ST. FRANCIS ELECTRIC, LLC

FORMAL BID PROTEST

Tennyson Park Streetlight Project
City of Hayward Project No. 06950

Protest of Columbia Electric, Inc. Bid

Project	Tennyson Park Streetlight Project, Project No. 06950
Bid Opening	September 1, 2026
Submitted To	City of Hayward, Office of the City Clerk, 777 B Street, Hayward, CA 94541

Dear City Clerk, City Engineer, and Members of the City Council:

St. Francis Electric, LLC ("SFE") hereby submits this formal bid protest concerning the bid submitted by Columbia Electric, Inc. ("Columbia") for the Tennyson Park Streetlight Project, City of Hayward Project No. 06950. SFE understands that Columbia was the apparent low bidder and that SFE was the second-lowest bidder. SFE further understands that Columbia failed to acknowledge Addendum No. 3 in its bid and attempted to submit an acknowledgment approximately one day after the public bid opening.

Columbia's bid should be rejected as nonresponsive. Addendum No. 3 expressly required every bidder to acknowledge both receipt and acceptance of the Addendum on Proposal Page P-7 and to submit that acknowledgment with its bid. The Addendum materially modified the Contract Documents. Allowing Columbia to provide the missing acknowledgment after bids were opened would permit a post-opening cure of a material defect and would give Columbia an advantage unavailable to bidders that timely submitted responsive bids. That result conflicts with the City's own bid documents and California competitive-bidding law.

I. THE CITY EXPRESSLY REQUIRED ACKNOWLEDGMENT OF ADDENDA WITH THE BID

The original Specifications state that interpretations or clarifications considered necessary by the City will be issued by addenda; only questions answered by addenda are binding; bidders must be registered plan holders to receive addenda; and: "Addenda are required to be acknowledged on the Proposal Form. Failure to acknowledge all addenda may result in the Proposal being rejected." (Specifications, Notice to Contractors, p. 7.)

Addendum No. 3 is even more specific. It states that the Addendum is a "Contract Document" and directs: "All bidders shall acknowledge receipt and acceptance of this Addendum by indicating on Proposal Page P-7 and submitted with your bid." (Addendum No. 3, p. 2.)

This language required more than mere receipt or actual knowledge. It required an objective, timely acknowledgment of receipt and acceptance, on a specified proposal page, submitted with the bid. Columbia did not satisfy that requirement at the bid deadline.

II. COLUMBIA COULD NOT CURE THE DEFECT AFTER BID OPENING

California law generally prohibits a bidder from curing a material bid defect after bids have been opened when the cure would confer an unfair competitive advantage. The closest authority is DeSilva Gates Construction, LP v. Department of Transportation (2015) 242 Cal.App.4th 1409.

In DeSilva Gates, the apparent low bidder failed to acknowledge an addendum before bid opening. After opening, Caltrans allowed the bidder to submit evidence intended to establish that the addendum had been considered and accepted. The Court of Appeal held that the agency improperly waived a material defect because the post-opening cure gave the bidder an advantage unavailable to the protesting bidder. DeSilva Gates, 242 Cal.App.4th at 1421-1423.

The principle applies directly here. Columbia failed to provide the acknowledgment required with its bid and then attempted to provide that acknowledgment after the bids and competing prices had been disclosed. At that point Columbia knew whether the project was financially advantageous and whether it was the apparent low bidder. Responsive bidders had no comparable post-opening election.

III. THE CITY'S OWN WAIVER CLAUSE PROHIBITS THIS WAIVER

The City's Specifications reserve the right to waive only inconsequential deviations. Section 3-1.04A provides that a bid irregularity may be waived only where it does not affect time of performance, quality of performance, or bid amount, and expressly excludes a waiver where it "would give the low bidder an advantage or benefit not allowed to other bidders." (Specifications, Section 3-1.04A, p. 20.)

That language tracks the California rule discussed in DeSilva Gates and Konica Business Machines U.S.A., Inc. v. Regents of University of California (1988) 206 Cal.App.3d 449. Konica explains that a deviation is material where it could affect the bid or give the bidder a competitive advantage not available to bidders who complied with the stated specifications. Id. at 454-458.

Because Addendum No. 3 expressly required acknowledgment and acceptance with the bid, materially modified the Contract Documents, and Columbia attempted to cure only after bid opening, the omission is not an inconsequential irregularity that may be waived under the City's own standard.

IV. POST-OPENING MODIFICATION OF A MATERIAL BID IS IMPROPER

National Coach Corp. v. State Board of Control (1982) 137 Cal.App.3d 750 also supports rejection. There, the Court rejected an argument that a bidder could cure a substantive deviation after opening, recognizing the settled rule that bids may not be modified in substance after opening. Id. at 756 & fn. 3.

The policy is fundamental to sealed competitive bidding: a bidder should not be allowed to wait until competitors' prices are exposed and then decide whether to remove a deviation or accept an obligation. Columbia's attempted next-day acknowledgment creates the same concern.

V. COLUMBIA'S SUBJECTIVE INTENT OR ACTUAL RECEIPT DOES NOT CURE THE DEFECT

Columbia may contend that it received Addendum No. 3, considered it in pricing, or always intended to perform in accordance with it. That does not answer the responsiveness issue. The bidding documents required a timely, objective acknowledgment of "receipt and acceptance" submitted with the bid.

DeSilva Gates is particularly important on this point because the post-opening submission there was intended to show that the bidder had actually received and considered the addendum. The court nevertheless held that the defect could not be cured where doing so conferred a competitive advantage. Responsiveness must therefore be determined from the bid as submitted at the deadline, not from a bidder's post-opening explanation of its unstated intent.

VI. THE CITY'S AWARD PROVISION REQUIRES COMPLIANCE WITH THE PRESCRIBED REQUIREMENTS

Section 3-1.04 states that, if the contract is awarded, it will be awarded to the lowest responsible bidder "whose proposal complies with all the requirements prescribed." (Specifications, Section 3-1.04, p. 19.)

Columbia did not comply with the express requirement that Addendum No. 3 be acknowledged and accepted on Proposal Page P-7 and submitted with the bid. Because that defect is material and cannot properly be cured after opening, Columbia is not the lowest responsive bidder eligible for award.

VII. REQUESTED RELIEF

SFE respectfully requests that the City:

1. Find Columbia Electric, Inc.'s bid nonresponsive for failure to timely acknowledge and accept Addendum No. 3 as expressly required by the Contract Documents;
2. Reject Columbia's post-opening acknowledgment and any other post-opening submission offered to cure the omission;
3. Determine that the omission cannot be waived as an inconsequential irregularity because waiver would provide Columbia an advantage or benefit unavailable to bidders that timely complied;
4. Reject Columbia's bid;
5. Determine the lowest responsible and responsive bidder based on the bids and documents properly submitted as of the bid deadline;
6. Award the contract to SFE as the next lowest responsible and responsive bidder, if the City elects to award the project; and
7. Refrain from awarding or executing a contract with Columbia while this protest remains pending.

VIII. PRESERVATION OF BID AND PROTEST RECORD

SFE requests that the City preserve and include in the administrative record Columbia's complete original bid; Proposal Page P-7 as originally submitted; Columbia's post-opening acknowledgment of Addendum No. 3; the date and time of that submission; all communications between Columbia and City personnel concerning the omission or attempted cure; internal City communications concerning responsiveness or waiver; and the bid opening record and bid results.

The integrity of competitive bidding requires responsiveness to be determined from the bid as it existed when bidding closed, not from commitments made after competing prices have been publicly disclosed. For the reasons above, SFE respectfully requests that Columbia's bid be found nonresponsive and rejected.

Respectfully submitted,

Ryan Dunham, Vice President

ST. FRANCIS ELECTRIC, LLC

510-780-6793 – rdunham@sfe-inc.com

975 Carden Street, San Leandro, CA 94577

AUTHORITIES AND CONTRACT PROVISIONS RELIED UPON

- DeSilva Gates Construction, LP v. Department of Transportation (2015) 242 Cal.App.4th 1409, 1421-1423.
- Konica Business Machines U.S.A., Inc. v. Regents of University of California (1988) 206 Cal.App.3d 449, 454-458.
- National Coach Corp. v. State Board of Control (1982) 137 Cal.App.3d 750, 756 & fn. 3.
- City of Hayward Specifications, Tennyson Park Streetlight Project No. 06950: Notice to Contractors (addendum acknowledgment); Section 3-1.04 (Award and Execution of Contract); Section 3-1.04A (Bid Protest Procedures and waiver of inconsequential deviations); Section 2-1.07 (limited post-bid correction provisions).
- Addendum No. 3, dated August 27, 2026, including the express requirement that bidders acknowledge receipt and acceptance on Proposal Page P-7 and submit the acknowledgment with the bid.

ST. FRANCIS ELECTRIC, LLC • SAN LEANDRO, CA 94577

89901

VENDOR NO.	VENDOR NAME	CHECK NUMBER
100060	CITY OF HAYWARD	89901

TRANSACTION NUMBER	REFERENCE	DATE	DESCRIPTION	GROSS AMOUNT	DISCOUNT	RETAINAGE	PREVIOUS	BALANCE	NET AMOUNT
926 35	090926	09/09/26	BID PROTEST - CITY OF HAYW	500.00	0.00	0.00	0.00	0.00	500.00

VENDOR NO.		GROSS AMOUNT	DISCOUNT	RETAINAGE	PREVIOUS	BALANCE	NET AMOUNT
100060		500.00	0.00	0.00	0.00	0.00	500.00

THE FACE OF THIS DOCUMENT HAS A COLORED BACKGROUND • PADLOCK ICON DISAPPEARS WITH HEAT • FLUORESCENT FIBERS AND OTHER SECURITY FEATURES

ST. FRANCIS ELECTRIC, LLC
975 CARDEN ST., P.O. BOX 2057
SAN LEANDRO, CA 94577
510-639-0639

CALIFORNIA BANK OF COMMERCE
3595 MT. DIABLO BLVD , 2ND FLOOR
LAFAYETTE, CA 94549
90-4469/1211

89901

DATE	CHECK NO.	AMOUNT
09/09/26	89901	$500.00

Five hundred and xx / 100 Dollars

PAY TO THE ORDER OF

CITY OF HAYWARD
777 B STREET
HAYWARD CA 94541

AUTHORIZED SIGNATURE

RUB RED IMAGE — DISAPPEARS WITH HEAT

⑈089901⑈ ⑆121144696⑆ 18000514 2⑈