

Supreme Court No. 94711-2  
Court of Appeals No. 48644-0-II  
Thurston County Superior Court Case No. 14-2-02223-6

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IN THE SUPREME COURT OF THE STATE OF WASHINGTON

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CITY OF OLYMPIA

Petitioner,

vs.

NOVA CONTRACTING, INC.,

Respondent.

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**PETITIONER'S RESPONSE TO RESPONDENT'S MOTION TO  
STRIKE**

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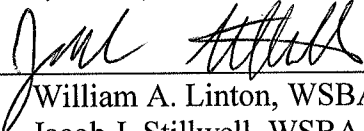
RAP 13.4(d) authorizes the petitioner to submit a reply “addressing only the new issues raised in the answer.” Nova’s answer raised several new issues that were not discussed in the petition for review: (1) whether the record has been sufficiently developed to permit review; (2) whether review is governed by 13.4, decision terminating review, or 13.5, interlocutory appeals, and; (3) whether a disputed material of fact exists regarding Nova’s filing a protest under the contract. Each of these arguments are by definition “new issues” because, without including them in the answer, they would not be considered on review because they were not discussed in the petition for review. Nova needed to file an answer in order to raise these new issues because “in order to raise an issue that was not raised in the petition for review, an answer must be filed. Otherwise, the issues reviewed by the Supreme Court will normally be limited to those raised in the petition. RAP13.4. Discretionary Review of Decision Terminating Review, 3 Wash. Prac., Rules Practice RAP 13.4 (8th ed.). Logically, without Nova’s answer, none of the issues raised in the answer would have been addressed on appeal because they were not in the petition for review. Under the plain language of RAP 13.4(d), that makes these “new issues” by definition.

Olympia's petition for review addressed only how the undisputed facts show that the Court of Appeals erroneously reversed the trial court because of the legal principles established by *Mike Johnson v. City of Spokane* and its progeny. Nova's answer was not a rebuke of this argument, but rather entirely dependent on newly-raised issues concerning jurisdiction, timeliness, and new facts not discussed in the petition. It was wholly appropriate for Olympia to reply to these new issues.

Olympia's reply was strictly limited to addressing the three new issues raised by Nova in its answer. Olympia had a responsibility to highlight the sufficiency of the record, clarify the correct rule governing this appeal, and respond to Nova's new claim that Nova did comply with the protest procedure. Responding to these new issues is precisely why RAP 13.4(d) authorizes reply briefs. Olympia respectfully requests that the Supreme Court deny Nova's Motion to Strike and consider the important responses addressed in the reply.

Respectfully submitted this 10<sup>th</sup> day of August, 2017.

INSLEE, BEST, DOEZIE & RYDER, P.S.

By   
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Attorneys for Respondent City of Olympia

I, Leslie Addis, under penalty of perjury under the laws of the State of Washington, hereby declare that on August \_\_\_\_, 2017, the following documents were served on the following individuals in the manner indicated:

1. *Petitioner's Response to Motion to Strike;*

Attorneys for Plaintiff Nova Contracting, Inc.:

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DATED this 11 day of August, 2017 at Bellevue, Washington.

  
\_\_\_\_\_  
Leslie Addis, *Legal Assistant*

**INSLEE, BEST, DOEZIE & RYDER, P.S.**

**August 11, 2017 - 9:56 AM**

**Transmittal Information**

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**Appellate Court Case Title:** Nova Contracting, Inc. v. City of Olympia  
**Superior Court Case Number:** 14-2-02223-6

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