



Steve Harris, President

Dave Thomas, Vice President

Bill Koponen, Secretary

Mike Hester, Treasurer

August 18, 2015

Jeff Pratt, Director
 Public Works/Road Commissioner
 800 S. Victoria Avenue
 Ventura, CA 93009

Sent via Certified Mail

Subject: Violation of the California Uniform Construction Cost Accounting Act
 Oxnard Area, Santa Clara Avenue Storm Drain Installation

Dear Mr. Pratt,

This letter is to serve as notice to you, per California Public Contract Code (PCC) Section 22043 (b) that we are filing a formal complaint with the California Uniform Construction Cost Accounting Commission that you are in violation of the Act. We assert that you have violated your force account limit of \$45,000 on the Santa Clara Avenue Storm Drain Installation project by not publicly declaring the intent to self-perform this work prior to the commencement of work, as required by PCC Section 22031 (e). We are requesting that the California Uniform Construction Cost Accounting Commission review this project.

The Construction Industry Force Account Council is a non-profit organization that represents members of the public works construction industry.

Sincerely,

Cathryn Hilliard
 Executive Director

cc: Michael Powers, County Administrative Officer



Steve Harris, President

Dave Thomas, Vice President

Bill Koponen, Secretary

Mike Hester, Treasurer

August 18, 2015

George Hicks, Chair
 California Uniform Construction Cost Accounting Commission
 c/o State Controllers' Office
 Local Government Policies Section
 P.O. Box 942850
 Sacramento, CA 94250

RE: County of Ventura
 Santa Clara Avenue Storm Drain Installation

Dear Chairperson Hicks and Commissioners:

The Construction Industry Force Account Council (CIFAC) is a non-profit organization that represents various members of the public works construction industry throughout California. We work to ensure compliance with the California Public Contract Code by public entities. Thus, we qualify as an interested party per the California Uniform Construction Cost Accounting Act requirements.

We request that the Commission review the County of Ventura, "Santa Clara Avenue Storm Drain Installation" project. It is our belief that they have exceeded their force account limit, as established in Public Contract Code Section 22032 (a). This violation occurred due to the Road Commissioner's failure to publicly declare that this work was to be performed by force account **prior** to commencing work. This is a requirement under PCC 22031 (e).

Here is the sequence of events:

- On April 20, 2015, CIFAC received a report, and photographs, of County of Ventura crews building a new culvert along Santa Clara Avenue at Eucalyptus Drive. It appears that the work began on April 15th with the installation of K-rail.
- Bacon spoke to Raul Gallo, Road Maintenance Engineering Manager, on April 20, 2015, and he confirmed the work in progress by county forces and said the work would take eight (8) weeks.
- Bacon contacted the County of Ventura again on April 21, 2015, and inquired if there was a Declaration of Intent to Perform Road Work for this project under Road Commissioner authority. The Management Assistant, PWA Transportation Dept., searched and could not locate the document.
- Bacon contacted them again on April 21, 2015 asking for the copy of the Declaration and was told by the Management Assistant, PWA Transportation Dept., it is "awaiting signature".
- When Bacon spoke to Raul Gallo, Road Maintenance Engineering Manager, on April 22, 2015 he said "I don't care" talk to my boss and his intent is to continue the work.
- On April 22, 2015, David Fleisch Transportation Department Director, had a conversation with Bacon stating possibilities of why the work was not declared. Bacon suggested an informal bid process (or formal, if over \$175,000) could be used for the work to be in compliance with CUCCAA.
- On April 26, 2015, David Fleisch, Transportation Department Director, said they pulled off the project and they are going to continue the work as noted on the Declaration of Intent to Perform Work that was dated on April 20, 2015. He admitted it was after the work began and he also stated "but they have now remedied it."

County of Ventura
 Santa Clara Avenue Storm Drain Installation-Formal Complaint
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- The Declaration of Intent to Perform Road Work was “dated” April 20, 2015, and actually “signed” on April 21, 2015, after the work started on April 15, 2015.
- The County of Ventura, Declaration of Intent to Perform Road Work states “**the following work is currently scheduled to begin May 4, 2015, on Santa Clara Avenue.**”
- On May 1, a report from the field listed K-rail and traffic control signs, service tanks, active stock piles of materials remained at the site and noted it looked like a project in progress. This work began on April 15, 2015, and was confirmed by a representative of the County as “in progress” on April 20, 2015.
- The Construction Costs noted on the Declaration is in the amount of \$160,000 which is above the force account limit of \$45,000.

It is our opinion that the County has not met the requirement of publicly declaring the work prior to the commencement, that they are thus by their own records in violation of their \$45,000 force account threshold. The intent of the Act and its requirements are to allow for equitable accounting and for transparency to the industry and the general public.

We have attached the County of Ventura, Declaration of Intent to Perform Road Work, dated April 20, 2015, and photographs that were received by Bacon on April 20, 2015 of the work already in progress. Please note the “Eucalyptus Drive” sign as it is mentioned in the Limits on the Declaration. We have also attached a copy of the complaint to the County of Ventura, sent via certified mail as required. Please feel free to contact me (800) 755-3354 or Shari Bacon, Southern Region Field Representative (951) 214-9196, should you have any questions. We appreciate the Commission’s attention to this complaint.

Sincerely,



Cathryn Hilliard
 Executive Director
 Construction Industry Force Account Council (CIFAC)

Attachments: Notice of Formal Complaint to CUCCAC addressed to the County of Ventura
 8 photographs of the Santa Clara Avenue Storm Drain Installation received on April 20, 2015
 County of Ventura, Declaration of Intent to Perform Road Work, dated April 20, 2015

county of ventura

PUBLIC WORKS AGENCY
JEFF PRATT
 Agency Director

August 31, 2015

George Hicks, Chair
 California Uniform Construction Cost Accounting Commission
 c/o State Controller's Office
 Local Government Policies Section
 P.O. Box 942850
 Sacramento, CA 94520

Watershed Protection District
 Tully K. Clifford, Director

Transportation Department
 David L. Fleisch, Director

Engineering Services Department
 Herbert L. Schwind, Director

Water & Sanitation Department
 David J. Sasek, Director

Central Services Department
 Janice E. Turner, Director

**SUBJECT CONSTRUCTION INDUSTRY FORCE ACCOUNT COUNCIL
 COMPLAINT REGARDING THE COUNTY OF VENTURA
 SANTA CLARA AVENUE STORM DRAIN INSTALLATION**

Dear Chairperson Hicks and Commissioners:

This letter is in response to the Construction Industry Force Account Council (CIFAC) complaint of violation by the County of Ventura Public Works Agency (PWA) of the California Uniform Construction Cost Accounting Act (CUCCAA) dated August 18, 2015 and agendized for your September 9, 2015 meeting.

The project in question is the Santa Clara Avenue Storm Drain Installation. This is work in preparation for a federally funded bicycle and pedestrian project expected to be out to bid in June, 2016. The storm drain installation replaced an existing open drainage ditch to easier facilitate the construction of the bicycle lanes, and was not included in the funded scope of the Highway Safety Improvement Fund funded project. Further, we wanted to complete these drainage modifications prior to the expected weather for the 2015/16 winter season. The work was within the capabilities of the Public Works Agency Transportation Department (PWATD).

In July, 2014, the PWATD Director, David Fleisch, worked with the County of Ventura County Counsel's office to ensure that the PWATD declaration of intent procedure was in accordance with the CUCCAA. At this time, several projects were noticed. Projects noticed can be found at: <http://pwa.ventura.org/transportation-department/transportation-active-projects>. This project was originally scheduled on the notice list dated July 21, 2014 by the PWATD Operations and Maintenance Division Manager Mr. Raul Gallo, but was removed by Mr. Fleisch because it was not planned to begin until 6 months after the other projects. Another notice was posted on April 14, 2015, the day before this project was to begin, which is when the project should have been noticed. However, it was in advertently left off the declaration.

Work began on Wednesday April 15, 2015 with 148 labor hours expended to mobilize, and install K-rail and other traffic-control devices. No work was completed Thursday or



California Uniform Construction Cost Accounting Commission
August 31, 2015
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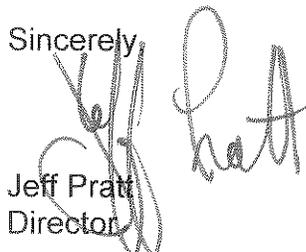
Friday. On Monday, April 20, 2015, the crew was on site to begin work. As stated in the complaint, Mr. Gallo was contacted by Ms. Shari Bacon from CIFAC regarding the project, informing him that it had not been noticed. Mr. Gallo consulted with Mr. Fleisch, and it was determined that the project had in fact not been noticed, although at the time the project began, they both thought it had been. Mr. Fleisch directed that the project be stopped until appropriate options and remedies could be considered. The crew was pulled from the site and no work was done (except one person out on the site on April 21 to review materials at the site and ensure the site was safe and organized) until May 5, 2015.

Between April 20 and April 24, Mr. Fleisch spoke with Ms. Bacon and received her input regarding CIFAC's concerns and desires and consulted with the County Counsel's office to request research on legal requirements and remedies. Also, Mr. Fleisch had a Declaration of Intent to Perform Work for this project prepared and signed by the PWA Director/Road Commissioner Jeff Pratt. It was e-mailed to Ms. Bacon on April 21, 2015 at 3:17 pm and posted on April 21, 2015 at 3:55 pm. Upon completion of the review with County Counsel, a determination was made that no specific remedy is required if a declaration of intent is not noticed properly. With this in mind, on Monday, April 27, Mr. Fleisch contacted Ms. Bacon and informed her that the County would commence work again on the project the week of May 4, 2015, having now properly noticed the project.

There were 238 labor hours expended (mobilization, installation of K-rails and traffic-control devices, and material preparation) on April 15 and 20, and 10 hours expended on April 21 to review materials at the site and ensure the site was safe and organized. No other work was performed until the project was restarted on May 5, 2015. The cost for the effort expended between April 15 and April 21 was \$19,951.37, which includes labor, heavy equipment, and miscellaneous equipment rentals. This is less than the \$45,000 limit. Once properly noticed, the project was restarted and completed on August 5, 2015.

The County of Ventura Public Works Agency takes its responsibilities seriously regarding compliance with all local, state, and federal laws and regulations. Attached is the PWATD internal process which was reviewed and updated after this incident to ensure appropriate declarations are completed and posted prior to work being performed.

Sincerely,


Jeff Pratt
Director

cc: Michael Powers, CEO

Attachment: PWATD internal declaration process

TRANSPORTATION DEPARTMENT

Effective: 08-25-15

Name of Process: Declaration/Notice of Intent to Perform Work (O&M)

Revised: 08-25-15

Drafted: 04-14-2015

Description of Process

Step	Responsible Party	Description
1	Engineering Manager – Operations & Maintenance	Initiates the draft Notice of Intent to Perform Work utilizing the appropriate template: <u>Declaration of Intent to Perform Road Work</u> <ul style="list-style-type: none"> Public projects as defined below listed in the draft are greater than \$45,000. Saves a draft of the letter (Word file) as well as any attachments in the appropriate file (see #11 below). Sends OAIII/MAIII a hyperlink of the draft Declaration.
2	Office Assistant III (SOY)/ Management Assistant III	1. Receives hyperlink of the draft from the Originator. Turn tracking on, proof, and make any changes that are necessary to draft. Add in dates construction will begin for each project if available. 2. Send back to Originator via hyperlink to review changes.
3	Engineering Manager – Operations & Maintenance	Reviews draft, inserts dates for construction if not already given; either accepts or makes other changes. Sends back to OAIII/MAIII via hyperlink for finalization.
4	OA III (SOY)/ MA III	OAIII/MAIII sends hyperlink of Declaration to PWATD Director for review.
5	PWATD Director	Approves for signature by PWA Director.
6	MA III	Prints out Declaration and sends to PWA Director (Jeff Pratt/via Clerical Services Manager Glenna Inouye) for signature.
7	PWA Director	Signs and returns to MA III (via Glenna Inouye)
8	MA III	Scans signed hard copy of Declaration and saves to appropriate file.
9	MA III	Posts on the <u>PWATD website</u> : <ul style="list-style-type: none"> Send Agnes Kish (Engineering Technician IV) a link to the scanned Declaration for posting to website Post for at least 5 work days prior to start of new construction and the first day of work Declaration is moved to website archives after first day of work starts
10	MA III	Posts signed hard copy of Declaration in the Hall of Administration Bulletin Board Glass Case in the main entryway: <ul style="list-style-type: none"> Gets keys from CSD OA IV (CJ Farrar) for outside bulletin board Post for at least 5 work days prior to start of new construction and through the first day of work
11		Save the final, signed letter as a PDF on T drive under the specific road file. See <u>T:\Roads - Areas - Cities\Roads</u> If more than one road is on the notice, save to the road with largest dollar amount associated with the construction being performed.

For the definition of public projects and construction, see below (in addition to the AB720/PCC language), which is extracted from the California Uniform Construction Cost Account Commission Manual (http://www.sco.ca.gov/files-ard-local/cuccac_cuccac_man.pdf)

- 22002
Definitions
- (a) "Public agency" for purposes of this chapter, means a city, county, city and county, including chartered cities and chartered counties, any special district, and any other agency of the state for the local performance of governmental or proprietary functions within limited boundaries. "Public agency" also includes a nonprofit transit corporation wholly owned by a public agency and formed to carry out the purposes of the public agency.
- (b) "Representatives of the construction industry" for purposes of this chapter, means a general contractor, subcontractor, or labor representative with experience in the field of public works construction.
- (c) "Public project" means any of the following:**
- (1) Construction, reconstruction, erection, alteration, renovation, improvement, demolition, and repair work involving any publicly owned, leased, or operated facility.**
 - (2) Painting or repainting of any publicly owned, leased, or operated facility.
 - (3) In the case of a publicly owned utility system, "public project" shall include only the construction, erection, improvement, or repair of dams, reservoirs, powerplants, and electrical transmission lines of 230,000 volts and higher.
- (d) "Public project" does not include maintenance work. For purposes of this section, "maintenance work" includes all of the following:**
- (1) Routine, recurring, and usual work for the preservation or protection of any publicly owned or publicly operated facility for its intended purposes.
 - (2) Minor repainting.
 - (3) Resurfacing of streets and highways at less than one inch.**

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California Uniform Construction Cost Accounting Commission



- George Hicks
Director of Public Works
City of Fairfield
Cities
Chair-CUCCAC
- Linda Clifford
Chief Financial Officer
C. C. Myers, Inc.
Contractors State License Board
Appointed
Vice Chair-CUCCAC
- Guiselle Carreon
Commercial Warrants &
Accounts Payable Manager
San Diego County Office of
Education
School Districts
Secretary-CUCCAC
- Jeff Armstrong
Apprenticeship Director
Northern CA Laborers' Union
Labor
- Eddie Bernacchi
President
NECA, Politico Group
Subcontractors
- Robert R. Campbell
Auditor-Controller
County of Contra Costa
Counties
- Will Clemens
Public Works Dept. Administrator
County of San Luis Obispo
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- David Cruce
Area Manager
Papich Construction Inc.
General Contractors
- Cesar Diaz
Legislative Director
State Building and Construction
Trades Council
Labor
- Lisa Ekers
Port Director
Santa Cruz Harbor
Special Districts
- Steven L. Hartwig
Director of Public Works
City of Vacaville
Cities
- Michael R. Hester
President
McGuire and Hester
Subcontractors
- Nathaniel Holt
Director of Purchasing and
Contracts
Pomona Unified School District
School Districts
- David A. McCosker
Chairman of the Board
Independent Construction Co.
General Contractors

September 9, 2015

Mr. Jeff Pratt
Director of Public Works
Ventura County
800 S. Victoria Avenue
Ventura, CA 93009

RE: Commission Findings Regarding Complaint Review

Dear Mr. Pratt:

On September 9, 2015, the California Uniform Construction Cost Accounting Commission (Commission) held a hearing to review a complaint filed with the Commission by the Construction Industry Force Account Council (CIFAC) against the County of Ventura regarding the Santa Clara Avenue Storm Drain Installation Project (Project). In their complaint, CIFAC alleged that the County of Ventura violated section 22031(e) of the Public Contract Code by failing to publicly declare your intention to use the alternative procedures allowed by PCC 22031 prior to the start of construction on the Project.

After deliberation of the written evidence and oral testimony provided by Mr. David Fleisch of your staff, the Commission determined that Ventura County did violate the Uniform Public Construction Cost Accounting Act (Act) by failing to publicly declare your intention to use the County Road Commissioner exemption for new construction allowed by PCC 22031 prior to commencing work. According to our records, this is the first violation of the Act by Ventura County within the past ten-year period.

Pursuant to PCC section 22044(b), the County of Ventura "...shall present the Commission's findings to its governing body and that governing body shall conduct a public hearing with regard to the Commission's findings within 30 days of receipt of the findings" by mail. A copy of this letter shall be made part of the record transmitted to the governing body in support of the public hearing.

Upon conclusion of the public hearing on this matter, please submit a copy of the County of Ventura governing board's meeting minutes by mail to:

California Uniform Construction Cost Accounting Commission
c/o State Controller's Office
Division of Accounting and Reporting
Local Government Policy Section
P.O. Box 942850
Sacramento, California 94250

California Uniform Construction Cost Accounting Commission



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Pomona Unified School District
School Districts
- David A. McCosker
Chairman of the Board
Independent Construction Co.
General Contractors

I would like to thank you and Mr. Fleisch for your cooperation and professionalism in responding to the Commission regarding this matter. The Commission was extremely impressed with the written procedures prepared by your staff to be used to prevent a similar noticing oversight from occurring in the future. With Mr. Fleisch's permission, the Commission will use these procedures as recommendations for other agencies to utilize to help ensure notice is published prior to commencement of work on county road commissioner work in other jurisdictions.

If you have any questions regarding this matter, please contact me at (707) 428-7493.

Sincerely,

GEORGE HICKS, Chair

- cc: Mr. Jeff Pratt (via email)
Mr. David Fleisch (via email)
Anita Dagan, State Controller's Office (via email)
Linda Clifford, Vice Chair (via email)

LEROY SMITH
COUNTY COUNSEL

MICHAEL G. WALKER
CHIEF ASSISTANT

ALBERTO BOADA
PRINCIPAL ASSISTANT



COUNTY COUNSEL

COUNTY GOVERNMENT CENTER
800 SOUTH VICTORIA AVENUE, L/C #1830
VENTURA, CALIFORNIA 93009
PHONE NO. (805) 654-2580
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Emily T. Gardner	Jaelyn Smith
Alison L. Harris	Matthew A. Smith
Cynthia Krause	Linda L. Stevenson
Ronda McKaig	Thomas W. Temple
Hene F. Mickens	Eric Walts
Lori A. Nemiroff	Anthony A. Zepeda

September 21, 2015

California Uniform Construction Cost
Accounting Commission
State Controller's Office
Division of Accounting and Reporting
Local Government Policy Section
Post Office Box 942850
Sacramento, California 94250

Re: Commission Findings Regarding Complaint by Construction Industry Force
Account Council (CIFAC) Against the County of Ventura

Dear Commissioners:

Your Commission's findings regarding CIFAC's complaint, as described in your September 9, 2015, letter to Jeff Pratt, are unauthorized by law and exceed your Commission's jurisdiction. The County of Ventura therefore requests that you withdraw your September 9, 2015, letter and enter new findings against CIFAC.

A. SUMMARY OF FACTS

On April 20, 2015, CIFAC first complained to the County about force account work that had begun on Santa Clara Avenue without the County's having posted a public declaration as required by Public Contract Code section 22031, subdivision (g).^{1/} (CIFAC complaint, August 18, 2015, p. 1.) CIFAC then spoke with County representatives about

^{1/}All further undesignated statutory references will be to the Public Contract Code.

California Uniform Construction Cost
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this issue on multiple occasions on April 21 and April 22, 2015. (*Ibid.*) The County stopped work on this project, posted the required declaration, and resumed work. (*Ibid.*)

CIFAC then waited approximately four months, until August 18, 2015, before it requested your Commission to review the matter. (CIFAC complaint, p. 1.) In its request for review, CIFAC made a single claim, asserting that the County had violated section 22031, subdivision (e):

“It is our belief that they have exceeded their force account limit, as established in Public Contract Code Section 22032(a). This violation occurred due to the Road Commissioner’s failure to publicly declare that this work was to be performed by force account prior to commencing work. This is a requirement under PCC 22031(e). [*Sic.*]”²¹ (*Ibid.*, emphasis removed.)

Your Commission found that the County “did violate the Uniform Public Construction Cost Accounting Act (Act) by failing to publicly declare your intention to use the County Road Commissioner exemption for new construction allowed by PCC 22031 prior to commencing work.” (Commission letter, September 9, 2015, p. 1.) Your Commission’s September 9 letter does not explain how a failure to post a public declaration constitutes one of the three permissible grounds for review under section 22042.

Your Commission directed the County to present the September 9 findings to the County’s Board of Supervisors within 30 days, citing section 22044, subdivision (b). But the September 9 letter does not explain how a failure to post a public declaration is subject to any of the requirements in section 22044, subdivision (b).

²¹ The County assumes that CIFAC intended to cite section 22031, subdivision (g), instead of subdivision (e). Subdivision (e) contains no public declaration requirement and applies only to a county with a population below 50,000. Ventura County, in fact, has a population approximately 17 times that figure. (Census Bureau, 2014 estimated population: 846,178. See <http://quickfacts.census.gov/qfd/states/Q6/Q6111.html>, as of September 16, 2015.)

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B. YOUR COMMISSION'S THREE ERRORS

In receiving CIFAC's complaint and issuing its findings, your Commission has committed three serious legal errors that may be corrected only by withdrawing your September 9 letter and replacing it with findings against CIFAC.

1. CIFAC Violated the Eight-Day Deadline in Section 22043

CIFAC's letter requesting your Commission review this matter was nearly four months late. Once CIFAC complained to the County about the failure to publicly declare, CIFAC had eight days to request review by your Commission. (§ 22043, subd. (b).) CIFAC first complained to the County on April 20, 2015, and discussed the matter with County personnel as late as April 22, 2015. (CIFAC complaint, p. 1.) Giving CIFAC the benefit of the doubt, CIFAC then had until April 30—eight days after April 22—to request review by your Commission. (§ 22043, subd. (b).) But CIFAC, without explanation or excuse, waited until August 18, 2015, to request review by your Commission. (CIFAC complaint, p. 1.)

CIFAC violated the Act's simple eight-day deadline, and by doing so deprived your Commission of jurisdiction over CIFAC's complaint. CIFAC's failure to comply with the statutory limitations period is fatal. A violation of the statute of limitations deprives an administrative body of jurisdiction and requires dismissal of the complaint. (*Coachella Valley Mosquito and Vector Control Dist. v. California Public Employment Relations Bd.* (2005) 35 Cal.4th 1072, 1082 [expiration of limitation period deprives board of authority to act].) The purposes of limitations statutes are to ensure complainants do not sit idly on their rights and to protect defending parties from having to contest stale claims. (*Jolly v. Eli Lilly & Co.* (1988) 44 Cal.3d 1103, 1112.) It is obvious, from other provisions in the Act, that a four-month delay is unreasonable. For example, under section 22044, when the Commission finds that an agency has improperly rejected all bids and concluded that work can be done less expensively with its own forces, the Commission must require the agency to either abandon the project or award the project to the lowest bidder. (§ 22044, subd. (a).) The eight-day limitations period in section 22043 thus serves to ensure public agency projects are not unduly delayed. Even on the claim alleged here, the remedy is for the agency to conduct a public hearing within 30 days; there is no excuse for CIFAC to have waited nearly four months before bringing this matter to your Commission. (§ 22044, subd. (b).)

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CIFAC will likely claim that the eight-day period only began to run when it submitted its August 18, 2015, letter to the County, but this claim does not withstand scrutiny. The Act says the eight-day period begins to run when “an interested party formally complains to the public agency.” (§ 22043.) CIFAC “formally complain[ed]” to the County in April, when it spoke to County officials, notified them of the public declaration requirement, requested a copy of the declaration, and claimed that the contract needed to be put out to informal bid. (CIFAC complaint, p. 1.) The Act does not define its term, “formally complains,” but under any reasonable definition, CIFAC’s detailed April complaints would qualify as “formal.” They were “formal” enough to cause the County to halt work and remedy the error. The Act does not require a complaint to be in writing to be “formal,” and there is no question that CIFAC was making an actual complaint based on its understanding of statutory requirements. It would be strange indeed if the Act allowed an interested party to make the sorts of detailed complaints that CIFAC made in April but required no action by the public agency until CIFAC, months later, managed to put them in writing. CIFAC’s delay defeats the purpose of the Act, which includes enforcement of accounting standards. (§ 22001.) A four-month delay, in light of the public’s need for public works projects to be completed in a timely fashion, is unreasonable. CIFAC’s April 20, 21, and 22, 2015, complaints to the County were formal, and the eight-day limitations period began then.

In sum, your Commission had no authority to review this matter after the April 30, 2015, deadline had passed, and your doing so was beyond your Commission’s jurisdiction and therefore a void act.

2. Your Commission Has Exercised a Power It Does Not Have

Even leaving aside CIFAC’s violation of the eight-day deadline, your Commission does not have the power to review every violation of the Act. The Act gives your Commission the power to review only three types of cases: (1) when the agency has rejected all bids and claimed the work can be done less expensively with its own forces; (2) where an entity exceeded its force account limits; and (3) where the work has been improperly classified as maintenance. Yet your Commission took it upon itself to review this matter, even though none of these three things had occurred. Your Commission had no power to do so.

Your Commission, like all administrative bodies, has only the power that is granted to it by the Legislature. Where the Legislature has created an administrative body

California Uniform Construction Cost
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and given it power to act, that power is strictly limited by the creating legislation. (*Ferdig v. State Personnel Bd.* (1969) 71 Cal.2d 96, 103 [administrative agencies have only those powers conferred on them].) An administrative agency has no inherent power to act, but instead may exercise only those powers conferred by the Legislature. (*Security Nat. Guar., Inc. v. California Coastal Com'n* (2008) 159 Cal.App.4th 402, 419.) Any act by an administrative body that exceeds the powers granted to it is unlawful and void. (*Ferdig v. State Personnel Bd.*, *supra*, 71 Cal.2d at p. 104.)

Nowhere in the Act has the Legislature given your Commission the power to review violations of section 22031, subdivision (g). And none of the three cases described in section 22042 applies to the County in this case.

CIFAC claimed only that the County exceeded its force account limits, invoking your Commission's authority to review the case under section 22042, subdivision (b), but this is impossible. (CIFAC complaint, p. 1.) Section 22042, subdivision (b), does not apply here. The County's project was not undertaken using any of the procedures in the Act. The County, in fact, exercised its authority to proceed outside the Act, using the procedures in Article 25 of the Public Contract Code. This is explicitly allowed by section 22031, subdivision (b), and is the only action for which a public declaration is required under subdivision (g) of that same section. The Act's only limitation on work performed under Article 25 is that "the total value of the new road construction and the road reconstruction . . . during a fiscal year does not exceed 30 percent of the total value of all work performed by force account . . .," but there is no evidence to show that—and the County has not—exceeded this limit. (§ 22031, subd. (b)(2).) The County, in other words, was not subject to the \$45,000 limit imposed by the Act. (§ 22032, subd. (a).)

CIFAC has attempted to bootstrap this case into your Commission's jurisdiction by claiming that a failure to declare under section 22031, subdivision (g), is the same as exceeding force account limits under section 22032, subdivision (a). Again, this is impossible: the force account limits in the Act did not apply to this project.

Thus, even though the County concedes that its posting of the public declaration did not comply with the literal terms of section 22031, subdivision (g), that noncompliance is outside your Commission's purview. That the Legislature saw fit to give your Commission some authority under the Act does not mean your Commission has authority to address all violations of the Act. (*Security Nat. Guar., Inc. v. California Coastal Com'n*, *supra*, 159 Cal.App.4th at p. 419 ["that an agency has been granted some

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authority to act within a given area does not mean that it enjoys plenary authority to act in that area”].) Your commission’s authority is limited to review of only the three types of cases listed in section 22042.

The Legislature, just this year, has made this limitation doubly clear. Senate Bill 184, recently signed by the Governor and effective as of January 1, 2016, adds to the Act a fourth type of case that your Commission may review: where “the public agency is not in compliance with Section 22034.” (Sen. Bill 184 (2015B2016 Reg. Sess.) § 32.) This addition illustrates the Legislature’s intent to allow your Commission to review only those cases listed in section 22042. If your Commission had the authority to enforce all provisions of the Act, this addition would have been unnecessary. Until the Legislature explicitly authorizes your Commission to enforce section 22031, subdivision (g), your Commission’s authority is limited to the three types of cases listed in section 22042 (and, as of next year, in the new section 22042.5). The County’s case, being none of these, is beyond your Commission’s authority to enforce.

Therefore, your Commission has exceeded its authority under the Act, and your review of CIFAC’s complaint is unlawful and void.

3. Your Commission Has No Power to Impose a “Strike” Against the County

Because your Commission’s review of this matter was beyond the powers granted by the Act, your Commission has no authority either to demand the County notify its Board of Supervisors or to find that the County has suffered one of the three “strikes” the Act imposes on violators. As discussed above, your Commission lacked jurisdiction over this matter, both because CIFAC violated the eight-day deadline and because the County’s violation of section 22031, subdivision (g), is not within your Commission’s power to review. Your Commission therefore had no power to impose the remedies described by the Act. Where an administrative body has acted beyond its authority, any remedy ordered by that body is void. (*Ferdig v. State Personnel Bd.*, *supra*, 71 Cal.2d at p. 104.) A court will refuse to enforce your Commission’s void act and may in fact nullify or rescind it. (*Aylward v. State Bd. of Chiropractic Examiners* (1948) 31 Cal.2d 833, 839; *Department of Parks & Recreation v. State Personnel Bd.* (1991) 233 Cal.App.3d 813, 824.) An administrative agency that acts in excess of its jurisdiction is subject to a writ of mandate. (Code Civ. Proc., § 1094.5, subd. (b) [writ of mandate extends to question whether agency has proceeded in excess of jurisdiction].)

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C. THE COUNTY'S CLAIMS ARE NOT WAIVED

Although the County is raising the above claims for the first time only after your Commission heard this matter, the County's claims are not waived, for the simple reason that your Commission's unauthorized acts are not waivable. When a body acts outside of its subject-matter jurisdiction, or exercises authority it does not have, that error is never waived. (*Young v. City of Los Angeles* (1927) 86 Cal.App. 13, 17 [lack of subject-matter jurisdiction cannot be waived, and failure to object cannot confer subject-matter jurisdiction]; *Department of Parks & Recreation v. State Personnel Bd.*, *supra*, 233 Cal.App.3d at p. 824 [acts in excess of jurisdiction are void and unenforceable].) Indeed, it is precisely this principle that enables your Commission to revisit this matter, even after having ruled on it. Ordinarily your Commission would have no authority to re-examine its prior order. (*Heap v. City of Los Angeles* (1936) 6 Cal.2d 405, 407 [commission had no jurisdiction, after hearing matter, to retry it and enter different finding].) But here, where your action is void and unenforceable, the rule points the other way:

“Implicit in the cases denying a board's power to review or re examine a question, however, is the qualification that the board must have acted within its jurisdiction and within the powers conferred on it. Where a board's order is not based upon a determination of fact, but upon an erroneous conclusion of law, and is without the board's authority, the order is clearly void and hence subject to collateral attack, and there is no good reason for holding the order binding on the board.” (*Aylward v. State Bd. of Chiropractic Examiners*, *supra*, 31 Cal.2d at p. 839, emphasis added.)

The County has not waived its claims in this case.

Because your Commission's powers do not extend to enforcing the public-declaration provision in section 22031, subdivision (g), your Commission's attempt to enforce that provision against the County must be vacated. Therefore, the County requests that your Commission withdraw its September 9, 2015, letter and issue a new letter finding that CIFAC's complaint was late and unfounded and that the County has not, as alleged, violated any portion of the Act subject to your Commission's review.

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If your Commission is unable to grant the County's request without a hearing, the County requests this matter be placed on your Commission's agenda at the soonest convenient time to consider the claims made in this letter.

Very truly yours,

A handwritten signature in black ink, appearing to read 'TWT', with a large, sweeping flourish above the letters.

THOMAS W. TEMPLE
Assistant County Counsel

TWT:sg

pc: Jeff Pratt, Director, Public Works Agency
Construction Industry Force Account Council

county of ventura

PUBLIC WORKS AGENCY
JEFF PRATT
Agency Director

September 24, 2015

California Uniform Construction Cost Accounting Commission
State Controller's Office
Division of Accounting and Reporting
Local Government Policy Section
P.O. Box 942850
Sacramento, CA 94250

Watershed Protection District
Tully K. Clifford, Director

Transportation Department
David L. Fleisch, Director

Engineering Services Department
Herbert L. Schwind, Director

Water & Sanitation Department
David J. Sasek, Director

Central Services Department
Janice E. Turner, Director

**RE: COMMISSION FINDINGS REGARDING COMPLAINT BY
CONSTRUCTION INDUSTRY FORCE ACCOUNT COUNCIL (CIFAC)
AGAINST THE COUNTY OF VENTURA**

Dear Commissioners:

Your Commission's findings regarding CIFAC's complaint, as described in your September 9, 2015, letter to me have been addressed by our County Counsel in a letter to you dated September 21, 2015.

No further action is anticipated by the Ventura County Public Works Agency.

Cordially,



Jeff Pratt
Director
Public Works Agency

ec: Tom Temple, County Counsel

