

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.

As clients modernize their facilities, our Public Contracts Practice Group concentrates on proactively responding to and resolving a whole host of issues that crop up—bidding process issues, delay and extra work claims, subcontractor substitutions, and more—to help move projects forward to successful completion. Our services encompass everything from providing advice on bid disputes to contract compliance and beyond.

The Meyers Nave team advises public entities at all stages of the construction and procurement process—from pre-project planning to project closeout and, if necessary, through litigation and appeals. We also represent our clients in claims resolution and alternative dispute procedures.

We possess complete knowledge of construction and procurement law and the interplay of these laws with the statutes, regulations and local ordinances governing public projects. These include the competitive bidding rules under the California Public Contract Code, California Environmental Quality Act (CEQA), prevailing wage rules under the Labor Code and Davis-Bacon Act, green building and energy standards, local hiring preferences and Disadvantaged Business Enterprise (DBE) rules, and Federal Transit Administration (FTA) regulations.

BID PROCESS

Our team assists with preparing and drafting:

- Prequalification questionnaires and requests for proposals (RFPs);
- Contracts for engineering design, architectural services and construction management;
- Front end specifications, including Division 00 and Division 01 documents;
- Terms and conditions;
- Construction contract specifications, including sections relating to Minority and Women Business Enterprise (MBE/WBE) rules;
- Bid protest rules, including cost recovery mechanisms.

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

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.

BOND AND AUDIT REQUIREMENTS

We help clients prepare and analyze surety bonds, review indemnity claims, and resolve work scope and design responsibility issues. We frequently work with surety companies and have made claims on performance bonds for defaulting contractors.

By assisting with audit preparations and findings, we strive to shield our clients and ensure that contractors comply with the terms and conditions of the specifications as well as applicable agreements and regulations.

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

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

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 state Department of Industrial Relations. We track current legislation, serve on legal advisory committees, and issue comments to legislators on proposed legislation.

CHANGE ORDERS AND PAYMENT DISPUTES

Working closely with clients and contractors to resolve change orders, we negotiate a release of claims related to delays, inefficiency, overhead costs and other project impacts to avoid change order work resurfacing as a basis for claiming additional compensation during project close-out. We understand the rules relating to prompt payment and have handled a number of claims for additional compensation based on imperfect specification, differing site conditions and extra work.

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 upfront in the specifications for a project. We have learned to quickly identify contractor performance issues and have evolved 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 various construction projects. We often deal with insurance and surety claims, and have secured insurance coverage and funds for settlement or project completion.

TECHNOLOGY & EQUIPMENT CONTRACTS

We have assisted 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 (VOIP) 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.

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 have helped draft and implement mandatory and incentive-based regulations requiring construction practices that exceed California's building and energy code standards.