



# THE MONTEREY CURRENT

## AUGUST, 2014

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**To Benefit...Participate!**

### PUBLIC WORKS CONTRACTOR REGISTRATION NOW REQUIRED

Our members that pursue state public works contracts will be subject to a registration and annual renewal fee (\$300)

under a provision that was passed as part of the State Budget last month. Under the new provision, no contractor or subcontractor will be qualified to bid on, be listed on, or engage in a contract for a state public works if they are not registered with the state as a public works contractor. The additional revenue will be utilized by the Department of Industrial Relations. The requirement to list only registered contractors and subcontractors becomes effective on March 1, 2015. The requirement to use only registered contractors and subcontractors will apply to all projects awarded after April 1, 2015.



The changes will have the effect of strengthening the public works law by screening out bad players. Contractors and subcontractors may not have any outstanding unpaid wage or penalty

assessments due to any employee or agency. It also looks like the Certified Payroll Reporting process will get more scrutiny by the state. See the linked review and discussion from Eddie Bernacchi, our legislative advocate in Sacramento, and the link to the actual revisions to the Labor Code.



### WELCOME OUR NEWEST MEMBER!

*We would like to welcome:*



### High Performance Electric, Inc.

Accredited Rep:  
Daniel Lozano

26 Hangar Way  
Watsonville, CA 95076  
Phone: 831-761-5278

Email:

[hpelectric@sbcglobal.net](mailto:hpelectric@sbcglobal.net)



## CHANGING HORSES IN THE MIDDLE OF THE STREAM

*What Happens When You Change Your Entity Status- Part 1*

John McGill

There is something to be said for being the President of a company; prestige, respect, the inference of success, dependability, and stature. Sole proprietor status is great too, but sometimes you outgrow it and incorporating makes sense both financially and professionally. There is also the liability protection that goes with it, although depending on what you are doing and how you are doing it that protection may be more theoretical than real.

When you change your entity status can also create some interesting legal issues. For example, if you undertake a project and then midway through the work you change from a sole proprietor to a corporation, there could be some unexpected problems. That's what happened in a recent case, *E.J. Franks Construction Inc. v Bhupinder Sahota*.

In the *Franks* case, E.J. Franks started a project for the Sahotas as a sole proprietor

but then incorporated and continued working on the project in that capacity. There was a dispute during the work and Franks was terminated before completion. The parties sued each other and one theory advanced by the Sahotas was that Franks was not properly licensed during the entire time he worked on the project. Under California law, if you are not properly licensed during the course of the work, you do not need to be paid. More devastating though, under California law, if you are not properly licensed the entire time you are working on the project, you can be forced to disgorge (return) all of the money that you were paid and you have no rights at all in court; no Stop Notice, no Mechanics Lien, no payment bond - none!

In *Franks* the Sahotas argued that when Franks converted his sole proprietor status to a corporate form, he was not properly licensed because the contract he signed had him as a sole proprietor. After he incorporated he continued to work on the project, but he was not licensed as a sole proprietor and therefore he was in violation of the CSLB licensing rules.

The trial court didn't buy the argument and the court of appeals didn't either.

The court agreed that Franks undertook the work as a sole proprietor and it also agreed that the corporation continued it, and that these were effectively two different contractors. But that didn't mean that Franks under either form was operating without a license. As the court wrote "all of the work was performed by a licensed contractor, to wit: the license issued to E.J. Franks Construction in 1995 and the license issued to E.J. Franks Construction Inc. on April 12, 2005..."

The work that was done before the entity change was done pursuant to contract but the work following incorporation was not. The court didn't deny Franks a recovery though; they just agreed that the corporation was entitled to pursue an equitable remedy- quantum meruit- rather than a breach of contract theory for that work. More on quantum meruit in part 2 of this article, but for now understand that quantum meruit basically allows you to recover for the fair value of the work.

Franks could have avoided the whole issue though if he had included a provision in his contract with the Sahotas that indicated that while he was taking on the project as a sole proprietor he intended to change his company to a corporation. The provision would state that the owners

agreed that the contract would then be *novated* to the new corporation. A novation is when the parties to a contract agree that one party to the agreement will be substituted out and another party put in its place, and that the substituted party would have no further legal responsibilities; instead the new party would assume all liability. A novation can be done as a separate agreement too, so if it is not included in the original agreement it can be done later, assuming everyone agrees.

It might also be possible to *assign* the contract to another entity, if there is no provision against it in the agreement and if it does not interfere with the expectations of the parties. An assignment is different from novation because the assignor and the new party performing the obligation both remain liable to the owner. If anything goes wrong, the owner can sue either or both parties, and it doesn't matter if the owner agreed to the assignment or not. A novation is the preferred way to make this kind of change if one party wants out completely.

A couple of other considerations that are sometimes overlooked when going from sole proprietor to corporate status. First, insurance- your sole proprietor CGL policy, Workers Comp, and license bond are not going to cover your new corporate status. You need to get new policies and bonds. Insurance

is especially important when you incorporate because one of the key legal requirements is that you be "adequately capitalized" when you incorporate. Adequate capitalization can be satisfied by insurance.

Another consideration that should not be overlooked is insurance for projects that you have completed as a sole proprietor. A corporation is a separate legal entity and you are only an employee of the corporation. However, as a sole proprietor you were personally liable for the work you performed. When you change entity forms be sure to have yourself (as a sole proprietor) named as an additional insured on the corporation's CGL policy for all of the completed projects you did as a sole proprietor. Your corporation's CGL policy will not cover your work as a sole proprietor unless you are named as an additional insured. Talk to your insurance agent on this. Finally, there is a belief that if you are incorporated you are shielded from liability; in other words, you can't be sued individually. Generally speaking this is true, but not always. If you are a small corporation and you are an officer or director, but you also do the work, be aware that there is case law that says if you perform the work negligently, even if you are incorporated, you can be sued. The corporate veil only

goes so far and it can be pierced. Again, make sure you have insurance and comply with all the rules.

Talk to your accountant too before you make the change. You may be better off not incorporating if the numbers are not there. Incorporation makes a lot of sense in many instances but there are things to be considered. Make sure you do.

Bio: John P. McGill is an attorney and represents contractors and suppliers throughout the Bay Area and Northern California in both private and public work disputes and in employment, transactional, and administrative matters. He is the author of California Contractor's DESKTOP GENERAL COUNSEL *What You Need To Know About California Construction Law.* Contact: Work - 925-952 5403 or Cell- 707 337 1932. Or email at [johnmcgill310@gmail.com](mailto:johnmcgill310@gmail.com)







## **NJATC TRANSITIONS INTO THE ELECTRICAL TRAINING ALLIANCE**

The National Joint Apprenticeship and Training Committee for the Electrical Industry (NJATC) announced recently that the NJATC Trustees have taken the first steps in the transition of the NJATC into the Electrical Training Alliance. The NJATC was created in 1941 by the International Brotherhood of Electrical Workers (IBEW) and the National Electrical Contractors Association (NECA) to develop and standardize training to educate the members of the IBEW and NECA, insuring they are providing the electrical construction industry with the most highly trained and highly skilled workforce.

NJATC Executive Director, Michael Callanan stated that over the past ten years the NJATC has become, in effect, “a diverse alliance of IBEW local unions, NECA electrical contractors, industry training partners and manufacturers, community colleges and universities, and public and private school systems.” “Today, Callanan stated, we have over 300 joint apprenticeship training centers in the United States and Canada, over 100 electrical

industry organizations and manufacturers and dozens of public and private organizations that are united by, and committed to, training the next generation of electrical workers.”

NJATC Director of Operations, Mark Cerulla revealed three primary drivers for the transition to the new organizational structure from the NJATC to the Electrical Training Alliance. “First, our new name better reflects the reality of our operation and the way we do business. We are truly an alliance of very diverse industry partners united by a common cause. Second, the NJATC, IBEW and NECA, over the course of the past ten years have been in the process of transforming our apprenticeship model. With the advent of a Core Curriculum Training Model; new National Guideline Apprenticeship Standards that provide greater latitude to local training centers; and the implementation of a Blended Learning model that leverages technology to improve our training outcomes, the timing was right for rebranding our organization to better reflect the scope and breadth of what we do. And finally, and perhaps most importantly, our new name and restructured organization will better allow us to meet the needs of the electrical

industry and our customers. There simply is not a better electrical training infrastructure in the world and we need to ensure that our customers know and appreciate what stands behind each IBEW and NECA trained electrical worker.”

Callanan noted that “The NJATC as we know it will not disappear but will become a part of the Electrical Training Alliance.” The NJATC, Callanan stated has “served the IBEW and NECA, and our industry well for 73 years, I see the NJATC remaining an important part of the new alliance, perhaps transitioning into a Foundation that supports the greater mission of the new Electrical Training Alliance.” Callanan concluded, “no matter, what we are called and how we identify ourselves, the critical point is that we will remain committed to expanding our new alliance to include all entities and organizations that are united to expanding apprenticeship opportunities in the electrical industry that provide a pathway to the middle class for young men and women, through an “earn while you learn” model that ensures the most highly trained electrical workforce in the world.”



## EDUCATION OPPORTUNITIES ABOUND!

*The NECA Convention is an exciting mix of opportunities for education, inspiration, networking, and fun!*

### Customize Your Learning Experience

Are you really interested in safety? Keeping up with new technologies and processes? Looking for ways to grow and streamline your business? All of the above? No matter your area of interest NECA makes it easy for you to identify the education programs that are right for you. If your focus is safety, you may stick to our Standards and Safety track. If it's new technologies, Technology, Process, and Innovation is the place for you. Or you can mix and match, attending a session on LED lighting and then one on leadership.

NECA's Convention is all about providing you with a unique experience to gain access to the best speakers in the country on topics that are relevant to you. No matter your area of interest, NECA

makes it easy for you to identify the education programs that are right for you.

#### Education Tracks

Tracks are a series of in-depth discussions about cutting edge technology, new business strategies, best practices and opportunities. Each education session or workshop is categorized by one or more of the following five tracks to help you better plan your learning experience:

#### Business Management

Getting the work, making your contract work, and preparing for the future are essential steps in growing your business for tomorrow. This track focuses on business practices to strengthen and grow your company.

#### Leadership and Communications

Strong leaders make strong companies. Building your workforce right and keeping them happy keeps them productive and keeps you profitable. This track focuses on how to be and build strong leaders.

#### Project Management

Getting the work is only part of the battle. How you manage risk, manage your crews, and perform the work decide if you win or

lose. This track focuses on how what takes place in the field can affect your company's bottom line.

#### Standards and Safety

Keeping up with the latest safety best practices, regulations, and standards are critically important for your company. This track focuses on ways to create a safety culture in your company, keep you abreast of current regulations, and help you prepare for tomorrow's rules.

#### Technology, Process, and Innovation

There is always something new. Always something that can put you ahead. From smart energy advancements to BIM, this track focuses on new technological developments, process improvements, and opportunities that help you grow and change your business.

***I know the price of success: dedication, hard work, and an unremitting devotion to the things you want to see happen."***

***— Frank Lloyd Wright***



## HOW CONTRACTORS CAN IMMEDIATELY IMPROVE PROFITS

Mark your calendars and plan to attend the education class that we hold in partnership with the California Central Coast Chapter members!

The class will be held as follows:

When: October 23, 2014

Where: Lawrence's Restaurant In King City, CA

Instructor: Ted Garrison

Target Audience: Company managers and executives

### **About the course:**

Improving your company's processes to increase productivity can have a substantial effect on how competitive you can be. This course discusses how contractors can better compete in a low bid award system by using their knowledge and experience to increase productivity.

### **About the Instructor:**

Ted has more than twenty-five years management experience constructing more than ten million square feet of commercial building. He currently serves the

construction industry as a consultant and speaker and is the author of Strategic Planning for Contractors, as well as the co-author of several other publications.

This is an all day class and participants will receive 0.6 CEU's for their participation.



## UPCOMING CLASSES OFFERED THROUGH THE JATC

### **OSHA 10**

Will be offered August 9<sup>th</sup> and 23<sup>rd</sup> from 7 am to 12 noon at the Training Center in Castroville. The instructor will be Derek Wegster.

### **SIGNIFICANT CHANGES TO THE 2014 CODE**

Will be offered on August 12<sup>th</sup> from 5:30 to 8:30 pm with instructor Dave Martinez.

### **CALCTP 5.0, CALCTP-AT**

Sign-ups are still being taken to obtain enough participants for this class, but is tentatively scheduled for August 11<sup>th</sup>,

Interested in any of these classes? Contact Stacy at the JATC office for more details! (831) 633-3063.

## CONGRATULATIONS TO THOSE WHO HAVE COMPLETED UPGRADE CLASSES

Congratulations to the following individuals who have recently completed classes offered through the apprenticeship program! We appreciate your commitment to the industry!

### **CALCTP 5.0**

- Michael Bradley
- Michael Carpenter
- Gabriel Regalado
- Peter Salvatore

### **SIGNIFICANT CHANGES TO THE CODE**

- James Brown
- Hector Camacho
- Guillermo Estrada
- Ralph Garcia
- Jesus Ramirez
- Robert Rovella
- Charles Ruiz
- Brian Sabado

### **FIRST AID/CPR**

- John Barber
- Miguel Bustos
- Earl Davis
- Randy Dike
- Guillermo Estrada
- Richard Greenlaw
- Andy Hartmann
- Dan Martinez
- Juan Rodriguez
- Ralph Yniguez

## BOOM AND SCISSOR LIFT TRAINING

- David Boggs
- Corey Cardenas-Perron
- Guillermo Estrada
- BJ Heading
- Igor Malyghin
- Brian Sabado
- Ed Sudyka
- Ray Sykes

- Beverly Thompson

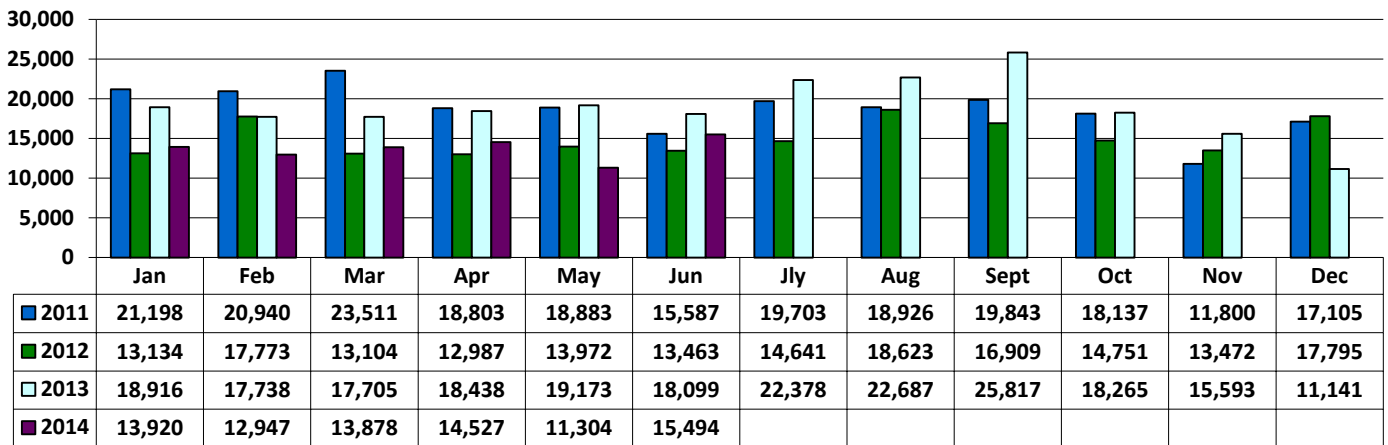
## LOCAL #234 AVAILABILITY LIST UPDATE

On the Inside Out-of-Work List, there are 36 on Book 1, 29 on Book 2 and 1 on Book 3. For Sound & Communications there is 1

on Book 2. There are no CW/CE on the book and we currently have one Inside apprentices available for work.



# INSIDE MONTHLY HOURS REPORT



# UPCOMING EVENTS CALENDAR



July 27 -August 1, 2014

National Training Institute  
University of Michigan

August 16, 2014

Apprentice Applicant Aptitude Test

August 21, 2014

Board of Directors Meeting  
Collins Electrical Board Room  
Marina, CA

August 29, 2014

Floating Holiday

September 1, 2014

Labor Day Holiday

September 19, 2014

Statewide LMCC Meeting

September 20, 2014

IBEW Local #234 BBQ  
Toro Park Buckeye Area  
Salinas, CA

September 27-30, 2014

Board of Governors and NECA Convention  
Chicago, IL

October 23, 2014

“How Contractors Can Immediately Improve Profits”  
Education Class  
Lawrence Restaurant, King City, CA