bids, the City reserves the right to advertise for new bids or to proceed to do the work otherwise if, in the judgment of the City Council, if it is the best interest of the City.

E. TIE BIDS

- A. Definition: A tie-bid is defined as an instance wherein bids are received from two or more Bidders, that are considered the low bids and are identical in all evaluation areas. Unless all evaluation areas are identical, there is not a tie-bid and the award will be made to the lowest responsive and responsible Bidder.
- B. Resolution Procedure: The procedure for tie-bids is to hold a public drawing and give all business to the winner of the draw. When a drawing is necessary, the City will contact the Bidders involved and explain the reason for the drawing. The Purchasing and Contracts Representative will indicate the time and place of the drawing and invite the Bidders to attend, but specify that attendance is not mandatory for the drawing. The City will ensure that another Purchasing and Contracts employee is present as a witness at the drawing.

F. BID PROTESTS

Any individual or company who is allegedly aggrieved in connection with the solicitation or award of a contract may protest. The protest will be submitted in writing to the Manager of Purchasing and Contracts, General Services, within three (3) working days after such aggrieved person knows or should have known of the facts giving rise thereto. The Purchasing and Contracts Division Manager shall review the written protest and shall issue a decision in writing. The decision shall state the reasons for the action taken. A copy of this decision shall be forwarded to the Director of General Services.

If the protest is not resolved by mutual agreement, the protestant may submit in writing, a request for an administrative appeal. This request must be submitted within three (3) working days from receipt of the written decision of the Purchasing and Contracts Manager. The Director of General Services will issue a decision in writing to the Protestant and any other party intervening. If the protestant wishes to appeal the decision rendered by the Director of General Services, such appeal must be made to the City Council, through the Director of General Services. The decision of the City Council will be final. The City Council need not consider protests unless this procedure is followed.

G. METHOD OF AWARD

The bid will be awarded to the lowest responsive and responsible bidder based on the Base Bid amount which includes all deductive items. Bidder must bid all deductive bid items to be responsive and considered for award.

H. TIME OF AWARD

The award, if made, will be within sixty (60) calendar days after the opening of bids.

The City of Las Vegas reserves the right to accept or reject any or all bids received.

IB.3 BONDS AND INSURANCE

Prior to execution of Contract, and not later than five (5) calendar days after notification of award, the successful Bidder shall furnish contract bonds and insurance to the Owner. If the Contractor does not keep the bonds or insurance policies in effect or allows them to lapse, the Contractor will pay over to the City the amount of One Thousand (\$1,000) Dollars per calendar day as liquidated damages.

A. Bonds

1. The Contractor shall furnish bonds covering the faithful performance of the Contract, payment of all obligations arising thereunder and a guaranty bond to take effect upon completion of the project, in such a form and amount as the City may prescribe. Bonds may be secured through the Contractor's usual sources provided that the surety is authorized and licensed to do business in the State of Nevada, with the exception of individual surety bonds which are not acceptable to the City of Las Vegas.
2. Labor and Material Payment Bond in the amount of hundred percent (100%) of the Contract price.
3. Performance Bond in the amount of one hundred percent (100%) of the Contract price.
4. Guaranty Bond in the amount of one hundred percent (100%) of the Contract price. The Guaranty Bond will go into effect when the project is accepted by the authorized representative of the City of Las Vegas.
5. The referenced bonds shall be written on the Performance Bond, Labor and Material Bond, Guaranty Bond forms provided by the City.
6. The Bidder shall require the attorney-in-fact who executes the required bonds on behalf of the surety to affix thereto a certified and current copy of his power of attorney.
7. Any Labor and Material Payment Bond, Performance Bond or Guaranty Bond prepared by a licensed non-resident agent must be countersigned by a resident agent in accordance with the provisions of NRS 680A.300.
8. The referenced Bonds must be issued by a certified surety listed in the Department of the Treasury, Fiscal Service, (Department Circular 570, Current Revision); companies holding certificates of authority as acceptable sureties on Federal bonds and as acceptable reinsuring companies.

B. Worker's Compensation Insurance

1. Contractor agrees, as precondition to the performance of any work under this contract, to secure and maintain in full force and effect, during the term of this contract, Worker's Compensation Insurance. Contractor further agrees to provide the City with a work certificate and/or a certificate issued by the State Industrial Insurance System (SIIS) in accordance with the Nevada Revised Statute 616.280.

2. If Contractor does not maintain coverage throughout the entire term of the contract, Contractor agrees that City may, at any time the coverage is not maintained by Contractor, order the Contractor to stop work, assess liquidated damages as defined herein, suspend the contract, or terminate the contract. For each six month period this contract is in effect, contractor agrees, prior to the expiration of the six month period, to provide another written request to SIIS for the provisions of a certificate and notice of lapse in or nonpayment of coverage. If Contractor does not make the request or does not provide the certificate before the expiration of the six-month period, Contractor agrees that City may order the Contractor to stop work, suspend the contract, or terminate the contract.

C. Contractor's Insurance

1. Contractor further agrees to furnish certificates of insurance as indicated below. The certificates for each insurance policy are to be signed by a person authorized by that insurer and licensed by the State of Nevada.
2. Contractor shall have on file with City current certificates of insurance evidencing the required coverage. **Insurance certificates for the City should contain the information shown on the sample Certificate of Insurance (Accord Form 25S) and the Additional Insured Endorsement (Form CG-20 26) included in the Sample Forms Section.**
3. Each insurance company's rating as shown in the latest Best's Key Rating Guide shall be fully disclosed and entered on the required certificate of insurance. The adequacy of the insurance supplied by the Contractor, including the rating and financial health of each insurance company providing coverage, is subject to the approval of the City. City requires insurance carriers to maintain a Best's Key rating of A VII or higher, (i.e., A VII, A VIII, A IX, A X, etc.).
4. Contractor shall furnish renewal certificates for the required insurance during the period of coverage required by the contract. Contractor will furnish renewal certificates for the same minimum coverage's as required by the contract. If the renewal certificates are not provided the City may declare the Contractor in default of its obligation under this paragraph.
5. City, its officers, employees, and volunteers must be expressly covered as insureds with respect to liability arising out of the activities by or on behalf of the named insured in connection with this project.
6. The Contractor's insurance shall be primary as respects City, its officers, employees and volunteers. Any other coverage (insurance or otherwise) available to City, its officers, employees and volunteers shall be excess over the insurance required of the Contractor and shall not contribute with it.
7. Each insurance policy supplied by the Contractor must be endorsed to provide that the coverage shall not be suspended, voided, canceled or reduced in coverage or in limits except after thirty (30) days prior written notice by certified mail "return receipt requested" has been given to the City. This notice requirement does not waive the insurance requirements contained herein.
8. All deductibles and self-insured retention's shall be fully disclosed in the Certificate of Insurance. No deductible or self-insured retention may exceed Ten Thousand Dollars (\$10,000), with evidence of financial worth this may be amended.

9. If aggregate limits are imposed on the insurance coverage, then the amount of such limits must be not be less than Five Million Dollars (\$5,000,000) per occurrence or per accident or Ten Million Dollars (\$10,000,000) aggregate. All aggregates must be fully disclosed and the amount entered on the required certificate of insurance. Contractor's insurer must notify the City of any erosion of the aggregate limits. The "per occurrence" limits of insurance required herein must be maintained in full, irrespective of any erosion of aggregate.
10. The Contractor shall obtain and maintain, for the duration of the contract or longer period if specified herein, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the Contractor, its agents, representatives, employees or subcontractors of any tier. The cost of such insurance shall be included in Contractor's bid. The Contractor is required to obtain and maintain the following coverages:
 - a) General Liability: General Liability coverage shall be on "occurrence" basis only and not "claims made". The coverage must be provided either on an ISO Commercial General Liability form or an ISO Broad Form Comprehensive General Liability form. Any exceptions to coverages must be fully disclosed on the required certificates. If other than these forms are submitted as evidence of compliance, complete copies of such policy forms must be submitted to City within (10) days after notice of award. Policies must include, but need not be limited to, coverages for bodily injury, property damage, personal injury, Broad Form property damage, premises and operations, severability of interest, products and completed operations, contractual and independent contractors. Contractor shall maintain limits of no less than Five Million Dollars (\$5,000,000) combined single limit per occurrence for bodily injury (including death), personal injury and property damages.
 - b) Auto Liability: Auto Liability must provide coverage for claims for damage because of bodily injury or death of any person, or property damage arising out of the Ownership, maintenance or use of any motor vehicles whether owned, hired or non-owned. Contractor shall maintain limits of no less than Five Million Dollars (\$5,000,000) combined single limit "per accident" for bodily injury and property damage.
 - c) Explosion, Collapse, and Underground: Contractor shall provide insurance coverage for explosion collapse and underground hazards with limits of no less than Five Million Dollars (\$5,000,000) combined single limit "per accident" for bodily injury and property damage.
11. If the Contractor fails to maintain any of the insurance coverages required herein, then the City will have the option to declare the Contractor in breach, or may purchase replacement insurance or pay the premiums that are due on existing policies in order that the required coverages may be maintained. The Contractor is responsible for any expenses paid by the City to maintain such insurance and the City may collect the same from the Contractor or deduct the amount paid from any sums due the Contractor under the Contract

12. The insurance requirements specified herein do not relieve the Contractor of his responsibility or limit the amount of his liability to the City or other persons and the Contractor is encouraged to purchase such additional insurance as he deems necessary.
13. Contractor is responsible for and must remedy all damage or loss to any property, including property of City, caused in whole or in part by the Contractor, any subcontractor or anyone employed, directed or supervised by Contractor. The Contractor is responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the work.
14. The Contractor will pay all premiums and costs of insurance.
15. Regardless of the coverage provided by any insurance policy, the Contractor shall indemnify, defend and hold City harmless from any and all claims, demands, actions, attorney's fees, costs and expenses based upon or arising out of any acts, errors, omissions, fault or negligence of Contractor or its principals, employees, subcontractors or other agents while performing services under this contract. Contractor shall indemnify, defend and hold harmless the City for any attorney's fees or other costs of defense, even if the allegations of the claim are groundless, false or fraudulent.

IB.4 CONTRACTOR'S LIABILITY INSURANCE

- A. Employer's liability and comprehensive general liability insurance shall be required of the successful bidder. The comprehensive liability coverage shall contain NO exclusions unless so stated on the Accord form 25-S, "Certificate of Insurance".
- B. The limits for Contractor's liability insurance shall not be less than:

<u>GENERAL LIABILITY</u>	<u>PER OCCURRENCE</u>	<u>AGGREGATE</u>
COMMERCIAL GENERAL LIABILITY	\$5,000,000	\$10,000,000
BODILY INJURY AND PROPERTY DAMAGE COMBINED	\$5,000,000	\$10,000,000
PRODUCTS AND COMPLETED OPERATIONS	\$5,000,000	\$10,000,000
OWNERS AND CONTRACTOR PROTECTION	\$5,000,000	\$10,000,000
PERSONAL INJURY	\$5,000,000	\$10,000,000
<u>AUTOMOBILE LIABILITY</u>		
COMPREHENSIVE FORM	\$5,000,000	\$10,000,000
BODILY INJURY AND PROPERTY DAMAGE COMBINED	\$5,000,000	\$10,000,000
OWNED HIRED (if applicable) NON OWNED (if applicable)	\$5,000,000	\$10,000,000

NOTE: THE CITY OF LAS VEGAS SHALL BE NAMED ADDITIONALLY INSURED AS IT PERTAINS TO THIS PROJECT ONLY AND SUCH NOTATION SHALL APPEAR ON THE ADDITIONAL INSURED ENDORSEMENT (FORM CG 20 26) BY THE SUCCESSFUL BIDDER'S INSURANCE COMPANY.

IN ADDITION, THE CITY OF LAS VEGAS WILL REQUIRE OF THE INSURANCE COMPANY TO GIVE THIRTY (30) CALENDAR DAYS WRITTEN NOTICE TO THE CITY OF ANY PROPOSED CANCELLATION OF THE COVERAGES AS OUTLINED IN SECTION IB.3, AND ANY EXCLUSIONS TO THE EFFECT THAT THE SURETY COMPANY WILL "ENDEAVOR TO INFORM" MUST BE STRICKEN FROM THE CERTIFICATE OF INSURANCE.

IB.5 CONTRACTOR'S COURSE OF CONSTRUCTION INSURANCE

Unless otherwise provided in the Contract Documents, the Contractor shall purchase and maintain property insurance (builders risk) upon the work at the site to the full insurable value (subject to such deductible amounts as may be required by Laws and Regulations.) This insurance shall include the interests of Owner, Owner's designated representative, Contractor, Subcontractors, Sub-contractors in the work, against the perils of fire, extended coverage testing and shall include "all risk" insurance for physical loss and damage.

IB.6 NOTICE TO PROCEED

Notice to Proceed for Work

After receipt of all required post-bid information, the Purchasing & Contracts Division will issue the Notice to Proceed. The Notice to Proceed will be issued within forty-five (45) calendar days.

IB.7 TIME: COMPLETION OF PROJECT

Time of Completion and Liquidated Damages

Bidder must agree to commence work as specified in the "Notice to Proceed" issued by the City of Las Vegas, achieve Substantial Completion as outlined in (GC.11 - Definitions) by 12 October 1999, and Final Completion of the Garage Forty-five (45) days thereafter. Bidders must also agree to pay liquidated damages, according to the following schedule, for each consecutive calendar day thereafter.

Amount of Liquidated Damages Per Day

In the event the Contractor fails to complete the work within the specified time for Substantial Completion as outlined in (GC.11-Definitions), the Contractor does hereby agree to pay the Owner, the sum of Three Thousand Dollars (\$3,000) per calendar day as Liquidated Damages. In the event the Contractor fails to complete the Work within the specified time for Final Completion as outlined in (GC.11 - Definitions) the Contractor does hereby agree to pay the Owner, the sum of One Thousand Dollars (\$1,000) per calendar day as Liquidated Damages.

SECTION 07130

BENTONITE DAMPPROOFING

PART 1 GENERAL

1.01 RELATED DOCUMENTS

- A. All of the Contract Documents, including General and Supplementary Conditions, and Division 1 – General Requirements apply to the work of this section.

1.02 WORK SUMMARY

- A. The work of this section includes:
 - 1. Sodium bentonite geotextile sheet membrane with all applicable accessory products.
 - 2. Prefabricated drainage composite (drainmat).
 - 3. Waterstops

1.03 RELATED SECTIONS

- A. Related sections:
 - 1. Section 02680 - Foundation Drainage
 - 2. Section 03300 - Cast-In-Place Concrete
 - 3. Section 07135 - Self-Adhering Sheet Waterproofing
 - 4. Division 15 - Floor Drains and other Mechanical
 - 5. Division 16 - Conduit and other Electrical

1.04 SYSTEM DESCRIPTION

- A. Provide sheet membrane dampproofing and drainage composite. Install without defects, damage or failure. Membrane shall be two high strength geotextiles interlocked encapsulating dry, granular sodium bentonite.

~~1.05 SUBMITTALS~~

- A. General: Prepare and submit specified submittals in accordance with Section 01330.
- B. Product Data: Submit manufacturer's product data, with complete general and specific installation instructions, recommendations, and limitations.
- C. Product Samples: Submit representative samples of the following for approval:
 - 1. Bentonite geotextile membrane
 - 2. Prefabricated drainage composite
 - 3. Geotextile protection material where required
 - 4. Accessories required for the installation of the specified system
 - 5. Termination bar and fasteners
- D. Material Certificates: Submit certificate(s) signed by manufacturer certifying materials comply with specified performance characteristics and physical requirements. Submit

certification that the system and components, including waterstops, drainage mat and protection materials are supplied by a single-source manufacturer.

- E. Submit certification letter from manufacturer that the materials used for this project and their application is appropriate and approved for the specified design.

- F. ~~Contractor Certificate: At time of bid, submit written certification that installer has current Approved Applicator status with the system manufacturer.~~

1.06 QUALITY ASSURANCE

- A. **Installer Qualifications:** Installing company should have at least five (5) years experience in work of the type required by this section, who can comply with manufacturer's warranty requirements, and who is an approved applicator as determined by system manufacturer.
- B. **Manufacturer Qualifications:** Sheet membrane system manufacturer shall provide service representation during construction, approve an acceptable installer, recommend appropriate installation methods, and conduct a final inspection of the waterproofing and drainage system applied.
- C. **Pre-Installation Conference:** A pre-installation conference shall be held prior to commencement of field installation to establish procedures to maintain required working conditions and to coordinate this work with related and adjacent work. Submit letter from manufacturer that final installation details comply with the system manufacturer's current installation requirements and recommendations.
- D. **Materials:** Obtain membrane, accessory and drainage materials from a single manufacturer to assure material compatibility.
- E. **Inspection:** Manufacturer's representative shall inspect installation periodically during application to verify that the system has been installed in accordance with manufacturer's guidelines and recommendations and requirements for single source warranty.
- F. **Water Sample Test:** Prior to proceeding with the installation, project site water sample shall be supplied to manufacturer by waterproofing contractor to determine type of bentonite system (standard sodium bentonite or contaminate resistant sodium bentonite) to be utilized on the project. Manufacturer shall conduct test at manufacturer's expense. Contractor is responsible for collection and shipment of required amount of actual site water. Water should be shipped in uncontaminated, sealed plastic container labeled with project name, city and state along with return address to forward test results. Manufacturer shall provide written test results and certify in writing the bentonite system to be utilized.

1.07 PRODUCT DELIVERY, STORAGE AND HANDLING

- A. **Delivery and Handling:** Deliver materials in factory sealed and labeled packaging. Sequence deliveries to avoid delays, while minimizing on-site storage. Handle and store following manufacturer's instructions, recommendations and material safety data sheets. Protect from construction operation related damage, as well as damage from

SECTION 01330

SUBMITTAL PROCEDURES

PART I - GENERAL

I.1 SUMMARY

- A. Related Sections:
 - 1. Section 01780 - Closeout Submittals.
 - 2. Section 01781 - Project Record Documents.

I.2 ~~SUBMITTAL PROCEDURES~~

- A. Schedule submittals to expedite Project in accordance with approved Construction Progress Schedules and in such sequence as to cause no delay in Work or in activities of Owner or of separate contractors.
- B. ~~Deliver submittals to Architect's office.~~ Submittals accepted only from Contractor.
- C. Submit Product Data, Shop Drawings, Samples, calculations, certificates, manufacturer's instructions, and other items requested within each specification section.
- D. Transmit each submittal using form attached to this Section. Number submittals using Specification section number and unique numeric reference number. Indicate reference number of previous submission for resubmittals.
 - 1. For example, Specification Section - 07410; Reference Number - 02; previous Reference Number - 01.
 - 2. Identify Project, Contractor, subcontractor or supplier, pertinent Drawing sheets and detail numbers, and Specification section number, as appropriate.
- E. Example of submittal review stamp is appended to end of this section for information. Contractor is required to have stamp made and used for this Project.
- F. Apply submittal review stamp. In Contractor Review portion, sign or initial and date certifying that review, verification of products, field dimensions, adjacent construction Work, and coordination of information, is in accordance with requirements of Work and Contract Documents.
- G. Submittals will be returned without processing if they have not been reviewed and stamped by Contractor for coordination of work and conformance with Drawings and Specifications prior to submission to Architect, if they are not initialed or signed by authorized person, if they are not dated, or if it becomes evident that they have not been properly reviewed. Delays resulting therefrom are not responsibility of Architect.
- H. Clearly identify on submittals, or in writing at time of submission, deviations in submittals from requirements of Contract Documents.

- I. Do not perform Work on any element requiring submittal and review of Shop Drawings, Product Data, Samples, or other similar submittals until respective submittal has been approved by Architect.
- J. Maintain in field office copy of submittal schedule and log of submittals indicating current status of each item.
- K. Prepare submittals using same units of measurement system (metric or inch-pound) in compliance with requirements stated in Section 01420. Use ASTM E380 and E621 for establishing metric measurements used in submittals.

I.3 CONSTRUCTION PROGRESS SCHEDULE

- A. Submit initial preliminary schedule 15 days prior to first Application for Payment. Within seven days after return of reviewed submittal, resubmit revised data.
- B. Prepare schedule as horizontal bar chart with separate bar for each major portion of Work or operation, identifying first work day of each week.
- C. Content:
 - 1. Show complete sequence of construction by activity, with dates for beginning and completion of each major element of construction.
 - 2. Identify Work of separate stages or phases, separate floors, or other logically grouped activities.
 - 3. Show accumulated percentage of completion of each item, and total percentage of Work completed as of first day of each month.
 - 4. Provide sub-schedules to define critical portions of entire schedule.
- D. Submittal Schedule: Provide separate sub-schedule to construction progress schedule indicating submittal dates for Shop Drawings, Product Data, Samples and other similar data.
 - 1. Submit schedule submittal 15 days prior to first Application for Payment.
 - 2. Indicate dates reviewed submittals will be required from Architect taking into consideration quantity of days specified for Architect's review.
 - 3. Allow sufficient time in schedule for resubmittal of disapproved submittals with causing construction delay.
 - 4. Indicate decision dates for selection of finishes and colors.
- E. Progress Revisions: Identify activities modified since previous submittal, major changes in scope, changes in dates, and other identifiable changes.
 - 1. Provide narrative report as necessary to define problem areas, anticipated delays, and impact on schedule.
 - 2. Report corrective action taken, or proposed, and its effect.
 - 3. Owner shall have right to withhold progress payments for work if Contractor fails to update and submit progress schedule and reports as specified.
- F. Estimated Payments: Prepare and submit estimate of partial payments as reflected by estimated work progress with submittal of construction schedule.
- G. Reliance on Schedule:
 - 1. Accepted Schedule: Establish interim completion dates for various activities.

2. Should any critical path activity fail to be completed within 15 days after indicated schedule date, Contractor shall expedite completion of activity by whatever means Owner deems appropriate and necessary without additional compensation to Contractor.
3. Should any critical path activity be 30 or more days behind schedule, Owner shall have right to perform activity or have activity performed by whatever method Owner may deem appropriate. Costs incurred by Owner in this activity shall be deducted from Contract Price.
4. It is expressly understood and agreed that failure by Owner to exercise option to expedited activity shall not be construed as precedent for any other activities or as waiver of Owner's rights to exercise his rights on subsequent occasions.

H. Progress Submittals:

1. Submit revised schedule with each application for payment.
2. Submit in quantity required for distribution, plus two copies to be retained by Architect.

- I. Distribute copies of reviewed schedule to project site file, subcontractors, suppliers, and other concerned parties.

I.4 PROPOSED PRODUCTS LIST

- A. General: Submit at least 15 days prior to submitting first Application for Payment.
1. Submit complete list of major products proposed for use, with name of manufacturer, trade name, and model number of each product.
 2. For products specified only by reference standards, give manufacturer, trade name, model or catalog designation, and reference standards.
- B. Architect will reply in writing within 15 days stating whether there is reasonable objection to listed items. Failure to object to listed item shall not constitute waiver of requirements of Contract Documents.

I.5 PRODUCT DATA

- A. Submit quantity of copies required by Contractor, plus two copies for Architect.
- B. Mark each copy to identify applicable products, models, options, and other data. Supplement manufacturers' standard data to provide information unique to Project. Delete inapplicable data.
- C. Special Warranties: Include sample of required warranties with proposed wording and locations for signatures. Final Submittal: With closeout submittals under Section 01780.

I.6 SHOP DRAWINGS

- A. Submit one reproducible and two copies. Only reproducible will be returned to Contractor.
1. Bind in complete sets. Transmit reproducible transparencies in roll form to eliminate folding. Folding of prints is acceptable.

2. Present in clear and thorough manner. Title each drawing with Project name and number; identify each element of drawings by reference to sheet number and detail, schedule, or room number of Contract Documents.
 3. Check and coordinate Shop Drawings of any section or trade with requirements of other sections or trades and as necessary for proper coordination and complete installation of Work.
 4. Do not use Contract Drawings for Shop Drawings. Provide original Shop Drawings with changes from Contract Drawings clearly indicated.
 5. Show layout, details, materials, dimensions, thicknesses, methods of assembly, attachments, relation to adjoining Work, wiring diagrams, rough-in requirements, and other pertinent data and information.
 6. Verify dimensions and field conditions. Clearly indicate field dimensions and field conditions.
- B. Submit detail drawings of special accessory components not included in manufacturer's Product Data.

1.7 CHANGED CONDITION DRAWINGS

- A. When specified in individual Sections, submit changed condition drawings in same quantities as for Shop Drawings.
1. Where conditions differ from Contract Documents or Shop Drawings and remedial work is necessary, submit drawing showing changes.
 2. Submit drawing bearing seal and signature of professional engineer responsible for design.
 3. Indicate differing condition and required work caused by differing condition.

1.8 SAMPLES

- A. Submit quantity required by Contractor, plus one set, except where indicated otherwise in Specification sections, to be retained by Architect.
- B. Sample Tag or Label: Large enough for review stamp and include full Project information.
- C. Submit Samples to illustrate functional and aesthetic characteristics of product, including integral parts and attachment devices. Coordinate sample submittals for interfacing Work.
- D. Except where specified otherwise, submit Samples from full range of manufacturer's standard colors illustrating textures, patterns, and finishes for Architect selection.
1. Where custom colors are specified, submit Samples illustrating colors, textures, patterns, and finishes for Architect's review.
 2. Architect will advise colors required or furnish Samples for color matching.

1.9 SUPPORT REACTION DESIGN DATA

- A. When specified in individual Sections, submit support reaction design data.
1. Furnish separate submittal indicating complete description of loads, forces, and moments transferred to "base building" structure at each point of contact.
 2. Include secondary forces resulting from connections used.
 3. Do not submit engineering calculations for support reactions.

- B. Submit design data bearing seal and signature of professional engineer responsible for design.

1.10 CALCULATIONS

- A. When specified in individual Sections, submit calculations.
1. Submit engineering calculations for component sizes, deflections, and connections.
 2. Submit calculations bearing seal and signature of registered professional engineer responsible for design.
- B. Where existing conditions deviate from Contract Documents or Shop Drawings, submit calculations for existing condition, including calculations for anticipated corrective action required, and changes to loads transferred to "base building" structure.

1.11 INFORMATIONAL SUBMITTALS

- A. Informational submittals upon which Architect is not expected to take responsive action may be so identified in Contract Documents. When professional certification of performance criteria of materials, systems, or equipment is required by Contract Documents, Architect shall be entitled to rely upon accuracy and completeness of such certifications.
- B. Types of Informational Submittals:
1. Design Data: Submit with Shop Drawings.
 2. Test Reports: Submit within two weeks of testing.
 3. Certifications: Submit certifications when specified in individual Specification sections.
 - a) Indicate material or product conforms to or exceeds specified requirements. Submit supporting reference data, affidavits, and certifications as appropriate.
 - b) Certifications may be recent or previous test results on material or product, but must be acceptable to Architect.
 - c) Submit welder certifications two weeks prior to commencement of welding operations.
 - d) Submit manufacturer or fabricator certifications with Product Data.
 - e) Submit certificates of compliance within two weeks following approval or acceptance by authority having jurisdiction.
 - f) Submit installation certifications within two weeks following completion of product installation.
 4. Engineering Certifications:
 - a) Submit certificated statement, signed and sealed by professional engineer responsible for design attesting to following:
 - (1) Conformity to applicable governing codes.
 - (2) Conformity to criteria in Contract Documents.
 - (3) Component parts were designed or selected for locale and application intended.
 - b) Submit with Shop Drawings. Submit prior to fabrication if Shop Drawings are not required by individual specification sections.
 5. Qualification Data: When specified in individual Sections, submit manufacturer's, fabricator's, and installer's qualifications verifying years of experience.
 - a) Include list of completed projects having similar scope of Work identified by name, location, date, reference names, and phone numbers.
 - b) Submit manufacturer qualification data with proposed products list.

- c) Submit fabricator or installer qualification data with list of subcontractors at least 15 days prior to submitting first Application for Payment.
- 6. Manufacturer's Instructions: Refer to Section 01400 for requirements.
 - a) When specified in individual Specification sections, submit manufacturer's printed instructions for delivery, storage, assembly, installation, adjusting, finishing, and other pertinent data.
 - b) Identify conflicts between manufacturer's instructions and Contract Documents.
 - c) Submit with Product Data.
- 7. Manufacturer's Field Reports: Refer to Section 01400 for requirements.
 - a) When specified in individual Specification sections, submit written results and findings of manufacturer's field services specified as part of Field Quality Control.
 - b) Submit within two weeks following completion of field services covered in individual reports.

C. Quantity: Submit in quantities specified for Product Data.

I.12 INCOMPLETE AND PARTIAL SUBMITTALS

- A. Incomplete Submittal: Submittal not complying with specified submittal requirements.
- B. Partial Submittal: Submittal subdivided into components as indicated in submittal schedule and each component submitted separately.
- C. Architect will not review incomplete submittals. Complete submittals for each item are required. Submittal will not be considered official until it is complete in every respect. Delays resulting from incomplete submittals are not responsibility of Architect.

I.13 CONTRACTOR REVIEW

- A. Review and approve submittals prior to transmittal to Architect; determine and verify field measurements, field construction criteria, manufacturer's catalog numbers, and conformance of submittal with requirements of Contract Documents.
- B. Contractor: Responsible for:
 - 1. Submission to and follow up with building code officials.
 - 2. Dimensions and field conditions which shall be confirmed and correlated at job site.
 - 3. Field measurements.
 - 4. Quantities.
 - 5. Fabrication processes.
 - 6. Construction techniques.
 - 7. Errors or omissions on submittals.
 - 8. Coordination and performance of work of all trades.
- C. Coordinate submittals with requirements of Work and of Contract Documents.
- D. Stamp, sign or initial, and date each submittal to certify compliance with requirements of Contract Documents.
- E. Do not fabricate products or begin Work which require submittals until approved submittals have been received from Architect.

1.14 ARCHITECT REVIEW

- A. Architect will review construction progress schedules, submittal schedules, product lists, Shop Drawings, Product Data, and Samples and return within 10 working days of receipt.
 - 1. Do not make "Mass" submittals (six or more submittals) to Architect at one time. If Mass submittals are received, Architect's review time stated above will be extended as necessary to perform proper review.
 - 2. Architect will review Mass submittals based upon priority determined by Architect after consultation with Owner and Contractor.
- B. Informational submittals and other similar data are for Architect's information and do not require Architect's responsive action.
- C. Architect's review of submittals is for limited purpose of checking for conformance with information given and design concept expressed in Contract Documents. Architect's review is not conducted for purpose of determining accuracy and completeness of items such as dimensions and quantities, which remain responsibility of Contractor.
 - 1. Architect's review and approval of submittals does not relieve Contractor of responsibility for deviations from Contract Document requirements, unless Architect is informed in writing of deviations and approval is received in writing from Architect for such deviation.
 - 2. Architect's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by Architect, of any construction means, methods, techniques, sequences or procedures.
 - 3. Architect's review of submittal that includes warranty statement within Product Data or Shop Drawing shall not constitute acceptance or approval of warranty statement unless otherwise specifically stated by Architect.
 - 4. Architect's review and acceptance of submittals does not indicate acceptance of changes in Contract time or cost.
- D. Submittals made by Contractor which are not required by Contract Documents may be returned without action.
- E. Submittals:
 - 1. Stamped **APPROVED**: No corrections or resubmittal required; fabrication may proceed.
 - 2. Stamped **APPROVED AS NOTED**: Comply with noted corrections and modifications; resubmittal not required; fabrication may proceed. If for any reason noted corrections and modifications can not be fully complied with, resubmit for review requesting clarification; do not proceed with fabrication.
 - 3. Stamped **DISAPPROVED/RESUBMIT** and **INCOMPLETE/RESUBMIT**: Revise and resubmit for review; do not proceed with fabrication. Disapproved submittals will not be considered valid cause for construction delay.
- F. Submittal approval does not authorize changes to Contract requirements unless accompanied by Change Order, Architect's Supplemental Instruction, or Construction Change Directive.

1.15 RESUBMITTALS

- A. Make resubmittals under procedures specified for initial submittals; identify changes made since previous submittal.
- B. Architect will record time required to review resubmittals after original submittal and first resubmittal. Contractor shall reimburse Owner for charges of Architect and Architect's Consultants for reviewing submittal more than two times.

1.16 DISTRIBUTION

- A. Duplicate and distribute reproductions of Shop Drawings, Product Data, Samples, and other submittals which bear Architect's stamp of approval, to Project site file, subcontractors, suppliers, other affected contractors, and other entities requiring information.
 1. Provide each testing and inspection agency one set of approved submittals for their exclusive use in providing specified quality control testing and inspection services; refer to Section 01451.
 2. Provide additional set of approved submittals for Project record documents file; refer to Section 01781.

PART 2 - PRODUCTS

Not used.

PART 3 - EXECUTION

Not used.

NEONoPOLIS PARKING GARAGE	
Contractor Review:	A/E Review:
Contractor has determined and verified materials, field measurements, and field construction criteria related thereto, and has checked and coordinated the information contained within submittal with the requirements of the Work and the Contract Documents	Approval is for conformance with design concepts only. Approval does not authorize changes to Contract Documents.
☐ Approved ☐ Approved as noted ☐ Disapproved/Resubmit ☐ Incomplete/Resubmit	☐ Approved ☐ Approved as noted ☐ Disapproved/Resubmit ☐ Incomplete/Resubmit ☐ Received/No Action Required ☐ Provide file copy with requested corrections identified. ☐ Not subject to review
By: _____ Date: _____ Contractor's Name	By: _____ Date: _____ RTKL NEVADA CORP.

END OF SECTION

Attachment



February 3, 1999

Dean Roofing
Att: Joe

To Whom It May Concern:

T. C. MiraDRI warrants it's products provided the installation conforms to the material specifications published in current sales literature.

Also be advised that Dean Roofing, a professional waterproofing contractor firm, is approved by T. C. MiraDRI to install the MiraDRI and MiraDRAIN waterproofing products.

Sincerely,

Diane M. Ackerman
Technical Services

Robert

3849964

TC MiraDRI

3500 Parkway Lane, Suite 500 / Norcross, Georgia 30092
Telephone 770 729-1829 / 1-800-464-7234 / Facsimile 770 729-1829

A subsidiary of Royal-Ten Cote

CLASSIFICATIONS

624.215. Contracting business.

1. For the purpose of classification, the contracting business includes the following branches:

(a) General engineering contracting.

~~(b) General building contracting.~~

(c) Specialty contracting.

General engineering contracting and general building contracting are mutually exclusive branches.

2. A general engineering contractor is a contractor whose principal contracting business is in connection with fixed works, including irrigation, drainage, water supply, water power, flood control, harbors, railroads, highways, tunnels, airports and airways, sewers and sewage disposal systems, bridges, inland waterways, pipelines for transmission of petroleum and other liquid or gaseous substances, refineries, chemical plants and industrial plants requiring a specialized engineering knowledge and skill, power plants, piers and foundations and structures or work incidental thereto.

3. ~~A general building contractor~~ is a contractor whose principal contracting business is in connection with the ~~construction or remodeling of buildings or structures for the support, shelter and enclosure of persons, animals, chattels or movable property of any kind, requiring in their construction the use of more than two unrelated building trades or crafts, upon which he is a prime contractor and where the construction or remodeling of a building is the primary purpose. Unless he holds the appropriate specialty license, a general building contractor may only contract to perform specialty contracting if he is a prime contractor on a project. A general building contractor shall not perform specialty contracting in plumbing, electrical, refrigeration and air conditioning or fire protection without a license for the specialty. A person who exclusively constructs or repairs mobile homes, manufactured homes or commercial coaches is not a general building contractor.~~

4. A specialty contractor is a contractor whose operations as such are the performance of construction work requiring special skill and whose principal contracting business involves the use of specialized building trades or crafts.

5. This section does not prevent the board from establishing, broadening, limiting or otherwise effectuating classifications in a manner consistent with established custom, usage and procedure found in the building trades. The board is specifically prohibited from establishing classifications in such a manner as to determine or limit craft jurisdictions. (1967, p. 1594; 1971, p. 600; 1983, p. 311; 1997, ch. 108, § 4, p. 212; 1997, ch. 556, § 6, p. 2687.)

Editor's note. — This section was amended by two 1997 acts which do not appear to conflict and have been compiled together.

Effective date. — Acts 1997, ch. 108, § 4, is effective October 1, 1997. Acts 1997, ch. 556, § 6 is effective at 12:01 a.m. October 1, 1997.

Effect of amendment. — The 1997 amendment by ch. 108, § 4, in subsection 1, deleted "any or all of" following "the contracting business includes"; and in subsection 3, added the second sentence.

The 1997 amendment, in subsection 3, sub-

~~stituted "contracting business is in connection with the construction or remodeling of buildings or structures for the support" for "contracting business is in connection with any structures built, being built, or to be built," substituted "requiring in their construction the use of" for "requiring in its construction the use of," substituted "upon which he is a prime contractor and where the construction or re-~~

LK

624.250. Application for license: (See Editor's note.)

1. To obtain a license, an applicant in writing containing the statement that a license under the terms of this chapter.

2. The application must be:

(a) Made on a form prescribed by and regulations adopted by the board.

(b) Accompanied by the fee fixed.

3. If the applicant is a natural person, social security number of the applicant. § 1474.23; 1997, ch. 483, § 230, p. 23.

Editor's note. — For this section as effective on the date of the repeal of the provisions of 42 U.S.C. § 666, see the bound volume.

Acts 1997, ch. 483, § 518, provides: "The amendatory provisions of sections 1 to 4, inclusive, and 6 to 516, inclusive, of this act expire by limitation on the date on which the provisions of 42 U.S.C. § 666 requiring each state to establish procedures under which the state has authority to withhold or suspend, or to restrict the use of professional, occupational and recreational licenses of persons who:

*1. Have failed to comply with a subpoena or

624.268. Payment of child support grounds for denial of license — See Editor's note.

1. A natural person who applies for a license shall submit to the board the statement of the division of the department of human resources. The statement must be completed and signed.

2. The board shall include the statement in:

(a) The application or any other document for issuance or renewal of the license; or

(b) A separate form prescribed by

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**VERBATIM TRANSCRIPT - ITEM D - DISCUSSION AND POSSIBLE ACTION TO AWARD BID NUMBER
99.1730.20, BLOCK 34 PARKING GARAGE STRUCTURE**

VICE CHAIRMAN McDONALD

Item D. Discussion and possible action to award Bid Number 99.1730.20, Block 34 parking garage structure to the lowest responsible and responsible bidder and approve a construction conflict and contingency amount of ten percent (10%) of the total bid price estimated at \$14,300,000.

CITY ATTORNEY BRAD JERBIC

Good morning.

VICE CHAIRMAN McDONALD

There's no enthusiasm this morning. I'm sorry.

CITY ATTORNEY BRAD JERBIC

We'll try and generate some. The, as you will recall, the Council, actually, the Redevelopment Agency pre-approved this bid sometime ago. When the bids were opened, it turned out that in the following order of price, M.J. Dean was the lowest bid, followed by Bomel, followed by Granite, followed by Jacks. The, as soon as bids were opened, everybody was examined to see if they were a responsive bidder. When staff opened the bids, one of the requirements of the bid was that a submittal of a certification of the installer of a dampening fabric be submitted at the time of the bid opening. Only one of the four people that submitted, that is Granite Construction, submitted that certification. Based upon staff's belief that they were the only responsive bidder to the bid, staff had recommended prior to last Council meeting that the bid be awarded to Granite Construction. Just prior to that Council meeting, I came to staff's attention that there was some issue as to whether or not Granite had the appropriate license to construct the project. In this state you can have an A License or a B License and each of them construct different types of products. In this particular case the low bidder, M.J. Dean and the second low bidder, Bomel Construction possess a B License. The third and fourth bidder possess A Licenses.

The bid documents require that if there's a dispute as to the qualifications of a license, that it be decided by the State Contractors Board. And so our recommendation at the last Redevelopment meeting, that the meeting be recessed to this Time Certain to give us an opportunity to bring it to the Contractors Board on Tuesday for their decision. That did happen. ~~The Contractors Board met on Tuesday.~~ Unfortunately, they did not reach a decision. After a lengthy discussion and a lot of back and forth, there was one member absent, but there was a three/three vote. Three people apparently believing that an A License was acceptable and three apparently believing it was not.

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Because they couldn't break their own tie, they decided to kick the issue to the Attorney General's office and they've asked for an Attorney General's opinion, as to whether or not an A or B License would be appropriate for a job like this. We got word yesterday --

COUNCILMAN BROWN

Brad, if I may interrupt, just -- so I understand the process here. When we send a situation like this to the Contractors Board, is that procedurally something we do to clarify? Do we take their decision as binding? Is it something in -- our process that says whatever they say we abide by? Are we restricted from making a decision? On that particular point, what happens when they make a decision here?

CITY ATTORNEY BRAD JERBIC

I think that under this particular bid we are bound by their decision because in these bid documents we agreed to be. We -- stated in these bid documents that if there is a dispute, it's to be decided by the Contractors Board. In a moment I'm going to go into the fact that I believe that you could've just as easily not put that in the bid documents. That doesn't mean that somebody couldn't still raise an issue before the Contractors Board, but certainly, I think it's within the City's ability to decide most of these issues. And we -- do generally, on -- a regular basis. The Contractors Board -

VICE CHAIRMAN McDONALD

Brad, I'm sorry to interrupt.

CITY ATTORNEY BRAD JERBIC

Please do anytime.

VICE CHAIRMAN McDONALD

Does it say, in the bid proposal, that you have to possess this certain license to build this or is it common knowledge among contractors that you must possess B License if you're going to build parking garage or --?

CITY ATTORNEY BRAD JERBIC

The only thing the bid documents say is an appropriate license. And you can look to other projects that have been built in the Valley, you can look at the definition of the licenses in the Nevada Revised Statutes. And because of the nature of this garage, there are strong arguments on each side as to whether or not that particular license is appropriate for building it. The, I have heard anecdotally that A Licenses have been used to build parking garages in the past. --I do not know that to be a fact. --I have heard that AB Licenses have built parking garages, and that B Licenses have. I don't know any of that to be a fact, but I believe that that's probably all true. I do know that my -- layman's reading of the statute talks about an A License being appropriate for things like structures and foundations.

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That is specifically in NRS 264.215. They also carve out a section where it talks about an A License being appropriate to build things at airports, including runways, hangers, and terminals. Now generally, when people think of A License, they think of structures that are not occupied by people. They think of a physical structures, they don't think of buildings. So the question becomes, this is a parking garage, particularly this type of parking garage, which involves a substantial amount of excavation, a substantial amount of engineering, more like a structure or foundation under an A License or more like a building under a B License. And I think it's the horns of that dilemma that the Contractors Board got hung up on and found it very difficult to reach a decision.

I can tell you just from -- my perspective that if I were an attorney at the Attorney General's Office, talented as they are, I -- don't know that I would be in any better position to decide that issue than the six members of these Contractors Board were. If - I had to render a pure legal decision, you would really have to look to other projects and do that kind of detail by detail comparison. So, what I've done is the next best thing and that is talk to our City staff and talk to other people as to whether or not they think an A would be appropriate. And I think that City staff would be -- fine with the idea of an A contractor building this. I think that the, there's clearly is no public safety concern. There is no issue as to whether or not these contractors are responsible bidders. The only question is whether or not that -- particular license in this particular project is appropriate.

The -- problem with the -- lack of resolution by the State Contractors Board and the fact that they are now asking for an Attorney General's decision, which we understand will take approximately 30 days, is that we have a lot more uncertainty injected into the timelines here on a project that we've known from day one is exceptionally time sensitive. To that end I'd like to introduce in evidence a letter that I received from Steve Rice, who is the attorney representing World Entertainment Centers, LLC, the developer of the Neonopolis project. As you're aware, this project is scheduled to open in Fall of 19, or the year 2000. It is critical that it open in the year, in the Fall of 2000, before the Thanksgiving-weekend, because Mann Theaters recognizes that there's a substantial demand for movies at that time of year. And they're paying higher rent and it will, to get in by that timeline. If they don't get in by that particular timeline, they will pay what's called base rent. And that means that over half a million dollars in rent moneys will be lost if they

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don't open on time. That's one critical reason for the timeline.

Another obviously critical reason for the timeline is we've issued \$32 million worth of bonds for this particular project, which we're paying interest on. And we count on repayment from this particular project to help do our, pay our debt service, including revenues from the parking garage. So, we as an entity, also have an interest in getting this thing in the ground as quickly as possible. And everyday it's delayed there are – more moneys not being returned to the City, more interest that we have to pay out of our general fund to – service debt. So, what I'd like to do, but those reasons, and or I'd like to read one more sentence here; delays will also result in a significant increase in carrying costs for the project and a day for day delays and the commencement of rent under the lease for the 15, of 1,500 square feet of leasable space, which is not included in the theaters, such rent is now estimated to be in excess of \$22,000 per day. So all of these reasons, I think make a very compelling argument for why this parking garage needs to be built as close to this original timeline as possible given the delays that we've already suffered. And certainly factor in staff's recommendation that we're about to make to you this morning.

After the word came back from the Contractors Board, I've met with our outside counsel, Kirk Harrison and Bob Sylvain of my office, and yesterday afternoon we called the attorneys for all of the contractors and invited them to meet with us in the Mayor's conference room to discuss the issue. At that point in time we told them of our recommendation, which I would like to briefly go over with you this morning. It is staff's recommendation that Council today reject all bids in this matter and set this matter back out to re-bid. We believe that based on some comments by the Contractors Board, some other problems with the bids, some changes that we need to make to the scope of work, that all of this puts us on the best timeline possible and the best chance of avoiding litigation that would further delay the project. If you accept this recommendation, the project would be advertised on March 1st.

Staff is currently preparing new bid documents in anticipation, but obviously we'll follow whatever your vote is this morning. We can be ready to go out on Monday morning. We can have a mandatory pre-bid on March 4th and given the fact that the Council has already pre-approved the bid in this particular project, we can open them

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and award on March 16th. That is pretty much the same kind of timeline we gave everybody the first time around. We'd be given the same timeline this time around, but there would be some changes to the documents.

Dennis Anderson, our City Engineer, was present in our meeting with the contractors yesterday when he informed them as to a few changes to the scope of work that would be made to these bid documents. We also informed them that the Contractors Board had stated individually, more than once, that they felt that the City would probably be in a position to make the determination as to the contracting license. Now, I don't want to mislead you and tell you that they took a vote to that effect and said, City just decide this. The fact is our bid specs say that if there's a dispute, it's decided by them. But we think that if we rewrite these bids specs this time around, we would not put in a provision that requires that the Contractors Board dispat, that the Contractors Board decide a dispute in the licenses. We would simply put in these bid specs, that an A License, AB License or a B License would be a qualified license for purposes of building this parking garage. We would also, everybody would also have the opportunity to submit whatever certifications they believe they missed the first time around --

VICE CHAIRMAN McDONALD

Brad, I'm sorry, on that again, you'd submit in writing that it would be A or B License? A and B or--

CITY ATTORNEY BRAD JERBIC

We would say basically, A or B or AB combination, would be sufficient for purposes of constructing this project. And the, if there's disputes that arise from that, we'll deal with them at that point in time.

VICE CHAIRMAN McDONALD

Why are we disputing it now if we have someone that has a B License and they're qualified and they --

CITY ATTORNEY BRAD JERBIC

The -- reason is this, is that the, unfortunately the B Licenses in this case, were the -- number two and three bidders, I mean, the one and two bidders and, yeah, number one and two on -- the dollar amount, and neither of them submitted the certification that was required in the bids specs contemporaneous with the, this submission of the bid. The bid required that you, not only install a particular type or one of a particular type of dampening fabrics at the base of this particular foundation, but that the installer of that particular dampening fabric be a certified installer. So you had to name the installer and you had to provide their certification. The only bidder who did that was the number

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three bidder.

VICE CHAIRMAN McDONALD

And was that in the package when it was released? Was that, that was already in the package when it went out?

CITY ATTORNEY BRAD JERBIC

That was and we believe, staff believes that it was just abundantly clear that -- that was required to be submitted.

VICE CHAIRMAN McDONALD

That that's what we wanted. Was it also clear that you'd have to have an AB License when we sent this out?

CITY ATTORNEY BRAD JERBIC

No. They, all it said was an appropriate license.

VICE CHAIRMAN McDONALD

Okay. And to presume now that our next bid is going to say an appropriate license would be A or B, we already have that bidder. We already have someone with the B License who already qualified with the submittal --

CITY ATTORNEY BRAD JERBIC

That's correct.

VICE CHAIRMAN McDONALD

-- of the package with the explanation that we have that said you have to have all the bells and whistles.

CITY ATTORNEY BRAD JERBIC

That's correct. The only -- fly in the ointment here, so to speak is, and I -- see exactly where you going with it, the only fly in that ointment is, why -- we can't just pick one since we're going to say all of them are qualified in the next bid package anyway? The reason we can't pick one now is because this bid package, which we're bound to follow as of today because it hasn't been rejected, says the Contractors Board decides it, not us. And until we take that decision back to us, we would, we, our only alternative is to just ride out the course of the -- Contractors Board right now and hope for several things. Hope for a short AG opinion and hope that at the end of the day that it persuades the Contractors Board to decide one way or the other, because the City clearly doesn't have any interest in this project other than to get the best lowest responsive and responsible bidder. That's our only goal.

VICE CHAIRMAN McDONALD

I'm sorry Councilman, go ahead.

COUNCILMAN ADAMSEN

Brad, you had mentioned that the City Engineer is going to do a modification. Give us an idea the extent of the modification so that we now recreate a level playing field because the bids are opened, everybody has seen everybody else's bid, know the numbers, and let's just make sure that we're fair and equitable to everybody. So give us an idea of what you're recommending, Dennis.

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DENNIS ANDERSON, CITY
ENGINEER

Basically, we're going to go through the specifications again in the front boiler plate to ensure that it's perfectly clear what the submittals required are at time of bid. We're going to clarify the licensing requirements, which Brad said we will either allow an A, an AB combination or a B License to bid this project. And there's a couple of other things relating to some technical issues that, we have two addendum's on this project, we're going to incorporate those addendum's directly into the -- new package. So, all of that stuff will be one package so the contractors will have all of that information in one place.

COUNCILMAN ADAMSEN

And we have the potential to save even a little more money here, hopefully, right?

DENNIS ANDERSON, CITY
ENGINEER

Well, it's a situation where we're compressing the time a little bit --

COUNCILMAN ADAMSEN

Right.

DENNIS ANDERSON, CITY
ENGINEER

-- and that's why it's important for us to -- do whatever we're going to do and get on with it.

COUNCILMAN ADAMSEN

Okay.

VICE CHAIRMAN McDONALD

Brad?

CITY ATTORNEY BRAD JERBIC

Yes, Sir?

VICE CHAIRMAN McDONALD

It says by NRS this goes to the Contractors Board?

CITY ATTORNEY BRAD JERBIC

It says by our bids specs that it goes to the Contractors Board. The NRS talks about the two different --

VICE CHAIRMAN McDONALD

What law governs that?

CITY ATTORNEY BRAD JERBIC

It's -- just a self-imposed obligation ourselves when we put the bid specs out.

VICE CHAIRMAN McDONALD

Okay. So we self-imposed it. Who happens if, now it went to the Contractors Board and they couldn't reach a consensus, right?

CITY ATTORNEY BRAD JERBIC

Right.

VICE CHAIRMAN McDONALD

Since it didn't meet that, then whose does it go to?

CITY ATTORNEY BRAD JERBIC

The Contractors Board should not have a deadlock,

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because the Contractors Board is made up of seven people and only six were present. And because they couldn't decide and the AG's office supposedly is going to -- help them break this deadlock. They think they can break their own deadlock. But it's a very good question. If -- you ultimately had a deadlock that could not be broken, I think we'd probably reach the same conclusion that we reach today, which is you probably have to re-bid this and find some way to get around it. Or you could go to court and petition for some kind of relief of some sort or fashion some other extraordinary remedy, all of which inject more time into it and -- a little bit more uncertainty.

VICE CHAIRMAN McDONALD

Well,

CITY ATTORNEY BRAD JERBIC

Again, these -- are fairly technical issues and --

VICE CHAIRMAN McDONALD

I -- hope this isn't going to be like the guard, guideline that we're going to use for this project.

CITY ATTORNEY BRAD JERBIC

No.

VICE CHAIRMAN McDONALD

This isn't like the -- way it's going to start out, but my point being is that we have somebody that has made the bid, that all of the sudden, is like you played the game, you know who's on each other team, but the other guy is a better quarterback, I use analogy of sports 'cause it's early in the morning, and now they're saying unfair you can't use that quarterback because he played pro not college. It's, now we have the Contractors Board is supposed to make a judgment and they bring six to the table instead of seven.

CITY ATTORNEY BRAD JERIB

I -- am very, very sensitive to the fact that all of these contractors worked diligently to prepare their bid documents and I recognize the fact that this is not a palpable decision for anybody. I don't think the contractors are terrible happy with it. I think they'll get up here and tell you that in just a moment, themselves. And I can tell you from staff's point of view, I -- wish that there were a better alternative in our opinion. I think you'll hear other people tell you that in their opinion this isn't the best decision, but -- in our opinion it is.

COUNCILMAN BROWN

Mayor Pro Tem, if I may. This is important to me, Brad. So what, we've gone through an opinion out of your office, as far as material, deviation, an opinion in your office to a low and responsive bidder. What you're saying now is, the recommendation is now based on the fact that in our bid we said anything would be clarified by the Contractors Board. Because they cannot clarify it, now you're opinion is

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because we've already put that self-imposed condition in, because of that is why the new recommendation's coming forward.

CITY ATTORNEY BRAD JERBIC

That's correct.

COUNCILMAN BROWN

So it's your opinion if we don't abide by a self-imposed condition, then we would invite even more trouble perhaps down the road.

CITY ATTORNEY BRAD JERBIC

I – think that you will have litigation from that. If we were to simply decide today, I – can tell you that the attorneys have pretty much already told us that, that if we were to award based on original recommendation to the only responsive bidder, which was Granite, you will get a challenge, I'm – almost certain. You will hear it from the attorneys from – the low bidder, M.J. Dean, as to the qualifications to that particular license and the fact that this was not decided by the Contractors Board. I think that's what's going to happen.

COUNCILMAN BROWN

But the new recommendation is based on the Contractors Boards inability to decide on the special meeting this week.

CITY ATTORNEY BRAD JERBIC

That's correct. I would also state that City staff, while – the Contractors Board certainly did not answer the question, and I've given you some analysis as to why staff wouldn't have a problem with an A License on this particular project, I would state that I've also been handed a letter that Granite gave me this morning. They're going to put into evidence, we might as well put it in anyway, stating from the association, the Associated General Contractors, Las Vegas Chapter, that they have reviewed this and believe that an A License is qualified to bid and construct the Neonpolis parking garage. So, again I don't think that for purposes of this project that – there is a problem with an A License. But as of today, under the bid's specs, that's not my call.

COUNCILMAN BROWN

And – let's clarify that also. There is no difference between an A, that is not the issue before us because in three weeks we're going to say, you can be A, B or AB. So that is not the issue that is – under consideration today.

CITY ATTORNEY BRAD JERBIC

Right.

COUNCILMAN BROWN

And in fact, I think there's evidence in testimony that other projects similar to this is a foundation, excavation and percent, at least I've been briefed saying that. So, I – want the record to reflect that that is not the issue. The issue is

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simply on the tail end of this process and under the, perhaps threat of litigation, we are now going to make an additional recommendation because of the Contractors Board's inability.

CITY ATTORNEY BRAD JERBIC

That's correct.

COUNCILMAN BROWN

I needed to make sure that's clear because this A and B should be off the table.

CITY ATTORNEY BRAD JERBIC

With -- this issue --

VICE CHAIRMAN McDONALD

Brad, a point of clarification.

CITY ATTORNEY BRAD JERBIC

Sure.

VICE CHAIRMAN McDONALD

At the Contractors Board what happened? Did a member have to abstain, was he unable to attend?

CITY ATTORNEY BRAD JERBIC

He was absent. He was absent, one of the member was absent and that left six. And again, they --

VICE CHAIRMAN McDONALD

How often do they meet?

CITY ATTORNEY BRAD JERBIC

They are meeting again on March 9th. I don't know how often they meet 'cause they can have special meetings in between. I don't know if they generally meet once a month or twice a month. Does anybody --?

VICE CHAIRMAN McDONALD

Do you have a member?

CITY ATTORNEY BRAD JERBIC

Twice a month? Twice a month.

VICE CHAIRMAN McDONALD

Do they call emergency meetings?

CITY ATTORNEY BRAD JERBIC

They can, they had a meeting already scheduled, they put this on as an emergency item to accommodate the Council for this -- meeting today. They put it on as an emergency for Tuesday.

VICE CHAIRMAN McDONALD

Do we have another emergency-emergency?

CITY ATTORNEY BRAD JERBIC

Well, again, without, now that they've said that they want the AG's office to render an opinion, I don't know if, you know, certainly we could ask them. But I don't know in the absence of that opinion, which they've asked for, that it's going to change anything.

VICE CHAIRMAN McDONALD

Okay.

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CITY ATTORNEY BRAD JERBIC

I would state this, because I – do not want mislead the agency in any way, this is – clearly not, none of these options are very attractive. We cannot promise that there wouldn't be litigation, and in fact, I think that there's going to be some litigation at the end of this depending on who gets it. If – that is the case, I do believe that this type of litigation is easier to defend and more defensible than other kind, not to say that other litigation wouldn't be defensible, but I believe that we can get a quicker resolution going this path than another. I hope that we're not proven wrong down the line, but we're taking our best shot on this and giving you our best advice.

I would state right now that to all counsel for all contractors who are bidding on this project, who are here today and may bid on the new documents in the future, that if they do sue us, we are going to be sending you a letter notifying you that we do not wish to be sued exparte on a temporary restraining order or – an injunction. We want to be present at the time of that hearing and we will send everybody a letter to that effect. If the court is inclined to grant a restraining order and stop this project in the future based on a future law suit, we will be seeking a very substantial bond to help the City and the Agency be compensated for the loss of business and moneys, which we know are going to occur if further delays to this project occurs. So, we take this very seriously and we will do everything possible to --

VICE CHAIRMAN McDONALD

Just a point of clarification for us common guys that went to bed at four, we're going to counter-sue if this project gets slowed down?

CITY ATTORNEY BRAD JERBIC

Well, we will – do everything to defend the City.

VICE CHAIRMAN McDONALD

Seek judgment.

CITY ATTORNEY BRAD JERBIC

That's absolutely correct and the --Agency.

VICE CHAIRMAN McDONALD

What about the LLC. I mean they have to be concerned about the whole --

CITY ATTORNEY BRAD JERBIC

Well, we've been in constant communication with our partners in this project, WEC, and their counsel have been with us at the meeting yesterday as we went through this decision making process. We have tried to involve as many intelligent minds in the thinking, as possible and that's not to say that right people can't disagree. But we do believe that this is the best course of action that – has, that -- minimizes

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the risk, although risk still exist.

VICE CHAIRMAN McDONALD

Further questions? Can we hear from both sides, please. Want to draw straws?

COUNCILMAN ADAMSEN

Roni? Could you please

VICE CHAIRMAN McDONALD

Roni (inaudible)

ATTORNEY ROGER WIRTH

I guess there must some advantage to going last. I have a package I'd like to hand out. My name is Roger Wirth, Jolley, Urga, Wirth & Woodbury. I represent Dean, the low bidder. At the offset, I -- want to thank you for taking the time from your busy schedules to be here for us on a special continued meeting. I say that both as counsel for Dean and as a member of this community, because I know how important this project is to you and to -- this community. I will try to be brief. There's an old saying that when a lawyer says he's going be brief, grab your pillow.

But I -- think the, to my mind, I think you, I hope you'll agree with me. I think the issues here are sufficiently clear cut and easily addressed. And the solution that I'm going to suggest to you is unassailably logical, that I think I can address it in -- less than ten minutes, subject to answering questions that you have.

VICE CHAIRMAN McDONALD

Roni, give him ten minutes.

ATTORNEY ROGER WIRTH

Okay. Judge O'Donnell used to do that. You said ten -- minutes counsel, you're done.

First of all, one thing that I want to make abundantly clear, is that my client's bid was one, \$11,049,000. The Granite bid, which is the protested and the other party to this dance, is \$11, 499,000. So, we have a \$450,000 difference. And -- as a taxpayer, as a member of this community and as -- all of you are concerned about dollars anytime, that's an important fact. Also to bear in mind is -- what was alluded to earlier, that if you put this back out, you're delaying things, there's a compression problem. Councilman Adamsen asked, are we going to save some money? The chances are not. Chances are because of the compression, it probably cost more. So that \$450,000 that you would lose if you award today to Granite instead of my client, is gong to increase many fold in all likelihood.

Staff has recommended that you put this back out to bid. Mr. Jerbic has represented, has -- suggested that, but

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because of the fact of, what I will demonstrate to you shortly, and because of the inevitable substantial loss to the, in dollars to this -- project, I hardly recommend that what you do today at the end of this session, is you vote to award this contract to my client, Dean.

Going through the packet that -- I gave you there, the, there was a request, that's before by way of background, part of the -- problem here is that my client was the low bidder. Staff initially indicated he was recommend that the project be awarded to my client. But then Granite protested and said that well, Dean like two of the other four bidders, didn't submit the waterproofing certification and therefore they protested. And staff said, well then having this, that, we're going to recommend that it be awarded to Granite. Then they cross in the roads and the contracting licensing crossed and then here we are. Why was there any problem regarding the omission of the certification.

I'd like to go through the documents in that respect. The first document you've got there is the bid proposal. This is a document prepared by the City for all bidders to use. You'll notice that I have highlighted there enclosed herewith are the following; bid security, subcontractors listing, slash supplier listing, affidavit for best bid preference per NRS 338.147. No reference whatsoever there to a waterproofing certification. None whatsoever. And I submit to you that if there is a blame to be cast, and I hesitate to because what we're talking is a document like this. But if there were a -- blame to be cast, it wouldn't be on the bidders because three out of four of them read that the same way. That is, we submit our bid and looking at the other documents, and I'll turn now, if I might, to -- document number three, pardon, document number two, page seven, I'm going to come back to this in a second. Page seven says in Section F, that omission of or failure to complete any portion of the required documents at the time of bid opening, may be cause to reject the entire bid. And if you go back to document number one, page two, the bidder understands that the owner reserves the rights to reject any or all bids and to waive any informality's in the bidding.

So, what we have here is an acknowledgment. And we've got a bid document here. We've got a lot of potentially, potential trap for the unwary. And we're saying, we're telling you bidders that we want you to do everything, we want you to give us everything in here that's required. But if you don't or if someone else doesn't, as between Granite and Dean, they're, you're warning Granite that on document one. We

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reserve the right to waive any informalities in the bidding. Now, so there could be no question and case law supports this proposition. That you have discretion to waive informalities. Cases in this State, cases across the country. And we've done the research. There's no question whatsoever, even without this new documents. In two places here. Document one; you may waive form and formalities; document two; you may but one not required, reject an entire bid. It doesn't say you will, doesn't say you must, doesn't say you shall, it says you may reject the bid. So you have the discretion, at most, to say that if we don't get a document that's specified back here in page five, a hundred of a thousand page document, we're going to waive them. Now why should you? And this is where I'd like to draw your attention, to exhibits three and four.

COUNCILMAN BROWN

If -- I may interrupt, where's -- Brad? Is Brad here? Just procedurally, Brad, since it appears that everybody wants to make a record, can I interject questions here so I understand where we're going on some --

CITY ATTORNEY BRAD JERBIC

Sure. I -- think it's appropriate to give everybody a chance to make their record, ask any questions you have. The only thing I would ask, if I could try your patience one minute further is that at the end of everybody's presentation, to have an opportunity to come back and maybe put a couple of more comments on.

VICE CHAIRMAN McDONALD

Of course.

COUNCILMAN ADAMSEN

I -- have some questions for you, when they're done, Brad.

COUNCILMAN BROWN

And -- I know on, so, counsel the point you've just made is -- the City has the discretion to waive informalities or reject a bid and case law demonstrates that. It is, I think in your words at most or at best, discretion. So we can do both of those. That -- was that part of --

ATTORNEY ROGER WIRTH

Not quite. I need to make myself clear on that. You have --

COUNCILMAN BROWN

Please, because I'm -- going to try to follow this as closely as I can. So that was an important point to me.

ATTORNEY ROGER WIRTH

I appreciate the question and please, I'm not always the clearest. You have the discretion to waive, you have the power to reject. Discretion is something that must be -- exercised reasonably. There are cases out of, at least out of Alaska and Minnesota, I can't tell you if there's a Nevada case because we don't have a case on point. But there are

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cases from other jurisdictions that say, in the exercise of your discretion you must be reasonable. Now, you have two – aspects here. Is it reasonable to reject the bid because of the failure of this waterproofing certificate. I submit that it's not. And I submit that the case authority is on our side standing from the proposition that although you have discretion, is not unfettered. There are guidelines. When you've got a bid that's half a million dollars less, I mean \$11,000,000 bid, that's a substantial difference. And it would be, I submit an abusive discretion to reject the bid. But, I think that's why the documents are drafted the way they are, to reserve to you reasonable exercise and discretion.

Now that brings me to the question, that I'd like to address next, and that is, is it reasonable here to reject the Dean bid because of the lack of the waterproofing certificate? And I submit to you that quite clearly it is not reasonable. Why is that? Well, first of all going back to document number one; the bid proposal. The document drafted by the City's staff, or there outside people (inaudible) on behalf of the owner here says, give us this bid proposal, which is a, I think about a six page doc, six or seven page document, and include with it the following. Doesn't say anything about the – waterproofing certificate.

Then if you go back to item, actually let's turn to item number five, excuse me, item number three, this is the section from the – bid documents, this is the section that talks about the – waterproofing certificate. And you see section 1.05, it says submittals. So part F there is what staff was talking about here, what Granite was talking when they made the protest. Contractor certificate, colon. At time of bid submit written certification that installer has current proved applicator status with system manufacturer. My client didn't do that. No question. My client did however, have a conversation with staff the day of the bid opening that said, do we need to get that down to you? He was told, well no, it's – we'll cross that bridge if we get to it, you don't need to. Why – is that? Because it's standard operating procedure not to.

Turn to tab four. This is again, it's earlier section from the bid documents, the submittal procedures. Recall that on the – damp proofing section, we talked about a second ago, that's – section 1.05 was titled submittals. Submittals are governed by the section called submittal procedures, which is maybe hard to see, there were section 01330. There it talks about how you submit, how – you do your submittals.

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The normal way, I think anybody in this room would tell you that the normal way submittals are done is, after the bid is awarded or in connection with it, to confirm that you have certain authority or as the – construction progresses. And if you look at 1.2, subsection B it says, what you do with submittals? It doesn't say give them to the City as part of the bid package. It says, deliver submittals to architects office. This is the document, these are two portions of the doc, and the two relative portions of a two inch thick document, that my client and the three other bidders were dealing with. And I think that it's instructive that four major substantial contractors in this State read it the same way. That is, three of them did, that is that we don't submit it with the bid, we submit it to the architect, we submit it when requested.

COUNCILMAN BROWN

Mr. Wirth, and – this, that reference on – submittal procedures, section 01330, that's – part of the City's bid package.

ATTORNEY ROGER WIRTH

Yes, that's part of this.

COUNCILMAN BROWN

Okay. All right. Thank you.

ATTORNEY ROGER WIRTH

If anyone of you would like just to look at while we're – I don't encourage you, but it's good bed time reading.

COUNCILMAN BROWN

We read it last night.

COUNCILMAN ADAMSEN

No questions.

ATTORNEY ROGER WIRTH

So, the – bottom line here, with respect to this question, is that you have reserved the power to reject a challenge such a bid proposed by Granite in this case, and my client failed to provide the waterproofing certificate. And my client reasonably didn't. I'd like you to turn to tab number five. You, see we had it. Second paragraph, also be advised that Dean Roofing, a professional waterproofing contracting firm is approved by TC Mira DRI to install the Mira DRI and Mira drain waterproofing products. We have the certificate. We're prepared to do what we reasonably understood that we should do. Now, has somebody been injured by this failure to provide you the certificate? That's an important question. You know, that's a question that courts look at all the time, when – questions of contractor's licensing or capabilities come up. Is the, has the public being injured? Is there danger of injury to the public? No, there's not. Has the City been injured? No. Has the project been injured? No because my client has it, we're dealing with a

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subcontractor that has been doing this for years and years and years. Has Granite somehow been injured by the fact that we didn't provide this? No, how can they claim they were? They had their certification, we had our certification. We just happened to come in at half a million dollars low.

I would like to very, very, very briefly address the contractors licensing cross. And I have also provided you behind tabs six the statute that Mr. Jerbic mentioned to you. There is no question, but that a contractor with a B License can do this job. My client has a B License. The only question was whether a subcontractor with an A License also could. Interestingly and confusingly, perhaps, the statute, I didn't highlight this part, but the very last line of Subsection one says; general engineering contracting and general building contracting are mutually exclusive branches. And that's why contractors if they want to do both the engineering, and type of foundation, work that isn't going to be inhabited that's why they get an AB License.

Now, neither of these, neither of these two has, currently has an AB License. But there is a distinction. Apparently the legislature thought there was. But I want to set the stage up by noting that there is no question that my client can do this work. The only question is whether Granite could under its qualification. Cause if you look – at subsection three, which I have highlighted there, the definition of a general contractor, general building contractor as opposed to a general engineering contractor, which is an A qualification, which is subsection two of the statute, three, general building contractor is a contractor that it's principle contracting business is in connection with the construction of buildings or structures for the support, shelter, and enclosure of persons, chattel or moveable property of any kind to requiring in their construction the use of more than two unrelated building trades or crafts. That's this. Because you are going to have vehicles in there, you're going to have people in there. It is a structure that is, does involve people and vehicles. And it involves the use of two or more subcontractors. Even Granite in their bid has two or more subcontractors. And clearly it is category B.

Now, where does this get, where – does this all get us? No body likes the "L" word, the litigation word, the lawsuit word. Even – I don't, it's my job. And – my client doesn't have any interest in being dog in the manger here. My client would -- like this project. My client is a member of this community and would like to see this project go forward. But, right is right. My client submitted a bid that was half a million

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dollars low. It is the lowest responsible bidder, there's no question. Mr. Jerbic said that. They're responsible. The only question is whether it's responsive because of the – failure to include the waterproofing certification, which it had. And you have the power, I believe you have the obligation to waive what at most is a technical deficiency. A technical deficiency engendered and caused by the City's own documents.

I request that you award the contract to my client. If – Granite wants to file a law suit, let them do it. In fact, I'm, Bill Curran is – the normal attorney for Granite, Mr. Stan Parry is here today, his partner. Bill and I are involved in a law suit right now, involving a mandate in this proceeding, where it was filed during the holiday period, we had a hearing in 16 days. If they want to file a law suit, I will assure and I will represent on the record with my client's authorization, that we will accept service immediately. We will file a response within 48 hours. I would do everything to accommodate a hearing one week from Monday, before the District Court to resolve this question. If they want to play dog in the manger, let them do it. Let's get it resolved. But why should you go back at the risk of delay, at the risk, of certainly more money, not just a risk, almost a guarantee, and re-bid this on these circumstances.

So our request is that you approve the award of the contract to my client, Dean and that we'll move forward. We'll do a good job. I'd be happy to answer any questions you have. Thank you.

VICE CHAIRMAN McDONALD

Councilman. We have any questions?

COUNCILMAN BROWN

And Brad, this will be one for when you come back up. So, now we are separating. We're separating, there's – at least on the record an indication that Dean is contesting not all our recommendation that they deviate it, but also, and Mr. Wirth correct me if I'm wrong, you are saying on the record that an A contract is not allowed to do this particular job.

ATTORNEY ROGER WIRTH

That's our position. I think that, yes.

COUNCILMAN BROWN

so, regardless, and – stated earlier, Mr. Jerbic said, if we do reject all bids, go out to bid and say A and B, AB's are going to be allowed, your position three weeks from now could very well be the same.

ATTORNEY ROGER WIRTH

That's correct.

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COUNCILMAN BROWN

Okay.

VICE CHAIR McDONALD

Councilman?

COUNCILMAN ADAMSEN

One quick question of Mr. Jerbic. Brad address the term informalities in the City's perspective. Give us the definition.

CITY ATTORNEY BRAD JERBIC

We – do not believe this is an informality. The question that needs to be determined with respect to the deficiency in submitting the certification, is whether or not it's a material deficiency. That is the question. And in determining whether or not it's a material deficiency, you can look at a number of things. First of all, you do not look at extensive evidence; phone calls to staff and what they tell you. That's one why we have four corners of bid documents, it's what you always look at. And you also have pre-bid conferences where these things are discussed. And those are the only things that make up the record.. The one thing that is clear, and I agree with Mr. Wirth, when he – spoke and he said that generally you, it is right in here, it's clear as day, section 07130, vent light damp proofing, that the material we're talking about, page 07130-1, states general, prepare and submits specified submittals in accordance with section 010330.

Mr. Wirth is correct when he tells you that. If you flip the page, item number F says and I'll quote: contractor certificate at time of bid submit written certification that installer has current approved applicator status with the system manufacturer. We always have a general provision in every bid specs, saying generally submit all this. And you always have the right to call out individual things in addition to those. If was felt that this was so important. We're digging a 30 foot deep plus hole in an area where we know there's ground water at 10 feet. So damp proofing fabric, from what I'm told by our engineers, is a critical component of the parking garage. So critical that we want a particular type of fabric. We want a qualified installer and we want to know up front that they're certified. Why else it is material? Another reason is material is because what can a person do if they don't submit everything that's supposed to be submitted with the bid. If limiting material, another thing you look at materiality is that if a person doesn't submit something, do they have an argument, not that they're making it, but do they have an argument, that they don't have to comply with the bid.

What if the contractor were to submit a bid, and let's say

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they submitted one for \$9,000,000, and they came up after the bids were opened and they omitted a substantial amount of steel in their calculations as to how much it would cost to construct the project and they realize this mistake after the bids were opened and they wished that they had not made that mistake, they have an out if you say, submit the certification after the fact, because by not submitting it then they're out and they don't have to perform. So you look at whether or not a contractor has, not that they are or not that they're saying it, but does it give a contractor an argument that they can back out of a bid based on the fact that they didn't comply with it. And I think that that's another way that this is material, is that gives the argument, if they don't submit it at the time of bidding, it gives the argument that you can back out of the bid.

And that was in our original analysis that we provided the Council that prior to the AB issue coming up, allowed us to conclude that not only was this a material component to the agreement, not only is it specifically called out in the bid document because it's such a critical component of the project, but it is material to omit it. And the fact that – three missed it is unfortunate, but it does not change the fact that the bid documents specifically called for it and it was not submitted. And I do not believe based upon being it material that you have the ability to waive it. If it's un-material, your discretion, if it is material, no discretion. And that's the law.

ATTORNEY ROGET WIRTH

Can I respond, please by, drawing the counsel's attention to exhibit one. Enclosed herewith are the following; three items. No reference whatsoever to the, this, what Mr. Jerbic now says it's so critical. So critical that is material, and is a substantial deviation and therefore justifies rejection of a low bid and the incurring of substantial more cost in this construction. If it was – so critical, why it wasn't called out there? Number one. Number two, and you can certainly hear from him, Dean's representative, who was at the pre-bid conference, there wasn't discussion of this waterproofing certification at the pre-bid conference. Third point. I mentioned the Alaska case and Minnesota case, and I, you're probably better able to sift through that than judges are because I think you'll see the logic. The facts of the Alaska case were that the bidder, whose bid was rejected, failed to break out a sub-item and the City went through the calculations and it looked like it probably was right, but – couldn't tell. Certainly a far more material point. And that is along the lines of what Mr. Jerbic mentioned. That – could be an excuse. A far more material point the lack of the

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certification.

In the Minnesota case it was a matter of – the bidder failing to provide an affidavit of non-collusion, which is required under Minnesota law that there was no collusion among the bidders. Failed to provide that. Pretty important document. The court said, well it's covered by a letter where they indicate basically the same thing. To say that the waterproofing certificate here is so material and so important that this project should incur at least a half million dollars in perhaps much more than it cost, I think is – not accurate. And looking at the documents themselves.

One more point. If –you would please turn to tab three. 1.05, submittals, Section A, general. Prepare and submit specified submittals in accordance with Section 01330. One of the submittal is this waterproofing certificate. You look back at 01330, as I said before, which is Tab four, and says subpart B, deliver submittals to architects office. Well, the direction there was not to – submit it to the City with the bid package. It says submit it to the architect's office. So, if there was confusion, I submit it was engendered by – these documents, by these bid documents themselves, which my client didn't prepare. Thank you.

VICE CHAIR McDONALD

Do you have arguments, do you have a question of Mr. Jerbic?

COUNCILMAN ADAMSEN

I was just gonna ask --

VICE CHAIR McDONALD

Other side?

COUNCILMAN ADAMSEN

-- Mr. Jerbic, how can – we avoid, even though it's almost unavoidable, a debate between the attorneys for all the firms --

CITY ATTORNEY BRAD JERBIC

Well, --

COUNCILMAN ADAMSEN

-- and the City's, and I know we're trying to build a record, but how do we keep from ping ponging the issue.

CITY ATTORNEY BRAD JERBIC

I know we're a little bit into this now. I – suspect that the only reason I'm responding is because if – the goal of the individuals today is to make more than a record, if the goal of the individuals appearing before you today is to lobby you at the meeting to change, to not follow staff's recommendation, to make an award today, I feel that's important to put more facts on the record.

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COUNCILMAN ADAMSEN

Yeah, I know.

CITY ATTORNEY BRAD JERBIC

If it's merely to put facts on the record for litigation that may or may not come in the future after this, if it's re-bid, if the Agency decides that, then -- there's less need to put those facts on the record. But I have sensed that -- what is happening is that there's an effort to lobby you to make a different decision, which I'm not saying is a bad thing. I mean they have every right to ask you to do that. But if that's the way it's going, then I feel I need to get up and -- make the record more complete.

COUNCILMAN ADAMSEN

And if that's the case, then we will need to recess this meeting because I have another meeting that I have to go to.

CITY ATTORNEY BRAD JERBIC

I -- will certainly keep my comments only to respond in counsel from this point forward. I -- the last thing I would state though, is that this is perfectly illustrative of -- why as of today you are almost certainly heading into litigation. And these very issues that everybody's struggling and debating back and forth here, the same things that the Contractors Board would here, same things the District Court would here, and the same reason we believe that this is not gonna be resolved quickly, based upon this set of bid documents.

VICE CHAIRMAN McDONALD

One second.

ATTORNEY STAN PARRY

If you wanna tell us how much time you wanna give us, we'll -- stay at a time frame.

VICE CHAIRMAN McDONALD

Probably about five minutes.

ATTORNEY STAN PARRY

Okay. We'll -- work real hard to do that.

VICE CHAIRMAN McDONALD

Well, I think what's gonna happen, we're gonna have to recess. Give me -- Where's Roni? We need five minutes on the time. Can you fit it in five minutes?

RICHARD BUNTING

It's gonna be real tough, Mike.

ATTORNEY STAN PARRY

We'll go as fast as we can.

RICHARD BUNTING

We'll talk fast.

VICE CHAIRMAN McDONALD

Okay.

ATTORNEY STAN PARRY

Councilmen, Stan Parry of Curran and Parry on behalf of

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Granite, and Rich Bunting and Eddie Riggs with me. First of all, we won't spend much time talking about the non-responsive nature of the bid because your counsel has already discussed that. We could spend a lot of time on it. We'll simply say that it cost us a lot of money to make sure that that certification was properly done, because it is an integral, critical part of the job and was very expensive to make sure that we qualified for that. And, therefore, to us, it was very material, you're attorney has said it's material; I don't see how you could say it's not a material part of the bid.

As to the second item, we have prepared a letter setting some of our legal bid points and authorities why we think that an "A" contractor is qualified to do this job. First of all, we find it very ironic that we find ourselves as the only responsive bidder, and then a question about whether or not we're a responsible bidder.

Nobody's challenging that Granite Construction can't do this job. We're capable. We've done these kinds of jobs all over the country. We've done these jobs all over Nevada. We've built garages very similar to this. We build structures very similar to this all the time under this license.

One of the things that has come up, and is what I consider a question of fact, whether or not this "A" license is appropriate. We went to the Contractors Board. Their big problem was is they couldn't decide upon what the scope of the job was. In other words, well, exactly tell us what it is. And so, they ended up in a tie vote. The chairman said, well, the City can decide that themselves. They can decide what the scope of the job is.

If you decide, for instance, that the job is excavation, foundation, then a parking structure on top of that, and that the excavation and foundation is a integral part of that job, we get the job. We have the proper license. And to that effect, Mr. Jerbic has already put the letter in effect, into evidence. But I would put it in from the Associated General Contractors, where, who was at the Contractor Board hearing, and they reviewed this matter and found that our license, that we would be properly qualified under the license to do this job.

I say, simply because the Contractors Board tied, that mean it comes back to you. Now, you, the responsibility is shifted back to you. If you want to talk about waiver, then I think that you could waive the contractor provision. That's not

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critical to the job. That's simply a decision of discretion, which you are capable of making that decision. Therefore, if there was gonna be any waiver in the hearing today, you can't waive the non-responsiveness of the bid, but you could waive that provision, and I would recommend that you do waive that, take back the responsibility, and make this decision.

Obviously, if you go out to re-bid, A/D, or A/B, you're staff is saying that. They're saying we'd be qualified anyway, if you read that.

Now, Dean has indicated they're gonna sue you if you do that. Well, what they're saying then, even if you go out to re-bid and we're the low bid on the next bid, they're still gonna sue you. So the idea that you're gonna reject the bids and avoid a lawsuit, they've already nullified that for you. They say that's not gonna happen. They're gonna sue you anyway, unless you give the bid to them.

So, and Mr. Wirth has said, we can do this lawsuit in 16 days, which is shorter time than you're gonna re-bid this and start it again. So my client who is eminently qualified -- Everyone says we had the proper license, even your staff says we had the proper license. Today, you need to award the bid to us. If it goes to litigation, I promise you, just as Mr. Wirth did, we'll make it as quick as possible. We'll be on our way. And my client has some comments about indemnity that he would like to go on the record.

MEMBER BROWN

Mr. Parry, if -- I may interrupt. Two things --

ATTORNEY STAN PARRY

Sure. I'm trying to --

MEMBER BROWN

Yeah. And then that's --

ATTORNEY STAN PARRY

-- get under that five minutes --

MEMBER BROWN

Two things. The first is I don't think it's fair to put the second applicant or third applicant on a timer.

MEMBER ADAMSEN

And I agree. I just said that because I was afraid we were going to go on and on --

MEMBER BROWN

I would ask the Council to take that off. And secondly, I've been drinking coffee since six. And if I go into the back room, there are microphones, so continue at testimony so our quorum is still in tact.

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VICE CHAIRMAN McDONALD We'll recess for a second.

MEMBER BROWN No, we don't -- Brad said we don't have to in light of the time
--

ATTORNEY STAN PARRY You're going to listen to it while you're back there, right?

MEMBER BROWN Yes. I can do two things at once.

VICE CHAIRMAN McDONALD Two minute recess.

RECESS: 11:19: - 11:23 a.m.

VICE CHAIRMAN McDONALD Go ahead, gentlemen.

MEMBER ADAMSEN (inaudible)

COUNCILMAN BROWN Yeah. Thank you.

ATTORNEY STAN PARRY I just had a couple other little items that I wanted to put onto
the record. My client has authorized me to make this
representation. We will indemnify the City if you award the
bid to us today for the potential delay that might result as a
result of litigation, because we understand the nature of this
job and how important it will be to make this job timely. Now,
I recommended that my client not do that, but they have
authorized me and instructed me to make that
representation on the record. So, we'll -- go forward with
that.

And, just in summary then, if it is well within your discretion
to award this bid to Granite, we are clearly the only
responsive bidder. We are a responsible bidder. We have
the appropriate license. We have done this kind of project all
throughout the country. We're ready to proceed. We'll start
tomorrow, if you give us a Notice to Proceed.

VICE CHAIRMAN McDONALD Councilman Brown?

ATTORNEY STAN PARRY Award the Bid.

VICE CHAIRMAN McDONALD Your have questions?

MEMBER BROWN No, not yet.

ATTORNEY STAN PARRY I have a couple comments from a couple of Mr. Riggs, and
with respect to our qualifications and this type of work, that
we've done it before and we have other projects that are

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similar.

EDDIE RIGGS

I'm Eddie Riggs with Granite Construction Company. The, I'd like to just point out very briefly that that \$450,000 difference, had we not had to submit that qualification, we would have been over half a million dollars cheaper on our bid, because we were gonna do that water proofing ourselves. So, --

RICH BUNTING

We wouldn't even analyze the bids if they didn't have the certification attached to their bid price.

EDDIE RIGGS

Right.

RICH BUNTING

So we just round filed them.

EDDIE RIGGS

Because we read the specs. They--as Brad said in Section 07130 and 07135, it clearly says that you need to submit that at time of bid. And -- as they say that they talked to the City that morning, the specs also say that any correspondence with the City needs to be done in writing, so that we avoid this he said/she said type of thing in this circumstance. And you have to submit, when you submit your bid, you have to certify that you have read and understand all the specs. And obviously, either A, they read that and disregarded it and used it as an advantage to prepare their bid, or B, they didn't read it and so they clearly didn't understand or -- follow through with the scope of the work.

We -- Granite Construction Company has done similar projects to this. This is a, this is construction from the top down. The excavation is over 120,000 yards of excavation on this job. More than half the job is not structure. We have built structures like this in the past. As recently as this year, we've done two soil nail jobs that are similar to this that are very similar in scope of work and -- in time frame.

We have -- We also, the question about the -- postponing this job, we -- understand the time sensitivity to this project. Mr. Jerbic's made it clear. It was clear in the pre-bid conference and it's been clear all the way through this.

We -- would submit that the -- City is deciding now that an A contractor or an A/B or a B contractor can bid this job. You have a responsive, low A bid. You have a responsive bid right now. The only one that's responsive. And to go through this whole thing again is very unfair to us, because the scope of the work that the City Engineer discussed with you

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changing, he didn't discuss any changes in the scope of work. He discussed changes in the specifications to make sure that we're not here again, possibly. But the scope of the work isn't changing. He didn't give us a change yesterday, and he didn't give us a change, any substantial change today.

COUNCILMAN ADAMSEN

And -- that was why I asked that question. Give you notice that if we're changing the scope of work, that everyone knows it. And I'll ask him again so that he could specifically address that. And I'm sorry to interrupt you, but I wanted to make that point clear.

EDDIE RIGGS

That's fine. We -- but the scope of work that we've, we have not heard any material change in the scope of work thus far. And so, our bids are out. Everybody can look at 'em. They can look at all four of the bids. And I would make one comment. Mr., the, Mr. Anderson did say that -- when you asked him if he would save some money, his comment was, we're going to be squeezing this job. But when you squeeze this job, you're, it's gonna cost more money to the City. There's no question about it.

RICH BUNTING

And inconvenience --

EDDIE RIGGS

And the, you know, the working hours on the job right now as laid fourth on the job that we bid are daytime hours only, a few hours at night. But you can't work past midnight. On the -- next one, they've told us that they're gonna try to get some cooperation from the hotels to allow 24-hour day construction. And we all know the phone calls we get, and I'm sure you guys get when that kind of stuff goes on. We can --

VICE CHAIRMAN McDONALD

Oh, yeah.

MEMBER ADAMSEN

Oh, yeah.

EDDIE RIGGS

We can build this job right now, and -- start it and complete it in the time frame, right now, and you have this responsive bid.

Now to the question of an A contractor. We, at the Contractors Board meeting on Tuesday, it was very apparent, all of the board members there were arguing back and forth different things. And they said that they had awarded A licensees to bid parking structures in the past.

Now, we feel like this job over -- almost 60 to 70 percent of

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this job is not parking structure. It's other work. And so, and it's heavy, civil engineering work. There's a 120 dewatering wells that need to be drilled on this job before it even begins. There's soil nail and this is like building a house from the roof down.

RICH BUNTING

Underground.

EDDIE RIGGS

Under the ground. So it's not a parking garage like the other parking garages in town. This is a heavy, civil engineering job. The AGC, the biggest contractors association in the country, has agreed with us on that point. Fifty percent of the people that bid this job agreed with us. Fifty percent of the contractors board agreed with us.

So, and we went back to our records. And this morning in an hour, is all I had to – look this up, I did find – And if I had more time, I'm sure I could find more. But I did find a job that an A contractor built. And it's a regular parking garage. It's not in the ground and it doesn't have the – special A criteria that we think this does. And – I have the description of work right here. And I'll just touch on a few of these, and then I've got a copy for – everybody here. But just very quickly, it's a nine-level parking garage, 22.1 million square feet of – on-slab grade. Two hundred and forty-four square feet and supported floors of approximately 1.9 million square feet. It's a slab-on grade. It's cast-in-place concrete, post tension. It has elevators, pedestrian bridges, moving walkways, vehicle bridges, parking operations office. And this job was a \$59 million job that was bid by Meadow Valley Construction Company and awarded to them, and I would call your attention to Page 3 of the Bid Documents where Meadow Valley lists their license classification as A - General Engineering.

They were --

RICH BUNTING

(inaudible)

EDDIE RIGGS

They --

MEMBER BROWN

If I may, Mayor Pro Tem, that issue, as far as the A and the B, I think is going beside. So if you want to enter that into the record, that's fine.

EDDIE RIGGS

Well, I just, I – The reason I'm saying that is had we given – been given the time at the Contractors Board meeting the other day, had been able to show that to them, perhaps that would have made them, swayed one of them one way or the

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other to -- be able to --

RICH BUNTING

Also, going into this bid, there was no reason to think our license was not applicable --

EDDIE RIGGS

That's correct --

RICH BUNTING

-- from -- these past experiences, our past experiences, and especially in lieu of the vast ma', well over 50 percent of this work is -- definitely heavy civil work.

EDDIE RIGGS

Right. When we --

RICH BUNTING

And the City and everybody agrees with that.

EDDIE RIGGS

That's the invitation to bid that job. That's the only thing we, as contractors, get to evaluate whether we're going to bid or not. We -- read that on that job. I knew that -- was an A contractor, at least that's -- the way I believed and that's the way it was -- eventually awarded. We get this, the scope of this work and it says, excavation, the work will generally consist of excavation. First of all, it's called the Neonopolis Garage Structure. And it says that it consists of excavation, soil nailing system -- mentioned very prominently at the beginning. Soil nails as a side bar, something incidental to construction, wouldn't even be mentioned in this -- very broad definition.

MEMBER BROWN

And it, I think, again --

EDDIE RIGGS

Okay.

MEMBER BROWN

-- you're pounding that issue, but that's -- just enter it into the record.

EDDIE RIGGS

Okay.

MEMBER BROWN

Yeah. Please.

EDDIE RIGGS

There's the -- Okay. We have a letter of recommendation from staff to Granite Construction Company that I don't know if you've seen, but I'd like to enter that if I didn't already. So when Dean says that they got a recommendation of award, I don't know of, that -- Dean ever --

VICE CHAIRMAN McDONALD

Roni.

ATTORNEY STAN PARRY

Move on, Eddie.

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EDDIE RIGGS

Okay. And – Right, if it's – not the license issue, and – we have already clearly identified Dean as being non-responsive, because of leaving out this vital piece of information out of their bid, I don't, I can't see how the Council cannot award this to us, especially in light of the fact that we have –instructed counsel to indemnify the City on any delay, problems that may occur. And we can start this project right now. You have a responsive bidder that – would be responsive a month from now, using the criteria that the City has decided to use.

RICH BUNTING

(inaudible)

EDDIE RIGGS

And the – Contractors Board has – not made a decision and so we feel that the decision lies with your discretion. And we certainly can do this job.

MEMBER BROWN

I think that's fair.

ATTORNEY STAN PARRY

We don't have anything more to put on the record, unless you have questions for us.

MEMBER BROWN

Just, Brad, on – one of the letter, that's being submitted here, that is of – The award, any bid, technically is not awarded until Council approves that?

CITY ATTORNEY JERBIC

Right. In this case it would have happened automatically but for the challenge.

MEMBER BROWN

Okay. So this --

CITY ATTORNEY JERBIC

Because you had given the pre-approval.

MEMBER BROWN

This indicates that that – the last, the latest of the staff recommendation at that point was to award to Granite?

CITY ATTORNEY JERBIC

Was to award to Granite before the A/B license issue came up.

MEMBER BROWN

But that needs, again, to be a policy decision or decision by the full board on the meeting of this 22nd. I just wanna make sure that there's nothing that's officially been awarded.

CITY ATTORNEY JERBIC

That's correct. The – way it works is when you pre-approve a bid, it would be officially awarded to the lowest, responsive, and responsible bidder the day it's opened, unless there's a challenge. And if the challenge comes up, then it goes back to Council to resolve the challenge.

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I would only put in less than one minutes worth of comments and the records here, I've heard everybody's arguments, as you've heard. These are good arguments that everybody makes, you know. We happen to believe, and staff's position on this, I think that the materiality was the issue that we caused first. Even if – the material itself were deemed by somebody to be less of a material part of the project, that the certification be less of a material part of the project, the very fact that a bidder can back out alone for not submitting that certification, that alone, I think, is a very persuasive argument for materiality. And I think that the evidence on this, if this think gets litigated, will probably go both ways. I mean, you'll have some people say they think it was real material to have that certification and others may say that they think it was not.

The fact of the matter is it was in the documents. For regardless of how it got in the documents or why it got in the documents, it is in the documents. You know, in hindsight, you know, you might be able to look at it and say, boy, it weren't in the documents, we could sure just pick M.J. Dean right now and that would be the end of it and you'd have the lowest bid. But it is in the documents and it does say it had to be submitted. And I think that the better view is to look at it as a material provision that was not met.

Staff has, during the break, briefly talked with Mr. Wirth. Mr. Wirth, I had assumed if anybody was gonna sue under the re-bid, if there was any suit at all, it would be only after the bids were open. Because clearly, if the low bid had a B license and submitted the certification this time, there would be no – argument. And if an A license won the bid, under the new bid, there might be some argument. But there was a real significant chance of avoiding litigation with throwing out all the bids.

But I have been told that we're gonna be sued tomorrow. And I have been told that they're gonna try and – jump in now before those bids are opened. That does not change my recommendation, but it causes me to offer you another option in conjunction with that recommendation.

If you do not feel that rejection of the bids is where you want to go, and that is clearly still our recommendation, then the next recommendation, if you are going to award, would be to – view the contract as having been required that we go to the Contractors Board for clarification. We have been to the Contractors Board, they have not given clarification. We are

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not likely to get clarification for a timeline well beyond that which we're at, given the fact that the A license in this particular case does seem to have many, or most of the components and A licenses have built similar structures before, we would say that if you're going to pick, then the pick should go to Granite.

MEMBER BROWN

Brad, a couple questions. And the issue of reserving our right to waive and/or reject, I think it was Mr. Parry or Mr. Riggs brought up the issue as far as under that same language if our self-imposed condition to go the Contractors Board for clarification, or whatever, if they don't give it to us, I think he stated, and I'm paraphrasing here, then that would fall back on our ability contractually to waive the self-imposed condition.

CITY ATTORNEY JERBIC

Or decided, I think ultimately you do have to have a decision. I think logically that you would be the ultimate people that decided if the Contractors Board didn't, given the fact that they haven't and aren't likely to for at least another 30 days and that they are split on it and that there are, I think, substantial arguments in – the statute for why this is an awful lot like an A-type project and A-type contractors have built similar projects before. Clearly if an A contractor can build an airport terminal and there are a lot of people in those kinds of things, it hardly seems that a parking garage should be exclusive, but I'm not an engineer. I'm just an attorney. And I've given you my best shot on it and that's – my analysis.

MEMBER BROWN

Again, but – the point I made earlier after your opening remarks was we had some recommendations that came to the point and I specifically asked, we're here today with a final recom', or the latest recommendation, even before your, the second to last recommendation, was based on the fact that our contract sent it to the Contractors Board.

Again my question, so I understand this. We may – or we do have the discretion to then, since they didn't decide, waive that, whether legally we can debate it. But we do have the ability to say now the Contractors Board, since they didn't make the decision, fine, it's back and it's incumbent upon the City.

CITY ATTORNEY JERBIC

I don't think you can waive the bid requirements. I think what you – If you were not inclined to accept staff's recommendation, reject all bids, which again, I want to be clear on, it's still our main recommendation. If the Council were to pick anyone today, and you were to reject staff's

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recommendation, I believe that the better argument is the award to Granite than the award to M.J. Dean because I believe the material defect and the fact that you have been to the Contractors Board shows that the City did everything it could to comply with the Bid Specs to get a review from the Contractors Board. I don't think you can just simply today say, we are waiving the ability to go to Board, because the Bid Specs do require it.

MEMBER BROWN

But you feel comfortable -- again, I was following the logic until then, but you feel comfortable because the Board did not make a decision and the time sensitivity -- we -- don't have 30 days or more to wait -- then it comes back and it's within our authority, discretion, or reserved right to then make the decision, make an award.

CITY ATTORNEY JERBIC

Let me use these words. I -- do not feel comfortable saying that. I want to make that part of the record. I do not feel comfortable saying that -- you have the ability to now throw that out. I do think that if you're going to pick between one of the two and you're not going to reject all bids, that the better argument is Granite than M.J. Dean. And the logic is that you did everything you could to comply with that provision of the -- Bid Spec. I -- that is a less comfortable position for me than rejecting all bids. But since we are going to litigation anyway, if you're going to pick one, then I think that if I'm gonna be in court trying to get this on the shortest time line possible, trying to get a court to resolve it quickly, that that would be the one that I would be more comfortable defending.

VICE CHAIRMAN McDONALD

Ms. Valentine, you have recommendations, any?

CITY MANAGER VALENTINE

I'm sorry.

VICE CHAIRMAN McDONALD

Do you have any recommendations as well?

CITY MANAGER VALENTINE

Well, it's my opinion that, along with the City Attorney's, that failure to submit on the waterproofing is a critical issue. I would also like to put on the record that their presumption that there will be a net savings of \$450,000, in my opinion, is somewhat flawed because ultimately the price for these things include contingencies and unforeseen site conditions and change orders. And everybody prepares their own bids based on different assumptions and conditions. So, the argument that this is, will result in a net savings of \$450,000, I think, is somewhat flawed.

I also support the City Attorney's recommendation that we

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reject all the bids. And with respect to the licensing issue, the City does not license contractors. We rely upon the State to do that.

VICE CHAIRMAN McDONALD

Thank you.

ATTORNEY ROGER WIRTH

May I just respond to Mr. Jerbic, and I will be 20 seconds.

VICE CHAIRMAN McDONALD

Okay.

ATTORNEY ROGER WIRTH

He said that I said we would file a lawsuit tomorrow. What I told him was that we could file a lawsuit tomorrow because I thought that that was the vein of helping you to get a resolution fast. I was just saying, if we wanna do this, we'll do it tomorrow, we'll get it on fast. He suggested, well, we should wait. I was surprised by that, and then I told him I was surprised with that. I thought that he would want to get it resolved ASAP.

VICE CHAIRMAN McDONALD

Question?

MEMBER BROWN

Is it fair to ask? Mr. Jerbic.

CITY ATTORNEY JERBIC

Um, hum. I think the way you get it resolved today --

MEMBER ADAMSEN

Is it fair to ask Mr. Wirth?

CITY ATTORNEY JERBIC

Sure.

MEMBER ADAMSEN

Is your client going to sue us if we reject all bids? Is that fair to ask?

CITY ATTORNEY JERBIC

Absolutely. Ask any question you'd like, Councilman.

ATTORNEY ROGER WIRTH

Are we going to? I don't know. Maybe --

MEMBER ADAMSEN

On --

ATTORNEY ROGER WIRTH

We've done the research. I don't know. I --

MEMBER ADAMSEN

Are you going to sue the City if we reject all bids?

ATTORNEY ROGER WIRTH

As I stand here right now, we have not made the decision. And I will say again what I told Mr. Jerbic. If we can bring this to a head fastest, which is what I thought, by suggesting that we do it right away, tomorrow instead of waiting a week or two weeks or whatever, I said, we'll do it.

MEMBER ADAMSEN

Ask your client and see if he will give us an answer.

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ATTORNEY ROGER WIRTH

I'm sorry?

MEMBER ADAMSEN

Ask your client, see if he will give us an answer.

ATTORNEY ROGER WIRTH

I think that's something that we'd have to -- reassess all of the -- this record today as well as the research that is going on in my office right now. I'll ask my client, but I -- don't think that --

MEMBER ADAMSEN

Please, ask your client.

ATTORNEY ROGER WIRTH

Sure.

CITY ATTORNEY JERBIC

Well, we of course take the position that -- lawsuits are an example of what happens when people can't resolve things.

MEMBER ADAMSEN

Exactly.

CITY ATTORNEY JERBIC

And I think that, and that's not to say that reasonable people can't differ, but in this particular case, it seems to me that you avoid litigation by re-bidding, because at the end of the bids, when they're opened, there may be no issue at all. And that would seem to me that if you've got the complaint, that your complaint is only after the bids are opened and you still have a disagreement.

MEMBER ADAMSEN

Mr. Anderson?

CITY ATTORNEY JERBIC

But.

MEMBER ADAMSEN

Mr. Anderson, as to the question as the scope of work?

DENNIS ANDERSON, CITY
ENGINEER

No substantial changes. The only thing that I would like to clarify is that we didn't say that we were going to have 24-hour a day work. We said we would talk to FSC and see if we could expand the hours of work in any way to help with the compression problem.

And maybe one other thing, the talking about licenses, it's kind of in and out, but the only question that I had with license with an A versus an A/B versus a B is a matter of experience. There are certainly A contractors out there that I don't think that are qualified to do this particular job. Their primary work is asphalt paving and that type of -- work. I have no reason to believe that Granite is not fully qualified to do this job.

MEMBER BROWN

Mr. Anderson, on that -- point -- this came up earlier in one

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of the testimonies. If we have a, someone submit a bid that just on the experience or their inability to do a project, wouldn't we reject that bid?

DENNIS ANDERSON, CITY
ENGINEER

I think that's a -- question that we'd be in kind of the same situation we are now.

CITY ATTORNEY JERBIC

If you could articulate why a contractor wasn't responsible, you could.

MEMBER BROWN

Okay. Well, that's -- the legal term of what I just asked.

CITY ATTORNEY JERBIC

Responsive and responsible, and what we're saying here is we believe all are responsible. Mr. Wirth is correct in that. There's no reason to believe M.J. Dean, Granite, or Bomel are -- not all responsible people to build this project. I -- don't want to leave out Jack's, which is the fourth bidder. I believe that they are a responsible bidder. I believe that we had heard in this particular case that their bond limit wasn't high enough. I don't know if that was accurate or not.

MEMBER ADAMSEN

Okay. And then do you -- believe it would be fair to ask the other side of this, Granite Construction, the same question I asked the --Dean

CITY ATTORNEY JERBIC

Sure. You can certainly ask, because avoiding litigation is a factor that you can legitimately consider in re-awarding a bid, and -- so knowing where you're going is clearly appropriate.

VICE CHAIRMAN McDONALD

Mr. Parry?

MEMBER ADAMSEN

Mr. Parry, to be -- fair and equitable --

ATTORNEY STAN PARRY

In general, Councilman, we would not challenge a bid that was rejected.

MEMBER ADAMSEN

Okay.

ATTORNEY STAN PARRY

You know, having said that, we recognize that may sabotage our position. We think that this would be a terrible precedent, if you did not award this to Granite. I mean, you would be making a huge mistake in the way bids are done and -- in the way this project will be built. But we will put that on the record. We're not likely to sue.

VICE CHAIRMAN McDONALD

Thank you, Mr. Parry.

ATTORNEY ROGER WIRTH

I suppose you just changed the name from Granite to Dean

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on -- that with the qualification that I -- came in here this morning, having done the research and feeling very strongly in my, about my client's case. And feeling that I was really doing a favor to the City and to this project by saying, I've got some of the research here right now and we can get it on file right away.

Brad's suggestion was, well, why -- would you sue now since you might get the bid if it's re-bid. And I -- told him, I said, you know, I hadn't thought about it. Maybe I should have. But I hadn't. So I, it's not something that I can stand here and say, no, we won't. And I can't say, I'm not saying, please understand, I'm not saying yes we will.

MEMBER ADAMSEN

Okay, that's fair --. I felt that I had to ask the question.

TOM McGOWAN

Less than a minute.

VICE CHAIRMAN McDONALD

Mr. McGowan, you've already had -- I'm sorry. We're on a time restraint. Public comment was taken on the 22nd, Sir.

TOM McGOWAN

This is not public comment. It's on the item. You didn't have the item before.

VICE CHAIRMAN McDONALD

No, Sir.

MEMBER BROWN

Please. Give him one --

VICE CHAIRMAN McDONALD

Okay, go ahead.

MEMBER BROWN

Mayor Pro Tem, one -- minute.

MEMBER ADAMSEN

It's not a public item. Go ahead, Tom.

TOM McGOWAN

Tom McGowan, friend and member of the public. In a strictly objective point of view, the issue's been resolved already. The issue fundamentally wise, the agreement condition to submit certifications, that went to the Board of Contractors, they had no appetite to act now. They acted indecisively. It reverts back to you. We can literally just moot at this point. You're back at square one.

You did accept bids regardless of any so-called defects. If you accepted them, they didn't have defects, because you admitted in that case that there was no certification requirement.

MEMBER ADAMSEN

That's no accurate, Tom.

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TOM MCGOWAN

MEMBER ADAMSEN

MEMBER BROWN

VICE CHAIRMAN McDONALD

MEMBER BROWN

MEMBER ADAMSEN

VICE CHAIRMAN McDONALD

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VICE CHAIRMAN McDONALD

CITY ATTORNEY JERIC

MEMBER ADAMSEN

MEMBER BROWN

CITY ATTORNEY JERBIC

VICE CHAIRMAN McDONALD

MEMBER BROWN

CITY MANAGER VALENTINE

VICE CHAIRMAN McDONALD

MEMBER BROWN

I was – following staff's recommendations throughout the

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last week, and I must say, going into this morning's meeting, I was willing to support that last recommendation. But some things that both attorneys put on the record have now changed my mind. Both the applicants have asked that we make a decision today. I heard that in both – testimonies. I don't think the issue of appropriate contractor, our – engineer has indicated that it's appropriate, earlier recommendations indicated it's appropriate, and certainly the Contractors Board can't decide if it's appropriate or inappropriate.

So, I think the fact that both firms before us today can do this job and can do it well and have the experience takes that issue off. We also had an earlier recommendation that in fact three out of the four proposals had the material deviation, or whatever the legal term is, regarding that one specific issue. That was part of an earlier recommendation from staff.

I feel very comfortable, again, that timing is the key here. We have contractors that can do the job. We have a recommendation from staff originally saying that one deviated, the other didn't. And the recommendation at the Council meeting on the 22nd was going to be for award of the bid. All this A/B, A, B, C, and everything that's happened in the last few days, I think was after the fact. What the testimony given today and certainly comments from Mr. Jerbic, my recommendation is going to be to follow staff's recommendation on the 22nd, and that would be to award the bid to the lowest and responsive and responsible bidder, which in this case would be Granite Construction.

MEMBER ADAMSEN

Councilman, before you make the motion, could I make a comment? I understand it's your recommendation, could I make a comment before the motion is made?

MEMBER BROWN

Please do.

MEMBER ADAMSEN

Councilman Brown, I'm gonna have to say I'm gonna have to concur with you for this reason: It's always in the best interest of the City to save money. That's our fiduciary responsibility to our constituents. With the re-bid, I've asked two different ways, three different ways, is it going to still be possible for the City to realize these savings because now everybody knows what everybody else's bid is and potentially could be. And I felt that might sharpen their pencils a little bit to get even a more competitive bid.

But now, because of the critical timeline that we face, and

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we are impacted because of the revenues that are being generated under there, if it's no longer possible to save money, then it becomes in the best interest of the City to make sure that this project doesn't cost us any more money than it's already going to cost us.

And I appreciate the patience and the indulgence of the counselors of the bidders. I didn't mean to rush this process. There's another critical meeting. And if the City is in a position of not being able to save money, then we must make sure that this doesn't cost a penny more than it's already going to.

So, that's kind of where I'm at, but I wanted to say that on the record before you made a motion.

MEMBER BROWN

And there's, I didn't feel comfortable and there were no guarantees that in 16 days or when, on March 16th we would be in any better shape.

MEMBER ADAMSEN

Yeah and it's not gonna save us any money.

MEMBER BROWN

The decision under the circumstances at that time would pretty much be the decisions that we've heard and our decision to based on the information provided today. So, I would stand -- by the motion and call for --

VICE CHAIRMAN McDONALD

Further comments?

CITY ATTORNEY JERBIC

I would ask, if you're gonna make that motion, to make it contingent upon Granite's offer of indemnification for the City. Since they offered it, I think we ought to take 'em up on it.

MEMBER BROWN

As amended --.

CITY ATTORNEY JERBIC

If the motion is toward Granite.

VICE CHAIRMAN McDONALD

Cast your votes. Post. Motion's approved. **(Motion carried unanimously with JONES and REESE excused.)** This meeting's adjourned.

END RELATED DISCUSISON - RESUME RELATED DISCUSISON

VICE CHAIRMAN McDONALD

There was a point that was brought up and Mr. Jerbic would like to make clarification of it.

CITY ATTORNEY JERBIC

If I could, the meeting had just been adjourned and we're

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within literally about 90 seconds of that, and I believe all the parties are still in the room. I do not like doing it this way, but I do think it's important to go back on the record. I spoke with our outside counsel very briefly the moment that you took the motion upon my recommendation. And in my eagerness to take Granite up on their offer, I overlooked the fact that that may be, although I do not know if it's certain, it may be looked at by the court as changing the bid requirements. It's getting indemnification from somebody when that was certainly not required.

That was not part of your logic. It was not part of your motion. It was upon my urgency that you -- added it to your motion at the end. I would ask that you discount that particular recommendation and remove at this time regarding your motion without the indemnification to avoid complicating this issue --

VICE CHAIRMAN McDONALD

So, you want to rescind the vote?

CITY ATTORNEY JERBIC

Rescind the vote, and -- revote without the indemnification.

VICE CHAIRMAN McDONALD

Call for the question to rescind the vote. Cast your votes.

MEMBER ADAMSEN

(inaudible)

VICE CHAIRMAN McDONALD

Councilman? Make a motion to rescind the vote. Post. Motion's approved. **(Motion carried unanimously with JONES and REESE excused.)** Now.

MEMBER BROWN

I would -- restate my earlier motion without the amendment.

VICE CHAIRMAN McDONALD

Cast your votes. Post. Motion's approved. **(Motion carried unanimously with JONES and REESE excused.)** Now this meeting's adjourned.

CITY ATTORNEY JERBIC

Thank you.

(END OF DISCUSSION)

/gpb/ac