

April 18, 2012

CURRAN-McLEOD, INC.  
CONSULTING ENGINEERS

6655 S.W. HAMPTON STREET, SUITE 210  
PORTLAND, OREGON 97223

City of Canby  
170 NW 2<sup>nd</sup> Avenue  
Canby, OR 97013

Attn: Mr. Greg Ellis, City Administrator  
Ms. Kim Scheafer, City Recorder

**RE: CITY OF CANBY  
NE 4<sup>TH</sup> AVENUE IMPROVEMENTS  
BID AWARD PROTEST**

Honorable Mayor & City Council:

Our office received a copy of the letter from Eagle-Elsner, Inc. protesting award of the NE 4<sup>th</sup> Avenue Phase II construction project, which is on the Council agenda for approval at the regular meeting tonight, April 18, 2012. We wanted to provide information to permit the Council to evaluate the basis of the protest and to provide our recommendation on the response.

The protest is based on three claims which are quoted below from the protest letter, followed by our response:

Claim 1: ***"The apparent low bidder, Jeff Kersey Construction, Inc., was registered with the CCB as a Residential "Specialty Contractor" not a "General Contractor" at the time of the bid."***

Response: Oregon Revised Statutes do not distinguish the registration title required to bid on public works construction. Related to the Construction Contractors Board requirements, the contractor is only required to have a public works bond on file prior to beginning work on the project. The CCB registration at the time of bid is not a basis to disqualify a bidder.

Claim 2: ***"He also did not have a public works Bond."***

Response: Oregon Revised Statutes ORS 279C.836 requires that ***"before starting work on a contract or subcontract for a public works project, a contractor or subcontractor shall file with the Construction Contractors Board a public works bond with a corporate surety authorized to do business in this state in the amount of \$30,000."*** I discussed this requirement with the State and they confirmed the bond only needs to be in-place before starting work, similar to a performance and payment bond. There is no requirement to have this bond in-place to bid on public works projects, thus this claim is not valid and does not prevent award of the contract. This bond must be in-place prior to the start of work, and Jeff Kersey Construction has already purchased this bond in anticipation of the project.

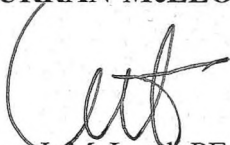
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Claim 3: ***“He is listed as having had two previous CCB numbers that were either revoked or de-activated.”***

Response: Jeff Kersey was a partner in a previous contracting business called M I C C, LLC and known as Oregon Siteworks. Oregon Siteworks also had an associated venture called We Can Dig It, which Jeff Kersey had little or no role in, but as a partner in M I C C, LLC, his name is also associated with the second venture. Both ventures were voluntarily de-activated by the owners and not as a result of any State actions. There have been no complaints, revocation actions, penalties or any type of discipline action associated with any of the businesses associated with Jeff Kersey Construction or the principals of business. This claim is not valid.

In summary, we have concluded the bid from Jeff Kersey Construction is responsive and responsible and that the protest is without merit. We recommend that the City Council deny the protest on the basis of the information in this letter, and that the City Council award the construction contract to Jeff Kersey Construction as presented.

Very truly yours,  
**CURRAN-McLEOD, INC.**



Curt J. McLeod, PE

enclosure: Eagle-Elsner, Inc correspondence April 18, 2012

April 18, 2012

City of Canby  
P.O. Box 930  
Canby, OR 97013

HAND DELIVERED

Attention: Mr. Greg Ellis  
Ms. Kim Schaefer

Reference: **N.E. 4<sup>th</sup> Avenue Improvements  
Bid Protest**

On Tuesday, April 10, 2012, the City of Canby received eight bids for the N.E. 4<sup>th</sup> Avenue Improvements, Phase II project.

The apparent low bidder, Jeff Kersey Construction, Inc., was registered with the CCB as a Residential "Specialty Contractor" not a "General Contractor" at the time of the bid. He also did not have a Public Works Bond. He is listed as having had two previous CCB numbers that were either revoked or de-activated.

We do not believe the City should have accepted a bid from this non-responsive contractor, and the City should award this project to the second lowest qualified bidder.

Respectfully,

EAGLE-ELSNER, INC.



Richard Eagle