

B H M

Construction, LLC

221 Gateway Rd West, Suite 405, Napa, CA 94558
PHONE (707) 643-4580 FAX (707) 643-4581
CSLB # 900404

June 10, 2025

VIA E-MAIL AND PERSONAL SERVICE

Napa-Vallejo Waste Management Authority
1195 Third Street, Room B-10
Napa, CA 94559
Email: Chris.Celsi@countyofnapa.org

Re: **BHM Construction, LLC's Bid Protest**
Construction & Demolition Facility Napa-Vallejo Waste Management Authority
Project No. 17810

Dear Mr. Celsi:

Second low bidder BHM Construction, LLC protests the award of Project No. 17810 to apparent low bidder Midstate Construction Corporation on the grounds that its bid is non-responsive because (i) it underbid the energy electrical power generation ("photovoltaic/solar") scope of work to gain an improper bidding advantage, and (ii) it failed to acknowledge the addenda per the bid documents. As such, BHM Construction, LLC is the responsible bidder with the lowest responsive bid.

Facts

Addendum #8 issued on May 2, 2025 provided that the Energy Electrical Power Generation System is to be design built per Section 48 of the Specifications using the Proposed Roof Plan (Sheet A2.7) as a design reference. (RFI Response 261.) Addendum #8 also requires: "All addendum signature pages must be signed and submitted with the bids."

On June 3, 2025 at 1:43 p.m., BHM and other bidders received a photovoltaic/solar proposal from Capital Valley Electric, LLC for \$494,550 for a 226 KW system. The other photovoltaic/solar proposals received on or before June 3, 2025 were:

- Evergreen Solar – 1124 KW for \$2,130,221
- Solar Technologies – 1150 KW for \$2,546,900
- McKee & Company – 1150 KW for \$2,546,900
- MEL Electric – KW not listed - \$2,945,552
- Pacific Power & Systems – KW not listed – \$2,995,105

BHM immediately notified Capital regarding the obvious bid error in Capital's photovoltaic/solar proposal, which was more than \$2 million lower than other subcontractors bidding a 1150KW+ sized system. On June 3, 2025 at 1:57pm, Capital emailed all bidders that it revised its proposal to exclude the "Photovoltaic Scope." This email is enclosed with this letter.

On June 3, 2025, bids were submitted by Midstate, BHM, and others to the Authority as follows:

Midstate Construction - Petaluma, CA	\$31,833,000.00
BHM Construction - Napa, CA	\$33,441,179.00
Overaa Construction - Richmond, CA	\$34,385,000.00
Roebbelen Contracting - El Dorado Hills, CA	\$34,596,000.00
SJ Amoros Construction - Redwood City, CA	\$37,177.00.00
Cambridge Companies - Scottsdale, AZ	\$37,341,113.00
Zovich Construction - Antioch, CA	\$38,000,000.00

Midstate's List of Subcontractors identifies Capital as the energy electrical power generation system subcontractor for the amount of \$494,550. BHM listed McKee & Company Electric for the electrical scope including photovoltaic/solar work.

The difference between Midstate's apparent low bid, and BHM's second low bid is \$1,608,179.

Midstate's bid did not include signed copies of Addendum #1-#9 as required by Addendum #8.

Midstate's Bid is Non-Responsive Due to Improper Bidding Advantage in Price.

Midstate's bid is non-responsive because Midstate underbid the project based on an obviously low (and then) withdrawn subcontractor proposal for the photovoltaic/solar work.

The Notice to Contractors states: "Bids are required for the entire work called for by the Plans and Specifications, and neither partial nor contingent bids will be considered." (NTC-1.) Likewise, the Instructions to Bidders state: "Bids are required for the entire work." (P-8.) As described above, Midstate knew or should have known Capital could not perform all required photovoltaic/solar work at the proposed price of \$494,550 which it identified as a "226.6kWDC roof-top photovoltaic array." A prudent bidder would have collected multiple proposals for this scope of work, and verified why it received such a low estimate from one subcontractor. At the very least, a prudent bidder would have compared its bid to the others submitted on bid day and realized it was inaccurate. Others, like BHM, did so and Capital withdrew its photovoltaic/solar proposal to all bidders. Midstate ignored this withdrawal in submitting its bid.

Midstate's listing of Capital for the photovoltaic/solar work when it cannot perform the full scope of required work at the listed price renders Midstate's bid non-responsive pursuant to the Public Contract Code and applicable case law because it gives Midstate a competitive, improper bidding advantage. (*MCM Const., Inc. v. City & County of San Francisco* (1998) 66 Cal.App.4th 359, 359 [City did not abuse its discretion in rejecting contractors bid as nonresponsive due to its failure to list subcontractor dollar amounts.]; see *Hensel Phelps Construction Co. v. Department of Corrections & Rehabilitation* (2020) 45 Cal.App.5th 679, 685 [Nonresponsive contractor's bid contained non-waivable mathematical errors that provided a competitive advantage.]; *Valley Crest Landscape, Inc. v. City Council* (1996) 41 Cal.App.4th 1432, 1443

[Contractor's bid was non-responsive due to a material, unwaivable mistake in subcontractor percentages.]

This failure is not a minor, waivable irregularity because Midstate gained a roughly \$2 million bidding advantage by improperly listing a subcontractor that withdrew its proposal and cannot perform the full scope of photovoltaic/solar work for the stated price. This is an unfair advantage that requires the bid to be deemed non-responsive. (*See Valley Crest Landscape, supra*, 41 Cal.App.4th at 1442 [Due to error in bid, apparent lowest bidder could seek to withdraw its bid without forfeiting its bond pursuant to Public Contract Code section 5103, giving bidder a clear and unfair advantage not allowed other bidders].)

Midstate's Bid is Non-Responsive Because it Fails to Acknowledge All Addenda.

Midstate further failed to comply with the bid instructions by not acknowledging Addenda #1-#9. A bid is responsive if it promises to do what the bidding instructions require. (*MCM Const., Inc., supra*, 66 Cal.App.4th at 368.) Midstate did not.

Addendum #8 instructed bidders: "All addendum signature pages must be signed and submitted with the bids." The Project General Conditions, section 20(e) also state: "Any addenda or notices issued during the time of bidding and forming a part of the documents provided to the Bidder for the preparation of his bid, shall be covered in the bid and shall be made a part of the contract. The Bidder shall acknowledge receipt of addenda in the space provided in the Proposal." Each addenda contained a signature page which instructs, in bold capital letters: **"PLEASE SIGN THIS ADDENDUM IN THE SPACE PROVIDED AND INCLUDE THE SIGNED COPY OF THE ADDENDUM WITH YOUR DOCUMENTS."**

Midstate failed to include the signature pages for each addenda in its bid. This is a material deviation from the bid requirements because Midstate failed to verify that its bid includes all work in the original scope plus Addenda #1-#9. The case *DeSilva Gates Construction, LP v. Department of Transportation* analyzed this same issue and found the error was a material deviation. In that case, Caltrans allowed the apparent low bidder to cure a failure to acknowledge a material addendum. The court found that Caltrans abused its discretion by allowing the opportunity to cure because it gave the apparent low bidder an advantage over other bidders not afforded this opportunity. (*DeSilva Gates Construction, LP v. Department of Transportation* (2015) 242 Cal.App.4th 1409, 1423.)

Thus, Midstate's bid is non-responsive.

BHM is the Lowest Responsible, Responsive Bidder.

Second low bidder BHM is the lowest responsible responsive bidder. BHM complied with the bid instructions including the submittal of all Addenda. Although BHM did not list all interested persons on Proposal Form P-13, it is a limited liability company not a corporation, co-partnership, or individual as requested on the form. As such, to the extent this information was required by a limited liability company it is a non-material, waivable deviation. A minor irregularity can be waived "if the variance cannot have affected the amount of the bid or given the bidder an advantage or benefit not allowed other bidders." (*Konica Business Machines*

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U.S.A., Inc. v. Regents of University of California (1966) 206 Cal.App.3d 449, 454.) Here, the list of interested parties is waivable as there is no impact to the amount of the bid or an unfair advantage gained by BHM.

BHM Construction, LLC should be awarded Project No. 17810.

Regards,



Seamus Dooher, President
BHM Construction, LLC

Encl.

Cc: Jeff Mazet, BHM Construction (jmazet@bhmconstruction.com)
Midstate Construction (bidroom@midstateconstruction.com;
rogern@midstateconstruction.com)
Overaa Construction (webuild@overaa.com; carlo@overaa.com; artc@overaa.com;
bids@overaa.com)
Roebbelen Contracting (estimating@roebbelen.com; general@roebbelen.com)
SJ Amoroso Construction (bceleste@sjamoroso.com; jbenenson@sjamoroso.com;
aperez@sjamoroso.com; berskine@sjamoroso.com)
Cambridge Companies (brandon@cambridgecoinc.com)
Zovich Construction (azovich@zovichconstruction.com;
zovich@zovichconstruction.com)
Capital Valley Electric, LLC (jwerner@capitolvalleyelectric.com)

ATTACHMENT F

BIDDAY

From: Jon Werner <jwerner@capitolvalleyelectric.com>
Sent: Tuesday, June 3, 2025 1:57 PM
Cc: Gary Gladson
Subject: RE: Napa Vallejo Waste Management Proposal
Attachments: Napa Vallejo Waste Management Proposal Letter R1- 6.3.25.pdf

Caution: This is an external email. Please take care when clicking links or opening attachments. When in doubt, contact your IT Department

See attached R1 proposal – Photovoltaic Scope is now excluded from or proposal.

Thank you,

Jon Werner
Senior Estimator

O (916) 504-4419
C (916) 336-8458
8550 Thys Ct,
Sacramento, CA 95828



Capitol Valley Electric, LLC
Proactive Solutions
Capitolvalleyelectric.com

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From: Jon Werner
Sent: Tuesday, June 3, 2025 1:43 PM
Cc: Gary Gladson <GaryG@capitolvalleyelectric.com>
Subject: Napa Vallejo Waste Management Proposal

Good afternoon please find attached our proposal for the Napa Vallejo Waste Management Project. Let us know if there are any questions.

Thank you,

Jon Werner

Senior Estimator

O (916) 504-4419
C (916) 336-8458
8550 Thys Ct,
Sacramento, CA 95828



Capitol Valley Electric, LLC
Proactive Solutions
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Napa Vallejo Waste Management - R1**American Canyon, CA**

6/3/2025

General Contractor

Attention: Estimator

Capitol Valley Electric is pleased to submit our Electrical / Low Voltage Proposal Letter for the above-mentioned project.

Our pricing is based on the following:

1. Drawings Prepared By: Axion + Colebreit Engineers
2. Electrical Drawings Dated: 100% CD Dated 10/21/2024, ADD#8 Dated 5/1/2025.
3. Electrical Specifications Dated: 12/5/2024
4. Addenda: 1-9
5. Pre-bid RFIs / Clarifications / Memos: Acknowledged.

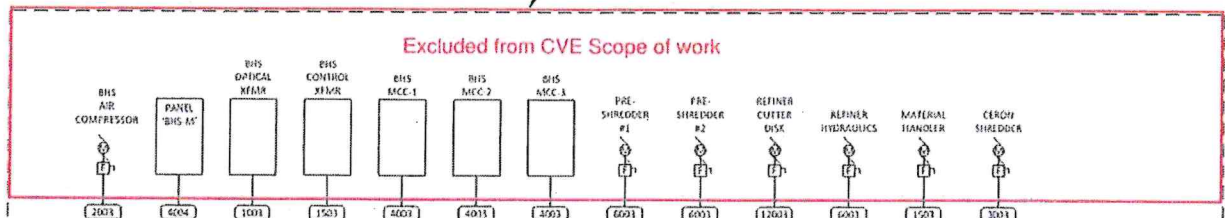
Inclusions:

1. **State Commercial Prevailing Wage Labor - PW Determination NAP-2025-1 with NO related increase per this determination only.**
2. This Proposal is based on an estimated ship date for electrical equipment and switch gear of **52** weeks. This is applicable after release of approved submittals and does not include any guarantee to meet construction schedule nor includes any expediting cost to meet construction schedule regardless of construction schedule being part of bid documents.
3. Provide 4000A Bussed duct from utility transformer to MSB-P.
4. Provide utility transformer pad per detail on sheet JT-T.
5. (18) Empty 4" from MSB-P to future site location of battery backup. These conduits have been stubbed and capped for the future.
6. Connection to Temporary Generator Connection Cabinet.
7. 3000A Generator Connection Cabinet.
8. Interior lighting fixtures and related lighting control devices / related wiring. If there are discrepancies between the architectural plans and electrical plans, electrical plans shall govern.
9. All electrical Single Line Diagram line components to be supplied by one manufacturer.
10. Branch circuitry panels as required; Includes feeders and final connections.
11. **Branch circuits have been run in #12 AWG Conductors.**
12. Boxes, wiring, devices, and final connections for a complete Electrical system.
13. Site lighting and related trench, conduit, wire, and concrete pole bases per site plans.
14. Conduit, wiring and final connections to all Mechanical units. Mechanical units provided and installed by others. All T-Stat & control conduit\wiring and connections regardless of voltage to be provided and installed by others.
15. Single point connection to Ceiling Fans, (fan installation and supports are by others.)
16. Sleeving only Structured Cabling, and Access Control.

17. Complete conduit rough in for Fire alarm system, CCTV, Telephone, and Access Control System, as shown on FA0.1 - FA5.1, and T0.1 - T0.6.
18. Conduit rough in for Fire Rover System.
19. Fire alarm system installation, per FA0.1 - FA5.1.
20. Conduit and line voltage wire only for powered gate location per sheet E.1. Low voltage portion is excluded.
21. (2) Dual Head Level 2 EV Chargers with associated raceways and cabling.
22. (3) Empty Future EV Raceways, taken back to the electrical room.

Exclusions:

1. Any work not listed above.
2. Liability for Liquidated Damage costs not specifically made aware of prior to submission of this Proposal
3. Repair of code violations outside of this proposal.
4. **Photovoltaic Scope in its entirety**
5. Any and all County, City, Fire Dept., and Utility permits and/or permit fees.
6. Removal of any obstacle that cannot be removed with a case 580 backhoe.
7. Provide or install fire sprinkler devices not shown on drawings. I.e., PIV, tamper switch, fire bell.
8. Power to or connection to and/or all equipment, devices or systems provided by others that are not shown on Electrical drawings.
9. Fan Installation and supports.
10. Fire Rover System.
11. All items outlined as future, fed from Distribution Board DSP.
 - a. We have included a 10' conduit stub with cable from Distribution Board DSP for future use.



12. "Off-Site" work not shown and Electrical drawings. Including street lighting, Signal, or traffic.
13. Provide private utility locating services or location of existing private utilities.
14. Demolition / removal / disposal.
15. Dewatering.
16. Offsite removal of excavation spoils.
17. PG&E primary conduit not limited to utility or customer owned joint trench, boxes, vaults, or conduit not listed above.
18. Phone or CATV Utility work beyond 5ft of building.
19. Utility company transformers, equipment, bollards or primary conduit or cable.
20. Secondary Cable.
21. Housekeeping Pads.
22. Concrete or asphalt work, roadwork, of any kind not listed above - sawcut, breakout, or patch, poured or pads.
23. Sawcut and patch back.
24. Fire sprinkler device install or connection (PIV, tamper switch, flow switch, bell, etc.).
25. Tele/Data, CCTV, Security, Intrusion, A/V, Card Access, 2-Way communications, systems, studies, or design.
26. Backboxes, conduit, and infrastructure for 2-Way, Intrusion, AV, any other systems not listed above.
27. ERRCS / DAS system of any kind including conduit, cable, equipment, or studies.

28. Installation of equipment and appliances provided by others.
29. Traffic control / flagmen.
30. Protective Bollards.
31. Design and Engineering.
32. Professional liability insurance. Errors or omissions of consulting engineers.
33. "Short Circuit," "Electrical Coordination or Arch Flash Studies."
34. Title 24 design or requirement of equipment not specifically shown on drawings.
35. Structural/Seismic engineering of any kind.
36. Seismic and/or structural support of lighting fixtures. Connection of wire by others included.
37. Ceiling or wall access panels or access doors.
38. Temporary construction power or lighting.
39. Irrigation / landscape controls conduit or wiring.
40. Landscape / tree removal, repair and/or replacement.
41. Offsite removal of construction debris. Disposal in on site container by others included.
42. Offsite removal of excavation spoils.
43. Import of trench backfill material other than standard utility requirements.
44. Surveying or survey staking of any kind.
45. Private underground locates and potholing.
46. Plywood backboards for phone/data equipment.
47. Backing or supports.
48. Painting, sealing, or weatherproofing of any type or kind.
49. Roof jacks, roof repair, or roof sealant of any kind.
50. Sheetrock work of any kind including but not limited to fire rated enclosures for recessed light fixtures.
51. Remediation and/or Disposal of hazardous or potential hazardous material of any kind.
52. Provide or install Utility (AT&T, Comcast, etc.) fiber distribution cable not shown on drawings. Furnish & install Microduct.
53. Lamps or appliance pigtails for equipment provided by others.
54. All Mechanical, Plumbing, or irrigation or control or interlock wiring or conduit not shown on Electrical drawings.
55. Mechanical VFDs or starters.
56. Door modifications, hardware, or wireless door locks or Power supplies not shown on Electrical drawings.
57. Bathroom exhaust or fan/light combo fixtures and or humidistat control.
58. "Quick flash" flashing at electrical boxes and/or exterior penetrations.
59. Sample and/or spare material; Sample devices or light fixtures, spare fuses, breakers, or panels. Spare light fixtures, devices, lamps, or Fire Alarm devices.
60. Factory startup or commissioning – CVE training included.
61. Third party verification or Electrical testing.
62. Fire Smoke Damper or HVAC equipment Duct Smoke Detectors or remote test stations.
63. BIM management, BIM modeling or CAD drafting for pre or post construction. Clash detection coordination assistance included.
64. Pull planning scheduling.
65. Pollution Liability Insurance.
66. Performance or Material Bonds.
67. Costs associated with purchasing, loading, storage or transporting of construction water from an off-site source due to drought, water rationing, or water agency policy changes.
68. Back charges or acceleration costs due to others.
69. Surveying, staking for vaults, site lighting, building corners, or curbs.
70. Costs impacted resulting from Acts of God or Force Majeure or Tariff events.
71. Builder's risk insurance and deductibles.

72. Costs for indirect and direct management, storage, rentals, material, and labor escalation past the contracted completion date.
73. Design simulation.
74. Soil mechanics (underground reticulation).

Photovoltaic Inclusions:

1. Provide and install a 226.6kWDC roof-top photovoltaic array, to include but not limited to IronRidge roof racking system, (527) 430W Mono Solar modules, (527) SolarEdge optimizers, (2) SolarEdge 120kW string inverters, (1) 400A PV AC Panelboard, (1) 400A PV AC Disconnect, AC/DC wiring and electrical connections via overhead conduit, equipment labels, rooftop slip sheets, etc.
2. Provide and install Sol-Ark 40kW Battery Energy Storage System (BESS) including but not limited to Battery Cabinet, Sol-Ark 30kW Inverter, AC/DC wiring and electrical connections via overhead conduit for back-up supply to electrical panel-ERA1, etc.
3. Provide system commissioning via use of a Solmetric PVA-1500 tool.
4. All work to be performed during normal business hours. No allowance for overtime is included.

Photovoltaic Exclusions:

1. Equipment wear and walk-paths.
2. Repair/patch of roof penetrations.
3. Pre-construction and post-construction roof certification.
4. Rooftop pedestrian fire path.
5. Mechanical roof attachments.
6. Roof certification, warranty or repairs.

Photovoltaic General Clarifications:

1. Bid based on certification of roof by others prior to start of construction.
2. CVE assumes the roof is in good condition and capable of withstanding the necessary construction abuse that may occur during installation. CVE will protect roof with plywood coverage where deemed necessary, however no costs for roof repairs are included in our proposal.

General Clarifications:

1. Proposal good for 15 days from proposal date.
2. This project is subject to prevailing wage.
3. Assumes free construction parking is available.
4. Capitol Valley Electric assumes no responsibility for other trades
5. Price is based on normal working hours
6. Price does not include any overtime or costs associated with an accelerated schedule
7. All required rated chases thru Building levels and equipment rooms to be provided by others.
8. Standard electrical, phone and data trim.
9. This Proposal includes a (1) One Year Warranty from date of final Electrical inspection, Temporary Occupancy, or Operation of Premises, which ever starts first unless stated otherwise above. Excludes extended / multiple warranties.
10. All fire rated putty pads for junction boxes per AHJ.
11. Standard construction methods.
12. Appropriate on-site storage and laydown areas to be provided by others
13. Unobstructed access to work areas to be maintained by others. All work areas will be free from debris, stored materials and ready prior to commencement of electrical work

14. A safe securable storage area on the job site shall be provided for our use at no charge
15. All general requirements to be furnished by the prime contractor or others
16. This proposal is made with the understanding that we will enter in a mutually acceptable subcontract agreement
17. We will not accept any terms or conditions that are less favorable to Capitol Valley Electric
18. Pricing is only valid with this proposal, scope of work and exclusions
19. The conditions of this proposal must be attached or incorporated into our subcontract agreement
20. Capitol Valley electric will not be bound to any collective bargaining agreements to which we are not a party
21. All fees from local agencies for location of utilities or for performing standby are not included in this proposal

Pricing Schedule of Values:

Lump Sum Electrical Price:	\$2,720,002
See Breakouts Below	

Breakouts:

1. Building (Metal Building & Administrative Building)	\$1,687,857
2. Site Work	\$471,524
3. Lighting (Fixture Package only)	\$385,185
4. Electronic Safety & Security (Fire Alarm Complete System, and Security Rough in Only)	\$175,436
5. Photovoltaic	\$494,550

Unobstructed access to work areas will be maintained at all times by others and work areas will be free from debris and stored materials, and substantially ready prior to commencement of electrical work. A safe securable storage area on the job site shall be provided for our use at no charge. All General requirements are to be furnished by the Prime Contractor or others. This includes but is not limited to preparation of construction schedule (with subcontractor participation), contractor quality control program and technician / inspection staffing, temporary construction trailers or facilities, safety and security, site fencing, escorts, signing, traffic control, maintenance of site access, site dust control, temporary site environmental protection, and builders-risk or all risk insurance policies.

This proposal is made with the understanding that we will enter into a mutually acceptable subcontract agreement. We will not accept any terms or conditions that are less favorable to Capitol Valley Electric than those imposed in the Prime contract by the owner. Pricing is only valid with this Proposal, Scope and Exclusions. The conditions of this proposal must be attached or incorporated into our subcontract agreement. Capitol Valley Electric will indemnify



Estimate No. 25-0032.JW
Capitol Valley Electric, LLC.
License # C10 - 1085507
DIR #1000855022

you for personal injury or property damage claims to the extent of Capitol Valley's own negligence. Capitol Valley's proposal excludes any obligation to indemnify you for your own negligence, or to indemnify any other party for that party's own negligence.

Capitol Valley Electric (CVE) will provide lien releases in accordance with applicable state statutes or regulations. CVE will be paid within seven days of Customer receiving payment by Owner, but in no case, will CVE be paid later than 120 days from the date of CVE's invoice for undisputed work. If any payment due to CVE is past due for more than ten days, we reserve the right to stop work until all payments are brought current.

Capitol Valley Electric will not be bound to any collective bargaining agreements to which it is not a party. All fees from local agencies for location of utilities or for performing standby are not included in this proposal.

We appreciate the opportunity to budget this project and do not hesitate to contact the undersigned if you have any questions.

Respectfully Submitted,

Jon Werner

Project Estimator

O: 916-504-4419

C: 916-336-8458

E: Jwerner@capitolvalleyelectric.com