

The logo for St. Francis Electric features the company name in a cursive font, enclosed within a dark oval with a white border. This oval is centered on a thick, dark horizontal bar that spans the width of the page.

November 4, 2015

VIA FACSIMILE (916) 227-6282 AND US MAIL

John C. McMillan  
Deputy Division Chief  
Office Engineer  
Division of Engineering Services  
State of California  
Department of Transportation (Caltrans)  
1727 30<sup>th</sup> Bidder Exchange, MS 43  
Sacramento, CA 95816-8041

Re: Contract No. 10-1C2104  
Bid Open: October 21, 2015  
Protest Submitted: October 29, 2015  
**SFE's Response to Protest of Tim Paxin's Pacific Excavation, Inc.**

Dear Mr. McMillan:

We are in receipt of the bid protest filed by Tim Paxin's Pacific Excavation, Inc. ("T-Pax") on October 21, 2015 on Caltrans Contract No. 10-1C2104. T-Pax has protested the award of Contract No. 10-1C2104 (hereinafter the "Contract") to St. Francis Electric, Inc. ("SFE"), the apparent low bidder, on the sole ground that SFE allegedly violated Section 4104 of the Subletting and Subcontracting Fair Practices Act by failing to list subcontractors to perform various items of work (T-Pax does not specify which items of work) which SFE allegedly does not perform. SFE will respond to this unsubstantiated protest below.

The Subletting and Subcontracting Fair Practices Act, Public Contract Code §§ 4100 through 4114 was enacted to protect both the public and subcontractors from the practices of bid shopping and bid peddling in connection with public works projects. See *Bay Cities Paving & Grading, Inc. v. Hensel Phelps Constr. Co.*, 56 Cal. App. 3d 361 (1976); *Cal-Air Conditioning, Inc. v. Auburn Union School Dist.*, 21 Cal. App. 4<sup>th</sup> 655 (1993). Section 4104 of the Act requires that bids include the names and places of business of all subcontractors that will perform specified work on a public works project. Pursuant to Section 4104, any subcontractor who will perform work or labor or renders service to the prime contractor in excess of one-half of 1 percent of the prime contractor's total bid or \$10,000, whichever is greater, must be listed. See Public Contract Code § 4104 (Listing of Subcontractors). However, **there is nothing in Section 4104, or elsewhere in the Act which requires a general contractor to subcontract out portions of work that the general contractor can perform itself.**

The logo for St. Francis Electric features the company name in a white, cursive script font, centered within a dark, rounded rectangular frame. This frame is set against a larger, dark oval background. A thick, dark horizontal line passes behind the central frame, extending across the width of the page.

## St. Francis Electric

In its protest T-Pax is critical of SFE for not listing more subcontractors to perform work that allegedly SFE does not perform. In fact, T-Pax' entire protest hinges upon SFE being required to subcontract out more work than it listed. T-Pax does not cite the solicitation for this proposition because the language of the solicitation contains no such requirement. T-Pax simply has it all wrong - based upon the language of its protest, the proper inquiry is not whether SFE should list more subcontractors in its bid, rather, the proper inquiry is whether SFE could perform the work set forth in its bid where it has not listed subcontractors to perform the work. To this end, SFE is a properly licensed (CA Con. License No. 335324), insured and bonded California-based contractor which currently holds a C-10 Electrical license and an A-General Engineering Contractor license.

Business and Professions Code § 7056 defines a General Engineering Contractor's license as follows:

A general engineering contractor is a contractor whose principal contracting business is in connection with fixed works requiring specialized engineering knowledge and skill, **including the following divisions or subjects:** irrigation, drainage, water power, water supply, flood control, inland waterways, harbors, docks and wharves, shipyards and ports, dams and hydroelectric projects, levees, river control and reclamation works, railroads, highways, streets and roads, tunnels, airports and airways, sewers and sewage disposal plants and systems, waste reduction plants, bridges, overpasses, underpasses and other similar works, pipelines and other systems for the transmission of petroleum and other liquid or gaseous substances, parks, playgrounds and other recreational works, refineries, chemical plants and similar industrial plants requiring specialized engineering knowledge and skill, powerhouses, power plants and other utility plants and installations, mines and metallurgical plants, land leveling and earthmoving projects, excavating, grading, trenching, paving and surfacing work and cement and concrete works in connection with the above mentioned fixed works.

Business and Professions Code §§ 7008 and 7059 define a C-10 Electrical Contractor's license as follows:

An electrical contractor places, installs, erects or connects any electrical wires, fixtures, appliances, apparatus, raceways, conduits, solar photovoltaic cells or any part thereof, which generate, transmit, transform or utilize electrical energy in any form or for any purpose.

As set forth above, T-Pax has not identified any specific areas in SFE's bid where SFE does not possess the required license to perform the work.

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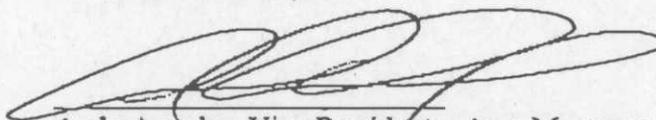
Again, the proper inquiry is not whether SFE routinely performs this work, but rather is SFE properly licensed and qualified to perform the work. SFE currently has every license its needs to self-perform any of the work where it has not listed a subcontractor to perform the work priced in its bid. T-Pax presents no evidence or argument to the contrary.

Further, T-Pax has presented no evidence or argument that SFE has actually failed to list a subcontractor which it intends to use on the project to perform any specific scope of work valued in excess of one-half of 1 percent of the SFE's total bid, or ten thousand dollars, whichever is greater. Absent any evidence or argument in support of its baseless contentions T-Pax' "protest" is wholly insufficient and should be denied on that basis. The fact is that T-Pax finished second and SFE should be awarded Contract 10-1C2104 as it is the lowest most responsible bidder.

Thank you for your anticipated consideration of St. Francis Electric, Inc.'s response to T-Pax' protest to the award of Contract 10-1C2104 to SFE. If you have any questions or comments regarding this response, please do not hesitate to contact me.

Respectfully Submitted,

St. Francis Electric, Inc.

A handwritten signature in black ink, appearing to read "Andy Amador", is written over a horizontal line.

Andy Amador, Vice President – Area Manager

Attachments – Business and Professions Code §§ 7056, 7008, 7058 and 7059

cc: Robert L. Spinardi, President  
Guy A. Smith, Vice President – Operations Manager  
Allen W. Estes, III, Esq. (w/o attachments)