

K.J.Cain Co. Inc  
4869 S. Bradley Rd. Suite #104  
Santa Maria, Calif. 93455  
(805) 934-9795 Fax (805) 614-9221  
CA. State Lic. 922737

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3/21/2012

To: County of Santa Barbara  
Re: Bid Project No. 8592  
Lompoc Animal Shelter Renovation  
Bid Date: 3/15/2012

K.J. Cain Co. Inc. is formally contesting the bid of STC Development Inc.

This letter is in protest for said job above STC inc. is using a loss leader to try and the bid for the animal shelter in lompop ca. Please refer to section 10302 of the public contract code and section 17030 of the business and professional code. 10302. (a) Except in cases of emergency where immediate purchase of goods without bid is necessary for the protection of the public health, welfare, or safety, whenever the department contracts for goods in excess of twenty-five thousand dollars (\$25,000), or a higher amount as established by the director, the department shall advertise in the California State Contracts Register the availability of its solicitation, and interested suppliers, upon request, shall be furnished with copies of the solicitation. In addition to advertising in the California State Contracts Register, the department shall post in a public place a copy of the solicitation, which shall remain posted until seven days after an award has been made. Whenever a contract in excess of twenty-five thousand dollars (\$25,000), or a higher amount as established by the director, is made pursuant to this section or Section 10301 without the taking of bids, the department shall prepare a written document stating the fact of the contract together with the facts requiring the contract of the goods without the taking of bids. This document shall be maintained by the department and shall be available as a public record. (b) (1) Every solicitation shall contain the following statement:

"It is unlawful for any person engaged in business within this state to sell or use any article or product as a "loss leader" as defined in Section 17030 of the Business and Professions Code."

(2) On and after March 31, 2010, and until December 31, 2011, if a solicitation does not contain the statement required by paragraph (1), the awarding agency shall report this error to the department within 30 days of the date the awarding agency discovers this error.

(3) The department shall post in the State Contracting Manual instructions for including the statement required by paragraph (1) in all affected contracts.

(4) The statement required by paragraph (1) shall be deemed to be part of a solicitation even if the statement is inadvertently omitted from the solicitation.

17030. "Loss leader" means any article or product sold at less than cost:

(a) Where the purpose is to induce, promote or encourage the purchase of other merchandise; or

(b) Where the effect is a tendency or capacity to mislead or deceive purchasers or prospective purchasers; or

(c) Where the effect is to divert trade from or otherwise injure competitors.

Respectfully,  
Kareem Cain  
CEO

P.O. Box 1490  
Shingle Springs, CA 95682  
Lic# 708077

Office (530) 677.5497  
Fax (530) 677.4548  
[twstc@sbcglobal.net](mailto:twstc@sbcglobal.net)

March 28, 2012

To: Todd Morrison  
County of Santa Barbara  
General Services Department, Facilities Division  
1105 Santa Barbara St., East Wing, 3<sup>rd</sup> Floor  
Santa Barbara, CA 93101

Re: Lompoc Animal Shelter  
Project #8592  
Letter from K.J. Cain

STC Development, Inc cannot respond directly to the protest brought forth by K.J. Cain because it is unclear as to what K.J Cain's actual protest is. There are no specifics included in the letter. STC would need to know specifically, with regard to STC's bid, what K.J. Cain is protesting. In addition, K.J. Cain's letter refers to public contract code 10302. Public contract code 10302 governs "State Agencies" only and would not apply in this circumstance.

Sincerely,



Tara Carlson  
X104  
Tcarlson1699@att.net

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## Morrison, Todd

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**From:** Ledbetter, Michael  
**Sent:** Tuesday, March 27, 2012 5:19 PM  
**To:** Kareem@KJCain.com  
**Cc:** Wagstaff, Leonetta; Van Wie, Jill; Morrison, Todd; Williams, Grady  
**Subject:** Lompoc Veterans' Memorial Building and Lompoc Animal Shelter Renovation Projects

Mr. Cain:

The bid protests filed in the Lompoc Veterans' Memorial Building Renovations and Lompoc Animal Shelter Renovations Projects have been referred to me for review.

I have concluded that the protest filed by STC as to your bid on the Lompoc Veterans' Memorial Building Renovations Project has merit, as the deviation from our spec requiring a specialty roofing subcontractor may have given you an advantage or benefit not allowed other bidders, and could have affected the amount of your bid. Additionally, your subcontractor list did not comply with the requirement of Public Contract Code Section 4104(a)(1) that the location of the subcontractors' businesses be set forth. Additionally, two of the four license numbers listed for subcontractors were incorrect.

A deviation from the bid requirements, even if minor, cannot be waived if it could affect the amount of the bid or confer an unfair competitive advantage. Please refer to the following authorities: *Domar Electric v. City of Los Angeles* (1994) 9 Cal. 4<sup>th</sup> 161; *Konica Business Machines v. Regents of University of California* (1988) 206 Cal.App.3d 449; 47 Ops.Cal.Atty.Gen. 129 (1966)

I have also concluded that your protest to the bid of STC Development on the Lompoc Animal Shelter Renovations Project is not meritorious. Public Contract Code Section 10302 is applicable to contracts entered into by the State of California; it is inapplicable to counties and other local agencies. Additionally, you set forth no facts or authority supporting your protest, except for the unsupported allegation that "STC Inc. is using a loss leader to try and the bid for the animal shelter."

This email supersedes previous communications from General Services—Capital Projects Division regarding recommendations to be made to the Board of Supervisors in these matters. The purpose of this email is to give you early notice of my intended recommendations and their basis. Please direct any questions or comments to me at this email address or at the phone number or mailing address below.

The Public Works contracting process can be complex and challenging. I hope that you understand the reasons for my conclusions and will continue to bid on our projects.

Michael R. Ledbetter,  
Senior Deputy County Counsel  
County of Santa Barbara  
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Santa Barbara, California 93101  
(805) 568-2950  
(805) 568-2982 (FAX)