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Newton W. Kellam
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June 8, 2015

John C. McMillan
Department of Transportation
Division of Engineering Services
1727 30th Street, MS-43
P.O. Box 168041
Sacramento, CA 95816-8041

By Facsimile (916) 227-6282

RE: *Contract 08-0R9604*
Client: Dalke & Sons Construction, Inc.
Bid Protest

Dear Mr. McMillan,

I have been retained by Dalke & Sons Construction Inc., (hereinafter "Dalke & Sons") Please accept this letter as a protest by Dalke & Sons of award of Contract 08-0R9604 to any firm other than Dalke & Sons.

The Department of Transportation should reconsider its decision to award the project to the next lowest bidder for two reasons:

First, as you are aware, public agencies are authorized to waive irregularities in subcontractor lists so long as they contain the information required by State Law and it is in the best interest of the public to do so. Attached for your review is the case of West Bay Builders which is a 2005 unpublished decision which is almost directly on point. The West Bay Builders case is consistent with the holding in Valley Crest Landscape 41 Cal.App.4th 1432 where the court expressly held that subcontractor percentages are a minor irregularity which may be waived so long as the bid documents do not contain a self-performance percentage requirement which as I understand is the case for the instant contract.

Second, it is in the interest of the public to do so because Dalke & Sons is over \$80,000 lower than the second bidder.

Please notify me if the Department has a special form or if you require additional information in support of this protest. Please also accept this letter as Dalke & Sons request for notice of all public hearing scheduled to discuss this matter.

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Sincerely,



Newton W. Kellam.

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California Rules of Court, rule 8.1115, restricts
citation of unpublished opinions in California courts.

Court of Appeal, First District, Division 2, California.

**WEST BAY BUILDERS, INC., Plaintiff and
Appellant,**
v.
**LIBERTY UNION HIGH SCHOOL DISTRICT,
Defendant and Respondent,
Lathrop Construction Associates, Real Party in
Interest and Respondent.**

No. A106343. | (Contra Costa County Super. Ct. No.
N031347). | May 23, 2005.

Attorneys and Law Firms

Alexander Bannon, McInerney & Dillon, Oakland, CA,
for Plaintiff-Appellant.

Christine Ann Goodrich, Lozano Smith, Fresno, CA, for
Defendant-Respondent.

Roger M. Hughes, Bell, Rosenberg & Hughes, Oakland,
CA, for R.P. I-Respondent.

HAERLE, Acting P.J.

I. INTRODUCTION

*1 West Bay Builders, Inc. (West Bay) appeals a judgment denying its petition for writ of mandate. The petition sought to compel respondent Liberty Union High School District (the District) to rescind a contract for public work that the District awarded to West Bay's competitor, Lathrop Construction Associates (Lathrop). West Bay contends its petition should have been granted because the District was legally obligated to award the contract in question to West Bay which was the lowest responsible bidder. We disagree and, therefore, affirm.

II. STATEMENT OF FACTS**A. Background: Heritage High School Construction Project**

The District determined its two existing high schools would not accommodate a student population of the size projected for the 2005 school year. Therefore, the District developed a plan to construct Heritage High School (the Heritage project). The Heritage project was divided into two phases. Increment 1 would include site work, site clearing, grading, excavation, utilities, infrastructure, landscaping, sidewalks, and the construction of non-classroom buildings including a swimming complex. Increment 2 would include construction of the classroom buildings.

Both increments of the Heritage project were put out to public bid. Bids were opened on August 14, 2003.¹ According to Wayne Reeves, the District's project director for the Heritage project, the "apparent" lowest bidder for Increment 1 was Thompson Pacific, the apparent second lowest bid was from West Bay and the apparent third lowest bidder was Lathrop. Thompson Pacific sought to withdraw its bid because of a clerical error resulting in a material irregularity in its bid amount. West Bay's bid for Increment 1 was \$58,424,000. Lathrop's bid was \$60,082,000. Both of these bids were under the Increment 1 construction budget which was \$62,354,000.

On August 19, S.J. Amoroso, the fourth lowest bidder for Increment 1 of the Heritage project, submitted an objection to the District requesting that the three lowest bids be deemed nonresponsive because all three bidders failed to list license types and phone numbers on their Designation of Subcontractors forms. The District did not receive any other objections or protests with respect to the Increment 1 bids.

B. West Bay's Bid

According to Reeves, the Designation of Subcontractors form (designation form) that West Bay submitted with its bid for Increment 1 of the Heritage project contained "numerous irregularities."

The California Contractor's State License Board maintains a website containing the names, license numbers, license types and status of the licenses of construction contractors. By searching that site, Reeves

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identified several errors in West Bay's designation form. For example, three of the license numbers that West Bay provided did not match the subcontractors' names listed on its designation form. However, the District was able to determine from the License Board website that the names that West Bay provided were subcontractors licensed to do the work for which they had been designated. Another subcontractor identified by West Bay did not have the license number listed for it on the form; however, that number did correspond to a different subcontractor licensed to do the work. In several instances, the location of the subcontractor listed on the designation form did not match the license number that West Bay provided. However, in each case, the license number provided did match a subcontractor licensed to do the work.

*2 Using information West Bay provided on its designation form and information obtained from the State License Board website, Reeves was able to identify a subcontractor licensed to do each portion of the work listed on West Bay's designation form with two exceptions: (1) the drywall/plaster and metal stud work; and (2) the food service work.

1. Drywall/plaster and metal stud work-PCI

West Bay's designation form identifies the drywall/plaster and metal stud contractor as "PCI," and lists a location of "S.Francisco." Although the form requests a telephone number, license number and license type, West Bay did not supply that information.

Reeves determined that the State License Board website listed several contractors named PCI and some had valid licenses but none were licensed to do the work that West Bay indicated PCI would do.

On August 27, Reeves sent a letter, via fax and regular mail, to Paul Thompson, president of West Bay. Reeves stated that "West Bay's Designation of Subcontractors lists one subcontractor not licensed to do the work for which they are listed: PCI (drywall/plaster/metal stud)." Noting that the State License Board had no listing for that company, Reeves advised that the District staff intended to recommend that West Bay's bid be found nonresponsive. Reeves invited West Bay to respond in writing by 2:00 p.m. that day. He advised that the District would decide whether to award a contract for Increment 1 of the Heritage project that night at its board meeting and he provided information regarding the time and location of the board meeting.²

On behalf of West Bay, Thompson submitted a timely response to Reeves's August 27 letter. That response

states, in part: "West Bay Builders has listed PCI, which are the initials to Performance Contracting, Inc. This company also goes by PCI, which is also on the top of their letterhead. Their license number is 474795. Attached is the status report from the California State License Board website showing them in good standing." The attached information from the State License Board identified Performance Contracting Inc., with an address in Lenexa, Kansas, as having a current, active license to perform the following work: general building contractor, insulation and acoustical, drywall, lathing and plastering, painting and decorating, flooring and floor covering.

2. Food service work area-Duray

For the food service area portion of the Increment 1 work, West Bay's designation form identifies its subcontractor as "Duray," with a location in "Downey," and a license number of "598205." Although the form requests a phone number and license type, neither is provided.

Utilizing the State License Board website, Reeves identified a Duray in Downey whose license had been cancelled in 1996. Reeves also determined that the license number West Bay provided for Duray belonged to Dubesky Glass Company in San Marcos whose license expired in 1998.

*3 On August 27, Reeves sent an "urgent" fax to Thompson at West Bay which stated: "Please provide information of your listed subcontractor DURAY in Downey # 598205. We are unable to locate the information with the state. [¶] Please respond no later than 4:00 pm August 27, 2003." Thompson sent a timely response in which he stated: "West Bay Builders has listed Duray, also know as J.F. Duncan Industries, Inc. Their license number is 598206 not 598205. Attached is the status report from the California State License Board website showing them in good standing." The attached document identified JF Duncan Industries Inc. as having a current, active license and as classified to do sheet metal work.

C. Lathrop's Bid

Lathrop's subcontractor designation form contained irregularities. However, according to Reeves, he and his staff were able to identify a subcontractor licensed to do each portion of the work listed on Lathrop's designation form by using information supplied on Lathrop's form combined with information available on the State License Board's website.

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Lathrop also failed to submit documentation regarding the qualifications of the swimming pool subcontractor listed on its designation form along with its bid as it was required to do. However, the designated subcontractor, Western Water Features Inc., had been identified by other bidders including West Bay. Since the District already had "several copies" of the documentation establishing Western Water's qualifications, it did not request an additional copy of this information from Lathrop.

D. The Contract Award

At its regular board meeting on August 27, the District considered awards for Increment 1 and 2 of the Heritage project. Bidders had the opportunity to comment, protest and present materials. West Bay did not attend the meeting, submit a protest or submit any additional materials.

With respect to the subcontractor designation forms submitted by both West Bay and Lathrop, the District waived irregularities to the extent the District was able to identify a subcontractor licensed to do the work from information provided on the applicable designation form in combination with information available on the State License Board's website. The District also waived Lathrop's untimely submission of the qualification documentation for its designated swimming pool subcontractor. However, the District did not waive the two irregularities in the subcontractor designation form submitted by West Bay which pertained to the identities of the subcontractors designated to do the drywall/plaster and metal stud work (PCI) and the food service work (Duray). Accordingly, the District found that Lathrop was the lowest responsive, responsible bidder for Increment 1 of the Heritage project and awarded the contract for that work to Lathrop.

E. West Bay's Protest

After Thompson learned that the Increment 1 contract was awarded to Lathrop notwithstanding that West Bay's bid was lower, he arranged a meeting which took place on August 29 and which Reeves attended. Reeves and Thompson offer different recollections of this meeting.

*4. According to Reeves, the August 29 meeting was between West Bay and Lathrop. Representatives of the District attended in order to listen, not to respond. At the meeting, Thompson defended West Bay's bid by taking the position that Duray did not need to be listed on West Bay's subcontractor designation form at all because it was only an equipment supplier and was not designated to do

any on-site installation. According to Reeves, Thompson did not mention Lathrop's bid during the meeting.

According to Thompson, he and his attorney met with representatives of the District on August 29 in order to "explain to the District that West Bay's bid was in full compliance with the invitation to bid and the California Public Contract Code." At the meeting Thompson presented the District with copies of the bid proposals PCI and Duray submitted to West Bay. According to Thompson, West Bay also objected to "numerous material errors and omissions" in Lathrop's bid including the failure to provide documentation of the qualifications of Lathrop's swimming pool subcontractor and "the numerous errors in Lathrop's subcontractor listings."

On September 2, Thompson was notified that the District would not rescind its contract with Lathrop. Lathrop began construction on Increment 1 of the Heritage project on the scheduled start date, September 8. On September 10, Thompson's attorney filed a petition with the District requesting that the Lathrop contract be rescinded. Thompson was subsequently informed that his petition was denied.

F. Petition for Writ of Mandate

West Bay filed a petition for writ of mandate on September 22, pursuant to which it sought an order compelling the District to rescind the Lathrop contract and award the contract for Increment 1 of the Heritage project to West Bay. On September 23, the Honorable Barbara Zuniga filed an order directing issuance of an alternative writ. After hearing the matter on January 15, 2004, the court denied West Bay's petition in an order dated January 23, 2004. Both the January 23, 2004, order and judgment in favor of the District were filed February 6, 2004. Notice of entry of judgment was mailed February 17, 2004. West Bay filed a notice of appeal on April 19, 2004.

III. DISCUSSION

West Bay contends the judgment denying its petition must be reversed because, pursuant to section 20111, subdivision (b), of the Public Contract Code (section 20111(b)), the District was required to award the contract for Increment 1 of the Heritage project to West Bay or to reject all bids. Alternatively, West Bay contends that the District abused its discretion by rejecting West Bay's bid while accepting Lathrop's bid when both bids contained

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the "same minor irregularities."

A. Standard of Review

"Appellate review of the award of a public contract is governed by certain well-established principles. In a mandamus action arising under Code of Civil Procedure section 1085, we limit our review to an examination of the proceedings before the agency to determine whether its findings and actions are supported by substantial evidence [Citations.] 'Our review is limited to an examination of the proceedings to determine whether the City's actions were arbitrary, capricious, entirely lacking in evidentiary support or inconsistent with proper procedure. There is a presumption that the City's actions were supported by substantial evidence, and [petitioner/plaintiff] has the burden of proving otherwise. We may not reweigh the evidence and must view it in the light most favorable to the City's actions, indulging all reasonable inferences in support of those actions. [Citations.] Mandamus is an appropriate remedy to compel the exercise of discretion by a government agency, but does not lie to control the exercise of discretion unless under the facts, discretion can only be exercised in one way. [Citations.] [Citation.]" (*MCM Construction, Inc. v. City of San Francisco* (1998) 66 Cal.App.4th 359, 368 (*MCM Construction*)).

B. Section 20111(b)

*5 Section 20111(b) provides, in relevant part: "The governing board [of any school district] shall let any contract for a public project, as defined in subdivision (c) of Section 22002, involving an expenditure of fifteen thousand dollars (\$15,000) or more, to the lowest responsible bidder who shall give security as the board requires, or else reject all bids...."

West Bay contends section 20111(b) mandated that the District either award the Increment 1 contract to West Bay or reject all bids because, after Thompson Pacific withdrew its bid, West Bay was the lowest responsible bidder. However, the record demonstrates that West Bay was not the lowest responsible bidder when the contract was awarded because its bid had been rejected by the District as nonresponsive.

A determination of nonresponsiveness is not equivalent to a finding of nonresponsibility. (*Taylor Bus Service, Inc. v. San Diego Bd. of Education* (1987) 195 Cal.App.3d 1331, 1341.) "A bid is responsive if it promises to do what the bidding instructions demand. A bidder is responsible if it can perform the contract as promised." (*Ibid.*) Thus, the

determinative question in this case is not whether West Bay submitted the lowest bid or if it was a responsible bidder but rather whether the District erroneously determined that West Bay's bid was not responsive. West Bay contends that its bid was responsive. However, substantial evidence supports the District's contrary determination.

The Joint Appendix includes copies of the subcontractor designation forms that both West Bay and Lathrop completed in connection with this project. The printed material on the designation form includes the following directions: "Each bidder shall set forth below the name and the location of the mill, shop or office of each subcontractor and the license number of each subcontractor who will perform work or labor or render service to the Contractor in or about the construction of the Work or improvement to be performed under these specifications, in an amount in excess of one-half of 1 percent (0.5%) of the bidder's total bid, and the portion of the Work which will be done by each subcontractor. [¶] All specified information must be provided. Failure to provide this information in a legible manner may result in the rejection of an otherwise acceptable bid." (Emphasis added.) These directions regarding completion of this subcontractor designation form are followed by a grid requiring the contractor to report (1) portion of work, (2) subcontractor's name and phone number, (3) location of the subcontractor, and (4) the subcontractor's license number and type.

Notwithstanding these clear instructions, and contrary to West Bay's argument on appeal, West Bay did not comply with these bidding requirements. As discussed in our factual summary, West Bay's designation form was incomplete and contained inaccurate information with respect to several of the subcontractors that West Bay designated.

*6 Relying on section 4106 of the Public Contract Code (section 4106), West Bay contends that any arguable irregularity with respect to its identification of subcontractors did not render its bid nonresponsive. Section 4106 states, in part: "If a prime contractor fails to specify a subcontractor or if a prime contractor specifies more than one subcontractor for the same portion of work to be performed under the contract in excess of one-half of 1 percent of the prime contractor's total bid, the prime contractor agrees that he or she is fully qualified to perform that portion himself or herself, and that the prime contractor shall perform that portion himself or herself."

West Bay ignores the plain language of section 4106 which applies only when (1) a subcontractor has not been

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identified to perform a portion of the work or (2) more than one subcontractor has been identified to perform the same work. Here, the irregularities in West Bay's subcontractor designation form pertained to work for which West Bay identified a single subcontractor but either failed to accurately or adequately identify that subcontractor and/or failed to provide specific information about that subcontractor that the District expressly requested. Thus, section 4106 does not apply here.

West Bay claims it "properly identified Performance Contracting Inc., as its drywall subcontractor." West Bay reasons that it "fairly and clearly" identified this subcontractor by using its "informal 'dba' of 'PCI' and properly listing its business location in San Francisco" since this company regularly does business as PCI and utilizes this abbreviation in its letterhead. To the contrary, substantial evidence supports the District's determination that West Bay did not properly or adequately identify Performance Contracting Inc. Not only did it use an abbreviation, West Bay did not provide a license number or any of the other background information that the District requested except for a location of "S.Francisco." Indeed, undisputed evidence establishes that the District was unable to identify a licensed subcontractor who corresponded with the designation in question.

West Bay also contends that it properly identified J.F. Duncan Industries, Inc., as Duray because "Duray is the business name for J.F. Duncan." West Bay simply ignores the fact that it supplied an erroneous license number for this subcontractor and that the District could not identify a subcontractor licensed to do the specified work based on the information that West Bay provided.

West Bay contends that, once the District determined that West Bay's bid was nonresponsive, it was "required to give West Bay a chance to informally provide information to show it was responsive."

"In determining whether a bid is responsive to a solicitation for bids, and whether a deviation from contract specifications may be disregarded as insubstantial, the contracting entity must provide the bidder with notice and allow it to submit materials concerning the issue of responsiveness." (*Ghilotti Construction Co. v. City of Richmond* (1996) 45 Cal.App.4th 897, 904, citing *Taylor Bus Service, Inc. v. San Diego Bd. of Education, supra*, 195 Cal.App.3d at pp. 1341-1343.) However, the entity is not required to conduct a hearing, make formal findings, or otherwise comply with the due process requirements which arise when there is question as to whether a bidder is

responsible. (*Ibid*)

*7 Here, the record demonstrates that the District's procedure did not violate West Bay's due process rights. Wayne Reeves, the District's project manager, notified West Bay about material irregularities in its subcontractor designation form and of his intent to recommend that West Bay's bid be found nonresponsive. Not only did Reeves afford an opportunity to respond, he invited West Bay to attend the meeting at which the District would determine whether or not West Bay's bid was responsive. West Bay chose not to attend that meeting.

West Bay contends that information it submitted in response to Reeve's inquiries established that its bid was responsive. Again we disagree. In its bid, West Bay designated "PCI" of "S.Francisco" as the drywall/plaster and metal stud subcontractor. The State License Board's website listed several contractors with the name PCI who held valid licenses but none that were licensed to do drywall/plaster and metal stud work. The supplemental information that West Bay provided did not change this fact. Rather, West Bay identified a different subcontractor than the one listed in its bid, Performance Contracting Inc., with a location different than the one identified in PCI's bid, Lenexa, Kansas. Similarly, in response to Reeve's notice that he was unable to confirm the existence of a food service subcontractor by the name of Duray in Downey with a license number of 598205 who was licensed to do such work, West Bay again offered a different subcontractor name and license number, J.F. Duncan Industries Inc., with a license number of 598206.

Thus, in both instances, West Bay supplied subcontractor information that was substantively different from the information set forth in its bid. In this regard we underscore that West Bay did not offer the District any documentation establishing or even suggesting that Performance Contracting Inc. used the business name PCI or that J.F. Duncan Industries Inc. was known by the name of Duray. Indeed, during these writ proceedings, West Bay has shown those connections by introducing copies of the bid proposals that Performance Contracting, Inc., and J.F. Duncan Industries, Inc., submitted to West Bay. Those proposals were not supplied to the District until *after* the contract was awarded to Lathrop.

C. The District's Discretion

West Bay contends the District abused its discretion by refusing to waive the irregularities in its subcontractor designation form.

"The purpose of requiring governmental entities to open

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the contracts process to public bidding is to eliminate favoritism, fraud and corruption; avoid misuse of public funds; and stimulate advantageous market place competition.' " (*MCM Construction, supra*, 66 Cal.App.4th at p. 369.) To prevent such potential abuse, the "general rule" is that "bidding requirements must be strictly adhered to in order to avoid the potential for abuse in the competitive bidding process." (*Domar Electric, Inc. v. City of Los Angeles* (1994) 9 Cal.4th 161, 175-176.) This prophylactic rule applies "even where it is certain there was in fact no corruption or adverse effect upon the bidding process, and the deviations would save the [public] entity money." (*Konica Business Machines U.S.A., Inc. v. Regents of University of California* (1988) 206 Cal.App.3d 449, 456.)

*8 However, "[t]he rule of strict compliance with bidding requirements does not preclude the contracting entity from waiving inconsequential deviations." (*Ghilotti Construction Co. v. City of Richmond, supra*, 45 Cal.App.4th at p. 908.) "[A] bid which substantially conforms to a call for bids may, though it is not strictly responsive, be accepted if the variance cannot have affected the amount of the bid or given a bidder an advantage or benefit not allowed other bidders or, in other words, if the variance is inconsequential." (*MCM Construction, supra*, 66 Cal.App.4th at pp. 373-374.)

West Bay construes these rules as requiring the District to waive the irregularities in West Bay's bid because those irregularities were inconsequential. However, as this court observed in *MCM Construction, supra*, 66 Cal.App.4th 359, authority recognizing an agency's right to waive inconsequential deviations from bid specifications "do not support the proposition that the contracting agency must waive deviations from bid requirements where it has the power to do so." (*Id.* at p. 373.)

In *MCM Construction*, we held that "[a]n agency has discretion to waive immaterial deviations from bid specifications and may accept the bid under certain conditions. The point of discretion is that the agency may properly act in either direction. It may waive or refuse to waive such deviations." (66 Cal.App.4th at p. 374.) We reject West Bay's contrary contentions in the present case and decline its invitation to revisit this issue.

West Bay contends that, to the extent its failure to properly identify subcontractors rendered its bid nonresponsive then, by the same token, Lathrop's bid was also nonresponsive and the District abused its discretion by waiving the irregularities in Lathrop's bid but refusing to waive identical errors in West Bay's bid. As a factual matter, this argument fails in light of the substantial

evidence before us which supports the following conclusions: The District waived errors with respect to the designation of subcontractors that were made by both West Bay and Lathrop to the extent those errors did not preclude the District from identifying contractors licensed to do the specified work by utilizing the State License Board website. The errors that were not waived, all of which appeared in the West Bay bid, pertained to situations in which the District could not identify a licensed contractor on the State License Board website that corresponded with the subcontractor listed on the subcontractor designation form.

West Bay contends that the District acted arbitrarily by waiving Lathrop's error in failing to provide qualification documentation for its swimming pool subcontractor but refusing to waive errors relating to West Bay's subcontractor designation form. According to West Bay, if the District was willing to use sources other than the internet to cure Lathrop's incomplete bid, it should also have used the supplemental information West Bay provided to Reeves to correct the irregularities on West Bay's subcontractor designation form. The most obvious problem with this argument is that the failure to provide qualification documentation is substantively distinct from the failure to accurately or adequately identify a subcontractor. The District was not required to use identical criteria to evaluate these substantively distinct problems.

*9 West Bay contends that it was denied equal protection because the District intentionally treated it differently than it treated Lathrop and there was no rational basis for the difference in treatment. (Citing *Village of Willowbrook v. Olech* (2000) 120 S.Ct. 1073, 1075.) West Bay has simply failed to support this claim. Indeed, this claim is undermined by evidence which shows that West Bay's bid was found nonresponsive because of bid deviations that were substantively different than the deviations in Lathrop's bid that were found to be inconsequential. This evidence also undermines West Bay's related claim of favoritism. (See *MCM Construction, supra*, 66 Cal.App.4th at p. 378.)

D. The Request for Judicial Notice

West Bay contends the trial court erroneously denied two requests for judicial notice.

First, West Bay requested that the court "take judicial notice of what is currently existing on the Contractor's State License Board ('CSLB'), which evidences that there are 16 contractors located in Fresno, of which 8 do not currently hold a valid contractor's license. Copies of print

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outs from the internet web site of the CSLB are attached to the declaration of Alexander Bannon."

This request was not well drafted or adequately proofed for errors. However, a review of the referenced documentation clarifies that the information from the State License Board website that West Bay asked the trial court to judicially notice was a list of contractors who used the word "Western" as part of their name. According to the declaration of West Bay's counsel, the list was printed on October 30, 2003. However, the list itself indicates it was printed on October 29, 2003. Apparently, West Bay maintains this evidence is relevant to show that Lathrop identified a subcontractor to do acoustical work, Western with a location in Fresno, which did not correspond to any contractor on the State License Board website that was licensed to do acoustical work.

The trial court properly denied this request on the ground of relevancy. As the court explained at the hearing on the petition for writ of mandate, evidence regarding the results of West Bay's contemporaneous search of the website was not probative of "what was on the Internet at the time the bids were made." Furthermore, the District submitted a copy of the State License Board information pertaining to a company called Western Building Materials Co. that Reeves printed out on August 26, 2003, while he was reviewing Lathrop's bid. That documentation reflects that Western Building Materials Co. was located in Fresno and was licensed to perform acoustical work. In light of this evidence, the material that was the subject of West Bay's request for judicial notice was simply not relevant to anything.

West Bay also requested that the court "take judicial

Footnotes

- 1 Except where otherwise stated, all date references are to 2003.
- 2 According to Reeves's declaration, West Bay had been notified within a few days of the bid opening that the contract for Increment 1 of the Heritage project would be considered at the August 27 board meeting.
- 3 We are perplexed by the parties' decision to not include in this record a copy of the bidding specifications and/or instructions that governed the bidding process.
- 4 These instructions are consistent with section 4104 of the Public Contract Code which regulates the content of bids for construction of public work or improvement projects.

notice of the rules and regulations of the [District] and note the absence of any rule which states that a contract is responsive if it contains enough information about its subcontractors to allow someone to find them by an internet search of the Contractor's State License Board's web site, or any similar rule."

*10 The trial court properly denied this request because West Bay did not identify or offer into evidence any rules or regulations of the District that could have been judicially noticed. (See Cal. Rules of Court, rule 323(c) ["A party requesting judicial notice of material under Evidence Code sections 452 or 453 must provide the court and each party with a copy of the material."] On appeal, West Bay contends that it could not and was not required to produce material to show that a rule did not exist. However, this argument is inconsistent with the request quoted above, which expressly asked the court to take judicial notice of the District's rule and regulations. Since no such rules or regulations were provided, the court properly denied the request.

IV. DISPOSITION

The judgment is affirmed.

We concur: LAMB DEN and RUVOLO, JJ.