

IDAHO TRANSPORTATION DEPARTMENT

In the Matter of the Bid Protest of:

KNIFE RIVER CORPORATON

Project A013(387) and A0(932)
State 55 from Jct. US95 to Marsing

HEARING OFFICER'S
FINDINGS, CONCLUSIONS,
AND RECOMMENDATIONS
FOR FINAL ORDER

This matter is pending before the Idaho Transportation Department (ITD) for administrative review by a hearing officer on a bid protest filed by Knife River Corporation (Knife River) upon the announcement by ITD that the bid of Wadsworth Brothers Construction Company (Wadsworth) submitted for the captioned project was deemed accepted as the low bid for contract award despite alleged irregularities in the compliance with statutory requirements under the bid specifications. The parties and appearances are as follows:

- The hearing officer is retired senior district judge D. Duff McKee, Boise, appointed by order of the ITD acting chief engineer.
- Knife River appeared in this matter through its counsel David T. Krueck, of Elam & Burke, Boise.
- ITD appeared in this matter through its counsel, Deputy Attorney General J. Tim Thomas, ITD Headquarters, Boise.
- Wadsworth participated in this matter through its counsel, Wilford A. Beasley, Salt Lake City, Utah.¹

No hearing was requested. Pursuant to agreement of counsel, this matter was submitted to the hearing officer upon the statement of facts provided by counsel, declarations of witnesses and exhibits,

¹ This matter was originally scheduled for an evidentiary hearing, and Wadsworth indicated that it would not participate as a party but would just observe. When Knife River and ITD waived a hearing and agreed to submit the matter on briefs, Wadsworth submitted both an opening and reply brief. I have taken Wadsworth's briefs into consideration in the matter.

and briefs from all counsel. All issues were deemed submitted for determination upon the written record which consists of the following:

1. Stipulation Waiving Hearing
2. Stipulation of Issues for Consideration
3. Knife River Statement of Facts
4. Knife River Exhibits 1 through 12
5. Declaration of J. Tim Thomas with Exhibits A through C
6. Declaration of David T. Krueck with Exhibits A through I
7. Declaration of Karen Rodriquez with Exhibit A
8. Declaration of Jesse Rosin with Exhibit A
9. Declaration of Josh Smith with Exhibit A

In addition, I have the opening round of briefs submitted on September 4, 2018, by Knife River, Wadsworth and ITD, and the closing round of briefs submitted on September 7, 2018, by Knife River, Wadsworth and ITD. I declared the record closed upon submission of the final briefs at 5:00 p.m. Friday, September 7, 2018.

I have examined the stipulations, declarations and exhibits submitted to the record, and studied all the briefs and the authorities cited. I compliment counsel for the thoroughly analyzed and carefully annotated materials they have submitted to me in connection with the case. I am satisfied that the record is complete on the submissions made and no further information is necessary for a decision on the issues presented.

Now therefore, being duly advised in the premises, I do hereby make and enter my findings, conclusions and recommendations for final order as follows.

Facts and Procedural History

There are no disputes over the basic facts of this dispute. The salient points are not included here as findings of the hearing officer, but only to identify relevant elements of the facts to the issues and analysis that follows.

The subject project is a state-funded improvement of a section of state highway near Marsing. There are no direct federal subsidies involved. As a state project without federal participation, the contract specifications required that the successful bidder comply with the provisions of Idaho Code §§ 44-1001 through 44-1005.² The core law is I.C. § 44-1001 that provides, in essence, that 95% of the employees working on any state public works project must be *bona fide* residents of Idaho, defined by I.C. § 44-1003 as being domiciled in Idaho for at least one year prior to employment, with these provisions required by I.C. § 44-1002 to be a part of every public works contract in Idaho. The bid specifications in this case required the bidding contractor to provide a separate form acknowledging awareness of these statutory provisions and assuring that the general contractor would comply with the requirements of law in performing the contract.

The bids were opened for the project on July 24, 2018. Wadsworth was the apparent low bidder at approximately \$20.9 million. Knife River was second in the approximate amount of \$21.4 million. Wadsworth is a Utah corporation with its principal offices in Draper, Utah. It does not maintain a permanent office location in Idaho. The separate statutory awareness form was properly executed by Wadsworth.

On July 27, 2018, within five days of the bid opening, Knife River submitted a notice of protest to ITD, protesting the award of the contract to Wadsworth, upon the grounds that it was a Utah contractor and could not qualify as the contractor for the subject project under I.C. § 44-1001. In accordance with the provisions of I.C. § 40-902(5), a contested case file was opened, and in due course a hearing officer was appointed by the acting chief engineer.

The opened bids were examined by ITD contract services. Karen Rodriguez, an ITD contracts officer, examined the submissions and determined that Wadsworth was the lowest responsible bidder

² Federal law makes application of these statutes inapplicable to any project involving federal funds.

on the project. On August 16, 2018, the ITD board authorized the award of the subject contract to Wadsworth.

The contracts have not been executed, pending the resolution of this protest.

Issues

Counsels have requested that the hearing officer address the following issues in reaching his conclusions:

1. Was ITD's determination that Wadsworth was the lowest responsible bidder erroneous and an actionable arbitrary abuse of discretion?

2. As a subpart of this question, must ITD make the determination prior to awarding the contract whether the bidder is qualified and capable with complying with I.C. § 44-1001, or is accepting the signed attestation form sufficient?

3. What evidence, if any, must a contractor supply to establish compliance with I.C. § 44-1001 during the performance of work under contract with ITD?

4. Can a subcontractor's employees be utilized to count toward the 95% residency requirement found in the code section?

Analysis

A. Introduction

The function of an administrative hearing officer in a contested case involving a bid protest by a private party is generally constrained by the principles imbedded in I.C. § 67-5279, in that the hearing officer is constrained to recommend intervention only if he finds that the act or acts complained of were or are (a) in violation of constitutional or statutory provisions of law, or (b) in excess of the statutory authority reposed upon the agency by law, or (c) based upon unlawful procedures or (d) the result of an agency decision that is arbitrary, capricious or an abuse of discretion.

The hearing officer may not substitute his business or executive judgment for that of the agency administrators in the absence of a demonstrated violation of (a) through (d), nor may he intervene unless a substantial right of the protesting party is or has been prejudiced.

There is a suggestion in the position paper advanced by Wadsworth, including citation to a number of cases, that in other jurisdictions a statute or statutes similar to I.C. §§ 44-1001 through 44-1005 have been declared unconstitutional under the privileges and immunities clause of the U.S. Constitution. The argument that the hearing officer should explore that question in the instant case is seductively inviting, but unavailing. The underlying constitutionality of the statutes the agency is charged with administering is not for examination by the agency itself under the Administrative Procedures Act. While I may examine the manner in which the agency carries out its administration of the law to ensure that constitutional principles are sustained, I have no authority to examine the constitutional underpinnings of the enabling law itself. Any issue addressing the constitutionality of the statute itself, if this is to be addressed at all, must be put before the courts under appropriate judicial inquiry.

B. Preliminary question.

It appears to me that the preliminary essential question here is how much of any compliance with I.C. § 44-1001 can be determined at the outset, as a matter of bid specification, and how much is purely a matter of contract administration, to be monitored as the contract is performed. The language of the statute is instructive. Redacted to its relevant part, the statute says: “In all state ... construction ... work ... the contractor, or person in charge thereof ... must employ ninety-five percent (95%) bona fide Idaho residents as employees on any such contracts” I.C. § 44-1002 provides that these terms must be included in every state contract. I.C. § 44-1003 defines “bona fide resident of Idaho” to mean one who has resided in Idaho for at least one year prior to employment. I.C. § 44-1004 makes any

violation of these sections a general misdemeanor. (I.C. § 44-1005, the last section in the set, prohibits employment of defined non-citizens on any public works contracts, and is not involved in this protest.)

The involved statute, I.C. § 44-1001, does not limit the state in selecting who to enter into contracts with, it limits how the contracting party is to perform once selected. It is a statute directed at performance, not initial qualification, and as a threshold matter, so long as the state assures itself that the contractor itself is not an unqualified non-citizen, is aware of the constraints of these statutes, and agrees to abide by the law, that is all the compliance with the statute in terms of measuring the bid specifications that the state can expect.

The bidding statute is I.C. § 40-902(3), which provides:

Except as allowed by the provisions of sections 40-904 and 40-905, Idaho Code, bids shall be opened publicly at the time and place specified in the advertisement and the contract let to the lowest responsible bidder, but the department has the right to reject any and all bids, or to let the contract for a part or all of the work.

There are two parts to the decision to award a bid: the agency must find that both of the following conditions exist: (a) the bid is the lowest dollar amount bid and (b) the contractor making the bid is a responsible bidder. The term “responsible” is not defined in the statute. In practice, it appears that the determination of whether a bid or bidder is responsible is accomplished in two parts. First, the agency determines that the bid is responsive to the exact specifications of the contract as set forth in the bid call. If this inquiry is not met, the process goes no further; the bid is determined non-responsive or irregular, and it is rejected.

If the first condition is satisfied, the agency evaluates whether the bidder presently possesses or will be able to obtain before the time for performance, all of the capabilities, qualifications, and financial resources necessary to enable it to perform the contract work if selected. Only upon satisfaction that both conditions exist is the bidder determined “responsible” as required by the bid statute.

In this case, there is no challenge to the fact that Wadsworth was (a) the lowest bidder, and that (b) its bid was technically responsive to the bid specifications. With respect to compliance with I.C. § 44-1001, the bid specification required the bidders to include in their bid submission a specific form declaration attesting that it was aware of the statutory requirements and that it agreed to comply with the requirements in its performance under the contract. There is no other aspect of bid compliance that has been advanced in this case; Wadsworth supplied the required form in its bid submission. Knife River has not suggested any objection to any other area of the bid submission.

On the evidence, it is not disputed that the bid submission of Wadsworth was the lowest bid, and that its submission was responsive to all bid submission requirements of the bid call. No evidence has been offered that would give ITD any reason to declare the Wadsworth bid irregular or non-responsive in any respect on these two essential conditions.

C. Determination of responsibility

The key to this protest appears to be in consideration of the second part of the determination of whether the bidder is “responsible.” Being responsive to the bid requests is the first consideration of a responsible bidder but is not sufficient standing alone under the statutes to support the contract award.

To be the “responsible” bidder, as required by the statute, a determination must be made that the bidder possesses, or is in a position to readily acquire, the actual capabilities, experience, and technical qualifications necessary to perform the work expected.

Knife River contends that being qualified and capable of performing under the contract means the bidder must presently comply with all aspects of the statute, and that the determination of this condition must be made by an independent investigation outside the bid submissions; that this determination cannot be confined to an examination of the bid documents but requires and examination of circumstances outside of the bid documents.

Having established this as the standard, Knife River then argues that it is a practical impossibility for Wadsworth to comply with the statute in question at the outset, and therefore, it cannot be determined a responsible bidder. It points to the fact that Wadsworth is a Utah corporation, with its headquarters in Utah. It has no offices or business locations in Idaho and no employees who are currently residents of Idaho. Knife River's argument, when separated out, is that Wadsworth does not comply with the statute at the present time – i.e., it has no Idaho employees at the present time, and it has offered no proof other than the bare statement in the attestation form that it will be able to do so when the time for performance arrives. Knife River argues that this is insufficient.

The problem with the argument is that it is not for Knife River to set the standard against which ITD measures responsibility. Moreover, if ITD has established a standard for the measurement of the issues under examination, it is not for the process of this bid protest to measure whether the standard that ITD has adopted is sufficient. The analysis here is in two parts: (a) does ITD have a standard it uses to make the required determinations in this case, and (b) did it follow them.

There are no regulations that have been adopted interpreting the general bid statute, I.C. § 40-902, or declaring what exact measurements have to be taken in determining whether a bidder is responsible, nor are there any separate statutes on point. There is no clear, legal definition of the term “responsible.” In the overall, then, the principle is as established in *Beco Construction v. Idaho Falls*, 124 Idaho 859 (1993): the issue of determining the consideration of responsible bidder is left to the sound discretion of the government entity.

This means it is up to ITD to determine what it will require in terms of establishing the bidder's qualifications, experience, capabilities, and financial resources in order to satisfy the statutory requirement of responsibility. So long as it establishes a rational method of making the determinations required that does not itself violate any statutes or constitutional rights, or use any unlawful methods,

or exceed the stated authority vested in the agency, there is no basis for a hearing officer to intervene. That additional information might be useful, or that ITD might approach the problem in a different way, or that more investigation might be helpful is immaterial; I have no authority to substitute my business judgment for that of the agency in the matter of determining what the standard ought to be that is to be applied by the agency in reaching its answer to the question of responsible bidder under the bid statute.

Since it is a matter of discretion with the agency, the limit of administrative review is to assure that the agency has established a rational procedure or adopted rational standards for making the determinations, and that the agency is then in fact following the procedures and standards it has adopted.

Here, ITD contends that it did not simply rely upon the bid submission for its determination; according to the declaration of the contracting officer, ITD has established a bid compliance check list that is completed and independently verified by the contracting officer in every case. In the instant case, she completed a bid compliance check list on the Wadsworth bid. That from her inquiries to complete the check list, she found Wadsworth held a currently active and valid “unlimited” class public works contactors license. The “unlimited” class meant the contractor was deemed qualified for public works contracts exceeding \$5 million. She verified that there were no negative comments on the Debarment/Excluded Parties System, a register of contractors involved in federal contracts. She noted the bid bond provided by Western Surety in the amount of 5% of the bid amount, or slightly over \$1 million, meaning that Wadsworth had sufficient bonding capacity to provide the required performance bonds if the contract was awarded – which she indicated was a positive sign of financial

stability. She indicated a personal familiarity with Wadsworth from other projects with ITD, and that these projects had been completed without difficulties with the contractor.³

ITD maintains that these are the steps that are normally taken on any contract let out for bid by ITD. The agency would rely upon the contractor's unlimited class public work license, the contractor's reputation and absence of negative comment, the extent of bonding capacity, and the contracting officer's familiarity with prior successful projects involving this contractor to determine that the contractor was generally presently capable and qualified with adequate financial resources to undertake the subject project. ITD argues that the existence of the check list, and the procedures followed by the contracting officer, are sufficient proof that there is a rational process in place, and that it is not arbitrary or capricious. I agree.

Knife River has offered no evidence that ITD did not follow its own normal procedures in verifying the qualifications of Wadsworth. There is no basis to find that ITD acted in an arbitrary or capricious manner, or that any of the actions taken constituted an abuse of their existing processes.

D. Additional Considerations on State Funded Projects

The issue then becomes, in the final analysis, whether or not something more is indicated where a state funded project with statutory compliance I.C. § 44-1001 is involved?

Knife River argues that that there is. It argues that because ITD has failed to prove it considered specifically Wadsworth's compliance with the cited statute, that the attestation statement or affidavit was not sufficient, and that this failure amounts to an indication that the decisions made without such proof are arbitrary and capricious. I think the argument fails both from a practical standpoint and as a matter of law.

It fails as a matter of law because Knife River does not get to set the standard. ITD is not required to go around all the corners Knife River insists upon to get to the point Knife River wants to

³ Declaration of Karen Rodriquez; Exhibits A, B and C to Declaration of Tim Thomas

make. In this case, ITD set the standard to be a requirement that at the time of bidding, the bidder demonstrate its general capabilities and an awareness of the specific statutory requirements on labor workforce, and its agreement to comply in performance. Under the standard ITD established, the contractor need not demonstrate actual compliance until the time of performance. As I have concluded above, this is a rational standard and process that does not offer any basis for intervention on protest. This is the standard that was set, and this is the standard against which I have measured the bid protest and ITD's performance under it.

On this standard, Knife River has offered no evidence of any shortcoming in the manner in which ITD conducted its review of the bids and in its determination that Wadsworth was fully qualified. I think the evidence is clear that ITD followed the standard it set.

Knife River seems to interpret the statute in point as requiring a qualifying contractor, and presumably each of the intended subcontractors, to have 95% of their direct employees as Idaho residents at the time the contracts are entered into and at all times throughout performance; that in general may not combine the employees of any of its subcontractors, or any of the future subcontractors it intends to employ on the project once it is begun, as counting against the statutory obligation that it must employ 95% of its direct employees from Idaho residents. Knife River argues that from its interpretation, Wadsworth cannot show, and will never be able to show, that it will be able to comply with the labor statute.

I think Knife River construes the statute wrongly. The employment requirements of the statute apply to the job, not to the contracting entity. The subject of the operative sentence in I.C. § 44-1001 is the "work" not the "contractor," and the 95% Idaho residency requirement applies accordingly. The residency requirement does not apply to the contractor generally, but rather to the workforce the contractor designates to the specific job or project. A general contractor who is awarded the contract

may acquire this workforce any way it chooses, either through direct employment, the use of subcontractors, or a combination thereof, so long as the total workforce when assembled and on the job is made up of at least 95% Idaho residents. The evidence seems to confirm that this is the way the statute is interpreted by ITD.⁴

From a practical standpoint, this is the only rational way to interpret the statute. If each individual entity had to separately qualify, administration would be a nightmare. For example, the statute excludes federal contracts entirely, and has special provisions for projects involving 50 employees or less. If these exceptions applied to each of the entities on a job rather than only to the overall project, then any time the general contractor or any of the involved subcontractors had more than one project going at a time, or if the subcontractors were of different sizes with some smaller than 50 employees, or if some subcontractors involved favored employees under some special statute, the tracking could become impossible. What is the contractor to do if one of the four employees of a tiny subcontractor moves from his mother's home in Parma to his girlfriend's apartment in Ontario? Under Knife River's approach, this might be argued as disqualifying the subcontractor entirely. Under the workplace totality, a single variance would not be as critical unless the total force was otherwise right on the edge. The specter that arises under the more complex approach is the potential this poses for manipulation.

A far more direct and manageable interpretation is to simply measure the workforce by project – a straight forward nose count of all the workers on the job, from whatever source, with the count periodically tested and audited as required. This appears to be the position of ITD. While I am persuaded that this appears to be the more rational interpretation, this really does not matter here. I do conclude that it is a rational interpretation, and so long as it is consistently applied by ITD, the action being taken cannot be said to be arbitrary or capricious, or an abuse of discretion. It is not sufficient to

⁴ ITD email memos, Exhibit H to Declaration of David Krueck; Knife River Exhibit I

show that there is another way to interpret the circumstance, or that the other way might even be better. The burden is on Knife River to show that the ITD method was an irrational or impractical interpretation that was contrary to law and it has offered no proof of such.

Lastly is Knife River's contention that ITD is aware of problems in administering this statute, as evidenced by on-going discussions with the Associated General Contractors (AGC) and by the number of protests that are accruing whenever ITD awards a state funded contract to an out-of-state contractor.

The fact that protests might be accruing is singularly unpersuasive of any point in contention.⁵ The problems raised in the AGC material seem to apply to administration and enforcement, but not initial compliance for bid purposes. That concerns are growing over enforcement of state-funded contracts under this labor restriction statute is not surprising.

Knife River seems to suggest that selection of an Idaho general contractor would make all the problems in administration under the subject statute go away, and this just is not so. I have no doubt that the administration of a sizable state-funded contract on a project that is close to a state line, such as this one where the project is close to the Oregon line, will pose constant problems. There are many small communities just across the Oregon line which might otherwise be depended upon to provide potential laborers to the potential workforce. Monitoring this contract for compliance under these circumstances may well keep the resident engineer and the contractor's project superintendent up nights throughout the contract period, whether the general contractor is based in Idaho or in Timbuktu.

But these problems are not germane to the issue before me on qualification of a responsible bidder at the outset. That problems arising later in a large project might boggle, that the AGC is

⁵ The declaration of Jesse Rosin on the manner in which Wadsworth staffed the project in North Idaho is irrelevant; it was a federal project involving tribal lands, which was exempt from the provisions of Idaho's labor statutes. The declaration of Josh Smith pertained to an unsuccessful Montana contractor on an unrelated project. Knife River failed to suggest any foundation for consideration of this declaration. I consider it immaterial. Nether were considered by the hearing officer.

involved, and that conversations are ensuing over potential enforcement issues, are interesting details, but immaterial.

From the standpoint of a bid protest, there is no showing by Knife River that the inquiries or interest by the AGC means that the ITD is or has been acting in an arbitrary or capricious manner or is abusing the discretion reposed in it for the administration of its business. The fact that problems might exist in the future does not prove the ITD is wrong or acting in error, or that Knife River is right.

From a practical standpoint, the interpretation by ITD of construing the statute to apply against the total workforce of a project and not to the specific employment rosters of the individual contractors and subcontractors would seem to me to be easier to manage than the proposal of Knife River. I do not intend this as a finding on the adequacy of the procedures adopted by ITD but rather upon the inadequacy of the argument advanced by Knife River.

Knife River attempts to construct the straw-man argument that ITD is obligated to determine by objective evidence that Wadsworth is specifically capable of complying with the residency provisions of I.C. § 44-1001, and then knocks down this straw man by claiming on present evidence that Wadsworth is incapable of qualifying. The argument is founded upon a faulty premise.

ITD is correct in its assertion that this inquiry is premature. In the normal case, and absent specific statutory requirements, specific performance of any particular phase under the contract is not evaluated at the time of the bid opening or contract award. All that the agency is concerned with at bid opening and contract award is the contractor's general capability – is it competent and capable of accomplishing satisfactory performance when the time comes. In this case, the only relevant inquiry is whether Wadsworth is capable of assembling a workforce on day one of the performance of this project, either directly or through appropriately qualified subcontractors, such that the workforce will consist of at least 95% *bona fide* Idaho residents, as defined? Wadsworth assured ITD that it could do

so, and if it is otherwise found to be generally responsible; this is all that ITD needs for satisfaction of the bidding requirements under the discretion reposed in it by law.

By ITD's determination, all that is required today to be determined a "responsible" bidder under the general bidding statute, is for the contractor in question to demonstrate that it is a fully qualified and licensed public work contractor, that it has no black marks against it by others, that it has the financial stability to undertake the work as demonstrated by its bonding capacity, and – as a bonus – that it has successfully accomplished work for the agency before. With this background, all that is required further is the acknowledgment of an awareness of the statutory labor residency requirements and the specific agreement to comply with the statute. Wadsworth meets all these criteria, and Knife River has failed to demonstrate any failing or defect in the process.

E. Responses to Questions Presented:

Based upon the foregoing discussion, I would answer the questions presented as follows:

1. Was ITD's determination that Wadsworth was the lowest responsible bidder erroneous, and an actionable arbitrary abuse of discretion?

Response: No. The determination appears to have been based upon a rational assessment of the qualifications of the bidder as to its overall competence, financial stability, and history with the agency generally, and of the statutory qualification specifically upon its attestation form acknowledging an awareness of the restrictive statute and an agreement to comply. The methodology of this process appears to be within ITD's discretion to determine. In his case, Knife River has failed to prove that the implementation of the process was arbitrary or capricious, or that any of the steps in carrying out the process constituted an abuse of the process as designed. There is no proof of any violation of law nor any violation of statutory or constitutional rights, nor any proof of any agency

action in excess of the authority vested in it. The burden is on the protesting party to establish a reason to intervene, and Knife River has not done so in this case.

2. As a subpart of this question, must ITD make the determination prior to awarding the contract whether the bidder is qualified and capable with complying with I.C. § 44-1001, or is accepting the signed attestation form sufficient?

Response: The standard adopted by ITD of determining general qualifications at the time of contract award, with specific adherence to the residency requirement accomplished by accepting a form attestation, is sufficient. ITD has determined that any fact-specific attempt to determine compliance with the residency requirements prior to the existence of the contract and prior to the identification and dedication of a workforce to it, would be premature. This appears to be a rational interpretation of the statutory requirements and a practical application to the facts, which are within ITD's discretion to accomplish. Knife River has offered no proof that this interpretation of the statute is contrary to law, or that ITD's application of bidding procedure to it is arbitrary or capricious. The decisions are within the discretion of the agency, and there is no reason to intervene.

3. What evidence, if any, must a contractor supply to establish compliance with I.C. § 44-1001 at the outset of its contract with ITD?

Response: The evidence that is normally supplied to enable ITD's confirmation of responsible bidder that is normally accomplished in all bid projects, coupled with assurance that the contractor has provided the attestation statement pertaining to the specific statute applicable to performance here, is sufficient for qualification of the bidder at the outset, where the project under examination requires conformity with I.C. § 44-1001 *et seq.*

4. Can a subcontractor's employees be utilized to count toward the 95% residency requirement found in the code section?

Response: Yes. Under ITD's interpretation of the statute, it is the total workforce on the job at any given time that is the subject of the 95% count, rather than the specific employee rosters of the general contractor and/or of the various entities that may be working with it. So, all the subcontractor's employees that are designated to the workforce on the project under examination, together with all of the contractor's direct hires that are designated to the workforce are counted together to make up the required 95% number. This is a rational interpretation of the statutory requirement, within the discretion of the ITD to interpret, and Knife River has failed to prove that the law requires something different.

Conclusion

For the above reasons, I recommend that the protest of Knife River not be sustained. I recommend that contract services be authorized to complete the contract award to Wadsworth Brothers Construction Company upon its conclusion that it is the low responsible bidder in accordance with its procedures as indicated and reviewed herein, including the determination that a fully completed and executed attestation form is responsive to the bid requirements and sufficient to satisfy the statutory requirements of I.C. § 44-1001 *et seq.*

Dated this 9th day of September, 2018.



D. Duff McKee, Hearing Officer

CERTIFICATE OF SERVICE

I hereby certify that on this 9th day of September 2018, I caused to be served a true and correct copy of the foregoing by the method indicated below, and addressed to the following:

Tim Thomas Deputy Attorney General Idaho Transportation Department PO Box 7129 Boise ID 83707-1129	<input checked="" type="checkbox"/> E-MAIL tim.thomas@itd.idaho.gov
Knife River Corp.-Mountain West % David Krueck Elam & Burke 251 E Front St. Suite 300 PO Box 1539 Boise ID 83701	<input type="checkbox"/> U.S. MAIL <input type="checkbox"/> HAND DELIVERED <input type="checkbox"/> FAX (208) 384-5844 <input checked="" type="checkbox"/> E-MAIL dtk@elamburke.com
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Lisa Hoag
Legal Section