

IN THE SUPREME COURT OF THE STATE OF NEVADA

CANYON CONSTRUCTION COMPANY,
A NEVADA CORPORATION,
Petitioner,

vs.

ELKO COUNTY SCHOOL DISTRICT
EX REL. BOARD OF TRUSTEES, A
POLITICAL SUBDIVISION OF THE
STATE OF NEVADA,

Respondent,


and

MGM CONSTRUCTION INC., A UTAH
CORPORATION,
Real Party in Interest.

No. 50665

FILED

FEB 12 2008

TRACEE K. LINDEMAN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER DENYING PETITION FOR WRIT OF MANDAMUS

This petition for a writ of mandamus challenges a public body's decision to award a public works project to the second lowest bidder. As directed, respondent and real party in interest have timely filed answers. Petitioner has submitted a reply.¹

A writ of mandamus is available to compel the performance of an act that the law requires, or to control a manifest abuse or an arbitrary or capricious exercise of discretion.² Mandamus, moreover, is an

¹Although petitioner failed to file a separate motion requesting leave of this court to file a reply, we have considered its reply. Therefore, we direct the clerk of this court to file the reply, provisionally received on January 28, 2008.

²See NRS 34.160; Round Hill Gen. Imp. Dist. v. Newman, 97 Nev. 601, 637 P.2d 534 (1981).


extraordinary remedy, and the decision to entertain such a petition is addressed to our sole discretion.³

Having considered this petition, the answers, and the reply, as well as all supporting documentation, we conclude that our extraordinary intervention is not warranted. In particular, while NRS 338.141(1)(b) apparently does not require a bidding contractor to list a subcontractor if that contractor intends to do the work itself, the record indicates that petitioner did not intend to do the specified flooring work itself and, at least as of the time of its bid, was not prepared or qualified to do so. Accordingly, respondent appropriately disqualified petitioner's bid as non-responsive for failing to list a flooring subcontractor as set forth in NRS 338.141(1)(b) and thus was not compelled by law to award petitioner the public works project.⁴ Therefore, we

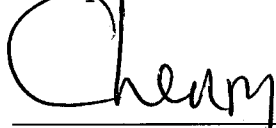
³See Poulos v. District Court, 98 Nev. 453, 455, 652 P.2d 1177, 1178 (1982).

⁴See NRS 338.143(5); NRS 338.147(2)(a); see also Faust v. Donrey Media Group, 95 Nev. 235, 237-38, 591 P.2d 1152, 1154 (1979) (recognizing that a local government has discretion, generally unchallengeable by writ petition, in determining whether a bidder is responsible, but has no discretion to award a contract to a bidder whose bid varies materially from the specifications); Clark Pacific v. Krump Const., Inc., 942 F. Supp. 1324, 1341 (D. Nev. 1996) (interpreting NRS 338.141 (formerly NRS 388.144) in light of its purpose to prevent bid shopping in public works projects); Bud Mahas Const. Inc. v. Clark County School Dist., 767 F. Supp. 1045 (D. Nev. 1991) (recognizing that Nevada statutory law permits local governments a great deal of discretion in determining whether a bidder is responsible and responsive).

ORDER the petition DENIED.⁵


_____ , J.

Maupin


_____ , J.

Cherry


_____ , J.

Saitta

cc: Law Offices of Michael B. Springer
Elko County School District
Wilson, Barrows & Salyer
Elko County District Attorney
MGM Construction

⁵In light of this order, we need not address respondent's and real party in interest's other arguments, including those pertaining to laches.