

June 11, 2025

VIA EMAIL & U.S. MAIL

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Re: Construction & Demolition Facility Project No. 17810

Dear Ms. Bratton and Mr. Zeleny,

The Construction Industry Force Account Council ("CIFAC") is in receipt of the Napa-Vallejo Waste Management Authority's ("NVWMA") May 8, 2025 reply to CIFAC's April 28, 2025 letter regarding the Construction & Demolition Facility Project No. 17810 ("Project"). CIFAC appreciates NVWMA's clarification that no work on the Project, including the fiber optic pull and connection scope of work ("Fiber Optic Work") at issue in CIFAC's letter, will be conducted via force account. However, NVWMA's response raised another concern that NVWMA may not have formally and competitively bid the Fiber Optic Work as required by the Public Contract Code. Additionally, upon further review of the Project's bid materials, CIFAC is concerned that NVWMA did not solicit the Project as a design-build procurement despite NVWMA's own bid materials indicating that multiple components of the Project are design-build.

This letter serves two purposes: (1) to ask how NVWMA bid the Fiber Optic Work, highlighting CIFAC's concern that, if not formally and competitively bid, NVWMA procuring that scope of work under a separate contract would be unlawful under the Public Contract Code and (2) to request that NVWMA re-bid the Project using design-build procurement given the presence of components that NVWMA has acknowledged in its own bid materials are design-build.

### I. The California Uniform Construction Cost Account Act ("CUCCAA") Requires NVWMA to Formally and Competitively Bid the Fiber Optic Work for the Project

Public agencies that opt into CUCCAA are permitted to perform public projects via force account, negotiated contract, or purchase order only if the project's value is \$75,000 or less.<sup>1</sup> If a Project is valued at less than \$220,000 the agency may utilize an informal bid procedure to procure the project.<sup>2</sup> Finally, if the project's value is more than \$220,000, the agency is required to competitively bid the project via "formal bidding procedure."<sup>3</sup> Critically, under the CUCCAA

<sup>1</sup> Pub. Contract Code § 22032(a).

<sup>2</sup> Pub. Contract Code § 22032(b).

<sup>3</sup> Pub. Contract Code § 22032(c).

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it is “unlawful to split or separate into smaller work orders or projects any project for the purpose of evading the provisions of this article requiring work to be done by contract after competitive bidding.”<sup>4</sup>

Here, the Fiber Optic Work is clearly part of the Project, as evidenced by its inclusion in the NVWMA’s handout at the Project’s preinstall meeting. As such, the Fiber Optic Work cannot be split from the Project and procured separately without formal and competitive bidding. If the Fiber Optic Work was split from the Project and not procured via formal and competitive bidding, any contract that NVWMA awards for that scope of work will be void and unenforceable.<sup>5</sup> Therefore, CIFAC requests that NVWMA explain how the Fiber Optic Work was bid for this Project and commit to bidding it formally and competitively.

## **II. The Project Must Be Re-Procured as a Design-Build Project As, By NVWMA’s Own Admission, Many Components of this Project Are Design-Build**

As a Joint Powers Authority formed by the City of Vallejo and the County of Napa, the NVWMA derives its authority to procure projects via design-build from section 22160 *et. seq.* of the Public Contract Code. The Public Contract Code defines design-build as “a project delivery process in which both the design and construction of a project are procured from a single entity.”<sup>6</sup> Local agencies are authorized to use design-build procurement for projects in excess of \$1,000,000 provided that the agency adheres to the mandatory process outlined in section 22164, which includes a prequalification process to establish qualified bidders, a request for proposals with certain elements, and a “best value” or low bid selection of bidders.<sup>7</sup>

Here, NVWMA’s own bid materials clearly indicate that many components of the Project are being procured as design-build. In the Questions and Answers section of Addendum No. 8 of the Project’s bid documents, NVWMA referred to design-build procurement for several components of the Project. Those references are as follows:

- Response to Question 261: “PV contractor to supply DESIGN-BUILD services under *Division 48 - Electrical Power Generation*.” Response to Questions 324, 325, 336 and 337 also clearly relate to the design-build procurement of the PV services and systems.
- Response to Question 272: “See sheets 10.1 – 10.6 included in this addendum for project requirements regarding CCTV and Telephone systems (Cat 6). Design elements pertaining to access Control Systems, CATV, etc. shall be design-build using the Architectural door schedule and specifications as a basis for design.”
- Response to Question 328: “Light pole foundation bases are design-build. Structural design to be by a licensed engineer in the State of California. Design will be reviewed by the Authority.”
- Response to Question 356: “Fall restraint contractor to supply Design-Build services.” Response to Question 357 reiterates that point.

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<sup>4</sup> Pub. Contract Code § 22033.

<sup>5</sup> See *Miller v. McKinnon* (1942) 20 Cal.2d 83, 89 (holding that public projects that are not competitively bid or otherwise awarded in violation of the Public Contract Code are “absolutely void as being in excess of the agency’s power” and therefore unenforceable); see also *Amelco Elec. v. City of Thousand Oaks* (2002) 27 Cal.4th 228, 234, 239 (same).

<sup>6</sup> Pub. Contract Code § 22161(c).

<sup>7</sup> Pub. Contract Code § 22162; Pub. Contract Code § 22164.

As NVWMA's responses in Amendment No. 8 demonstrate, NVWMA is clearly soliciting both design and construction services from a single entity for several components of this Project. Therefore, the Project procurement must follow the mandatory design-build procedure outlined in Public Contract Code section 22164. Because NVWMA did not bid the Project in accordance with this mandatory design-build procedure, any contract it awards will be void.<sup>8</sup>

Therefore, please confirm that the Project will be properly bid as design-build in accordance with Public Contract Code section 22160 *et. seq.*

### III. CONCLUSION

**Please respond to this letter by June 23, 2025 (1) explaining how NVWMA bid the Fiber Optic Work for this Project and confirming that NVWMA will comply with the formal competitive bid requirements under the CUCCAA and (2) committing to re-bid the Project in order to abide by the design-build requirements of Public Contract Code § 22160 *et. seq.***

Please provide the response to the undersigned, Max H. Kohn, at [mkohn@unioncounsel.net](mailto:mkohn@unioncounsel.net), Andrea Matsuoka, at [amatsuoka@unioncounsel.net](mailto:amatsuoka@unioncounsel.net), as well as Michelle Pickens, CIFAC Executive Director, at [mpickens@cifac.org](mailto:mpickens@cifac.org).

Sincerely,



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<sup>8</sup> See Footnote 5.