

**WE REPRESENT CLIENTS IN ALL PHASES OF A PROJECT, FROM CONCEPTION TO COMPLETION, AND LONG THEREAFTER.**



**ERIC FIRSTMAN**

*Chair, Public Contracts Practice Group*

Eric Firstman focuses his practice on construction litigation, construction project planning, procurement of professional services and regulatory compliance. He also advises clients on a comprehensive range of public works contracting matters, including competitive bidding requirements, bid protests, contractor prequalification, solicitation documents, subcontractor issues, and claims resolution.

Eric is a Charter Fellow and Advisory Board Member of the Construction Lawyers Society of America, a Fellow of the Litigation Counsel of America, and a member of the Associated General Contractors of California.

Meyers Nave’s Public Contracts Practice Group advises clients at all stages of contract procurement and construction—from pre-project planning and the bidding process to procurement of professional services and project closeout. We also represent clients in claims resolution, litigation and appeals. Our goal is to help clients move projects forward to successful completion.

Meyers Nave’s Public Contracts Practice Group has complete knowledge of construction and procurement law and the complex interplay of these laws with the statutes, regulations and local ordinances governing public projects. These include competitive bidding rules under the California Public Contract Code, California Environmental Quality Act, prevailing wage rules under the Labor Code and Davis-Bacon Act, green building and energy standards, local hiring preferences and Disadvantaged Business Enterprise rules, negotiation of Project Labor Agreements, and conflict of interest rules under the California Political Reform Act and Government Code 1090.

**(RE)CREATING PROCUREMENT SYSTEMS**

When confronted with the need to create or revise procurement approaches in light of new requirements, clients have turned to Meyers Nave for comprehensive development or updating of procurement policies and processes. For example, a Bay Area health care system preparing for compliance with California’s new seismic standards for hospitals engaged Meyers Nave to overhaul its system from the ground up, documenting new internal procurement processes and policies and providing guidance on how to successfully execute the new system.

Meyers Nave has assessed contract forms and recommended revisions for public entities of all types, and has developed contracting strategies, risk management strategies and re-usable standard contract forms for procurements of supplies, professional services and construction services on projects of various sizes. Our standard form agreements are used by scores of

cities, counties, school and college districts, water districts and special districts throughout the state.

Our broad experience also includes working with private entities on contracting and procurement matters, including vendor-side perspectives. For example, Meyers Nave advises the San Francisco Giants on contracting and procurement matters, including developing, reviewing and negotiating agreements for general contractor and other construction related professional services.

**PROFESSIONAL SERVICES AGREEMENTS**

Meyers Nave attorneys have prepared hundreds of consulting service agreements, including professional, skilled tradesmen and general service agreements for numerous engagements. We have prepared consulting agreements to retain architects, master planners, design engineers, project and construction managers, scheduling consultants, environmental and CEQA planners, peer-review engineers, on-call hauling and emergency services contracts.

**BID PROCESSES**

Our team assists with preparing and drafting:

- Prequalification questionnaires and RFPs
- Contracts for professional and other services, including construction management
- Terms and conditions
- Construction contract specifications, including Minority and Women Business Enterprise rules
- Bid protest rules, including cost recovery mechanisms

## Public Contracts

- Conceptual project planning
- Public-private partnerships
- Alternative delivery methods, including Construction Manager at Risk
- Green building and energy efficiency standards
- Environmental review
- Licensing, bonds and insurance
- Prequalification
- Drafting and review of bid documents
- Evaluating and awarding bids
- Bid protests and disputes
- Preparation and review of consulting contracts
- Resolution of change orders
- Contractor disputes
- Substitution of subcontractors
- Progress payment issues
- Final accounting and audits
- Stop notices and mechanics liens
- Claim resolution
- Delay and extra work claims
- Claims of imperfect specifications
- Claims on bonds and/or insurance
- Alternative dispute resolution
- Litigation and appeals
- Defect and warranty claims
- Prosecution of false claims

We review responses and conduct due diligence research on qualified proposers; develop scoring criteria in accordance with client objectives; create negotiation rules and processes for selection of top-tier professionals; assist staff in preparing interview questions; and negotiate specific changes in risk-shifting language, pricing, deliverables and compliance with client-mandated programs.

## TECHNOLOGY & EQUIPMENT CONTRACTS

We assist public agencies with the purchase of major software application systems and high-technology equipment. For example, our attorneys have advised on software licensing, the management of application service provider technologies, and the purchases of enterprise information technology suites, Voice over Internet Protocol systems, and cable television compression equipment.

We have prepared and reviewed procurement contracts for the purchase of specialized equipment, including hydropower turbines, replacement generator fan blades for a geothermal power plant, horizontal drilling equipment, and disinfection chemicals for a wastewater treatment plant.

## CONTRACTUAL LIABILITY ALLOCATIONS

We are well acquainted with all aspects of contractual and risk allocations and related legal limitations of California public agencies. On our client's behalf, we outline contracting and insurance strategies employed by contractors, designers, and public and private owners to manage and spread risk among project participants.

## PREVAILING WAGE COMPLIANCE

We advise our clients on the potential impacts of federal and state prevailing wage statutes and regulations, notably the Davis-Bacon Act and the California Labor Code, related to proposed transactions and public projects, including public-private partnerships. Our attorneys routinely counsel staff on prevailing wage compliance and procedures, and have

experience related to enforcement hearings before the California Department of Industrial Relations. We track current legislation, serve on advisory committees, and issue comments on proposed legislation.

## GREEN BUILDING AND SUSTAINABILITY

Our group advises public and private clients on the development of green building programs and sustainable construction practices, including energy efficiency measures and the use of recycled materials. We help draft and implement mandatory and incentive-based regulations requiring construction practices that exceed California's building and energy code standards.

## DESIGN-BUILD EXPERIENCE

Meyers Nave has worked on a number of design-build and design-bid-build construction projects for various clients, including community college educational and athletic buildings, public school campus facilities, hospitals, animal services facilities, community swimming pools, solar energy projects, recycling centers, solid waste digesters and wastewater treatment plants.

## DISPUTE RESOLUTION AND LITIGATION

With our in-depth public contract experience, we know which issues typically lead to disputes and claims, and will help mitigate such issues up front in the specifications for a project. We have learned to quickly identify contractor performance issues and have a comprehensive process for resolving issues immediately.

Although we emphasize and are skilled at avoiding and resolving disputes prior to and during projects, we also provide dispute resolution after completion, up to and including litigation and appeal. In addition to defending claims filed by contractors, construction managers, subcontractors, etc., our litigation team has been extraordinarily successful in recovering funds due to our clients on construction projects. We often deal with insurance and surety claims, and have secured insurance coverage and funds for settlement or project completion.