

## MEMORANDUM

**TO:** Kevin Smith and Truckee Tahoe Airport District  
**FROM:** Jason LaChance  
**DATE:** July 15, 2011  
**RE:** Acceptance of Koch & Koch bid for Apron Lighting and Segmented Circle

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Dear Kevin:

Both Brent and I have done further legal research into whether the Board can still accept the bid from Koch & Koch despite their initial failure to provide the District with their Worker's Compensation form and the Non-Collusion Affidavit with the initial bid.

Technically, the bid from Koch & Koch is still legally responsive and the Board can accept that bid. A bid is deemed "responsive" if it promises to do what the bidding instructions demand. Valley Crest Landscaping, Inc. v. City Council (1996) 41 Cal.App.4<sup>th</sup> 1432, 1438. Moreover, a bid may still be responsive even if there is a discrepancy or technical error in the bid, so long as the discrepancy is inconsequential or minor. Konica Business Machines v. Regents (1988) 206 Cal.App.3d 449, 454.

An inconsequential discrepancy or error is one that does not (1) affect the amount of the bid, (2) give the bidder an advantage over others (i.e., give the bidder an opportunity to avoid its obligation to perform), (3) be a potential vehicle for favoritism, or (4) affect the ability to make bid comparisons. Ghillotti Construction Company v. City of Richmond (1996) 45 Cal.App.4<sup>th</sup> 897.

The above-cited cases would allow the Board at the next meeting to make a motion (with findings adhering to the 4 requirements in the Ghillotti case cited above) that such bid from Koch & Koch was "responsive", the failure to provide the Worker's Compensation form and Non-Collusion Affidavit was inconsequential and did not affect the "responsiveness" of such bid (especially since Koch & Koch did provide such forms at the June meeting), and the bid can now be accepted.

Also, in the event that the Board is concerned as to what other bidders could be awarded in damages should they seek money from the Board for the Board's failure to accept their bid, their company could only collect their bid preparation costs from the District once the contract has been signed by the bidder the Board agrees to. Kajima/Ray Wilson v. Los Angeles County Metro Transportation Authority (2000) 23 Cal.4<sup>th</sup> 305.

I hope the case law cited above and my explanation of the Board's right to make a motion to still accept the disputed bid helps. If you have any questions I will be around all day today and most of Monday. Brent will be out of town, but I can reach him if there is an emergency.

Jason