

# California Uniform Construction Cost Accounting Commission

## Meeting Agenda

August 14, 2014  
10:00AM – 1:00PM

### Locations

California State Controller's Office  
300 Capitol Mall, 6<sup>th</sup> Floor Terrace Room 635  
Sacramento, CA 95814

Santa Cruz Harbor  
135 5<sup>th</sup> Avenue  
Santa Cruz, CA 95062

Teleconference Number: (877) 581-9247  
Participation Code: 221558

### Attendance

<i>California Uniform Construction Cost Accounting Commission</i>		
<i>Name</i>	<i>Position</i>	<i>Representing</i>
George Hicks, Chair	Director of Public Works	City of Fairfield (Cities)
Linda Clifford, Vice Chair	Chief Financial Officer	C.C. Myers, Inc. (Contractors State License Board)
Guiselle Carreon, Secretary	Purchasing Director	San Diego County Office Education (School Districts)
Jeff Armstrong	Apprenticeship Director	Northern California Laborers' Union (Labor)
Eddie Bernacchi	President	Politico Group (Subcontractors)
Robert Campbell	Auditor-Controller	County of Contra Costa (Counties)
Will Clemens	Public Works Department Administrator	County of San Luis Obispo (Counties)
Cesar Diaz	Legislative Director	State Building and Construction Trades Council (Labor)
William R. Dildine		Subcontractors
Lisa Ekers	Port Director	Santa Cruz Harbor (Special Districts)
Steven L. Hartwig	Director of Public Works	City of Vacaville (Cities)
Nathaniel Holt	Director of Purchasing and Contracts	Pomona Unified School Districts (School Districts)
David A. McCosker	Chairman of the Board	Independent Construction Co. (General Contractors)

<i>State Controller's Office Staff</i>		
<i>Name</i>	<i>Position</i>	<i>Representing</i>
Anita Dagan	Manager	County Policy Section
Jim Reisinger	Supervisor	County Policy Section
Lili Apgar	Fiscal Analyst	County Policy Section
Gabriel Peti	Fiscal Analyst	County Policy Section

## **Meeting Agenda**

- 1. Call to Order**
- 2. Introductions**
- 3. Oath of Office**
  - a. Newly Appointed Commissioners.
    - i. Mr. Steven L. Hartwig has been appointed to represent cities.
    - ii. Mr. Nathaniel Holt has been appointed to represent school districts with an average daily attendance greater than 25,000.
- 4. Approval of the Minutes for the meeting of April 14, 2014 (Refer to attachment Item 4)**
- 5. Commission Update (Refer to attachment Item 5)**
  - a. Report on new participating agencies.
  - b. Funding update.
- 6. Public Comment**
- 7. Staff Comment/Requests**
  - a. Special Presentation to outgoing Commissioner Dildine.
- 8. Commissioner Comments/Requests/Questions**
- 9. Old Business (Refer to attachment Item 9)**
  - a. Public Outreach Welcome Letter to new participating agencies.
  - b. Latest Policies and Procedures Manual Revision Update.
- 10. New Business (Refer to attachment Item 10)**
  - a. CIFAC's complaint against the County of Sonoma for project improvements to the main Adult Detention Facility (MADF) and kitchen.
  - b. CIFAC and Calleguas Municipal Water District requests to amend the manual language for informal bidding lists.
  - c. CIFAC's request for clarification on use of job order contracting and informal bidding procedures interactively.
  - d. Commission Vacancies.
  - e. Selection of new Chair for the Commission.
- 11. Annual Report to the Legislature**
  - a. Annual Report: The report to the Legislature for the year ending 06/30/14 is due.
- 12. Next Meeting**
- 13. Adjournment**

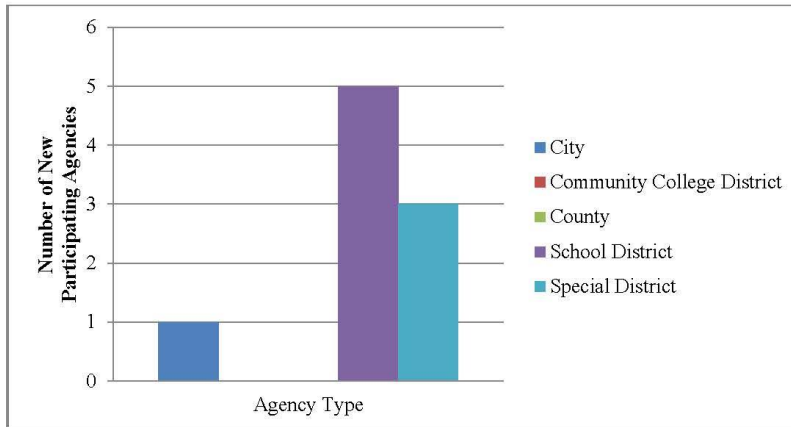
If you would like further information regarding this meeting or require special accommodation for attending this meeting, please contact:

**State Controller's Office  
Local Government Programs and Services  
Divisions Local Government Policy Section  
Local Gov Policy@sco.ca.gov**

**Commission Update**  
For period April 1 – July 31, 2014

5a. Report on new participating agencies.

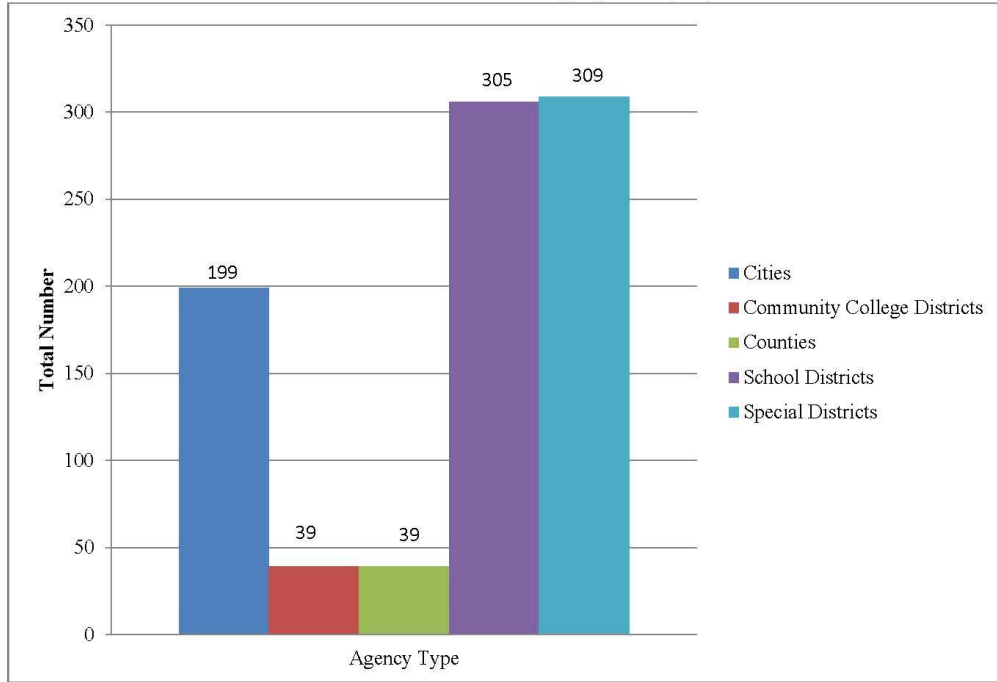
Nine (9) new agencies have opted into the UPCCAA, bringing the number of agencies participating in the Act to 891. Reconciliation of participating agencies is in progress by SCO.



	Agency	Date Opted In	Agency Type
1	Kern Sanitation Authority	4/8/2014	Special District
2	Ford City-Taft Heights Sanitation District	4/8/2014	Special District
3	City of South Lake Tahoe	4/15/2014	City
4	Russian River Recreation and Park District	5/1/2014	Special District
5	Blochman Union School District	5/13/2014	School District
6	Alhambra Unified School District	5/14/2014	School District
7	San Leandro Unified School District	5/20/2014	School District
8	Exeter Unified School District	6/11/2014	School District
9	Inglewood Unified School District	6/27/2014	School District

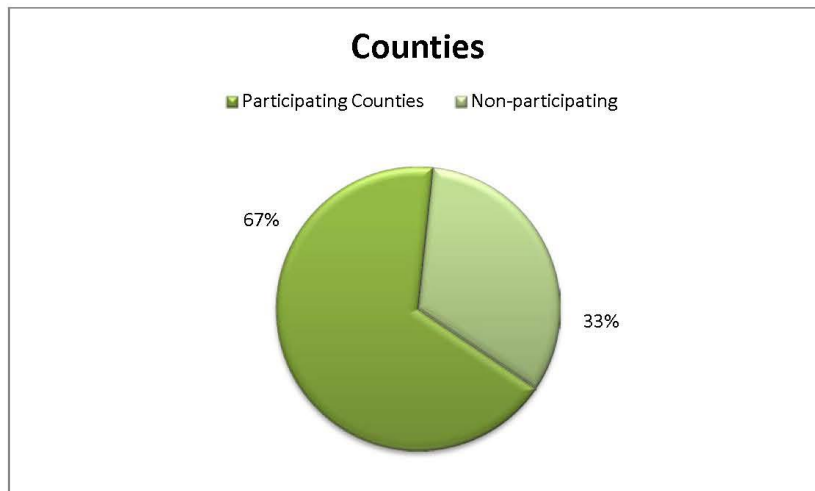
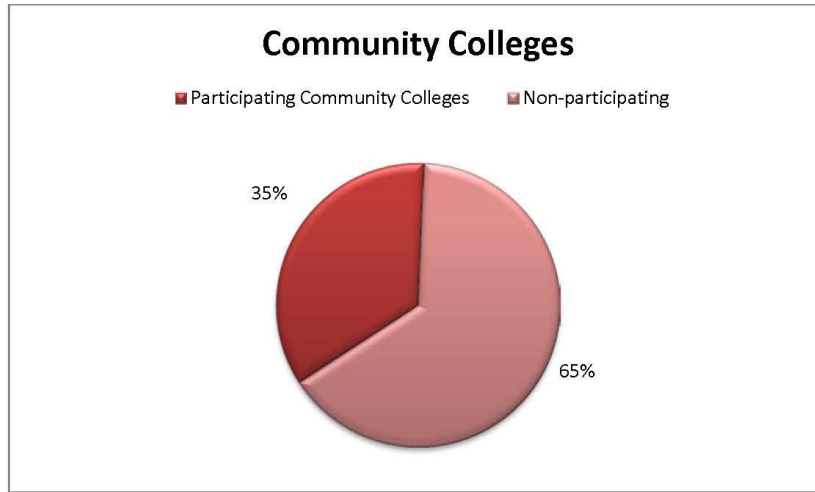


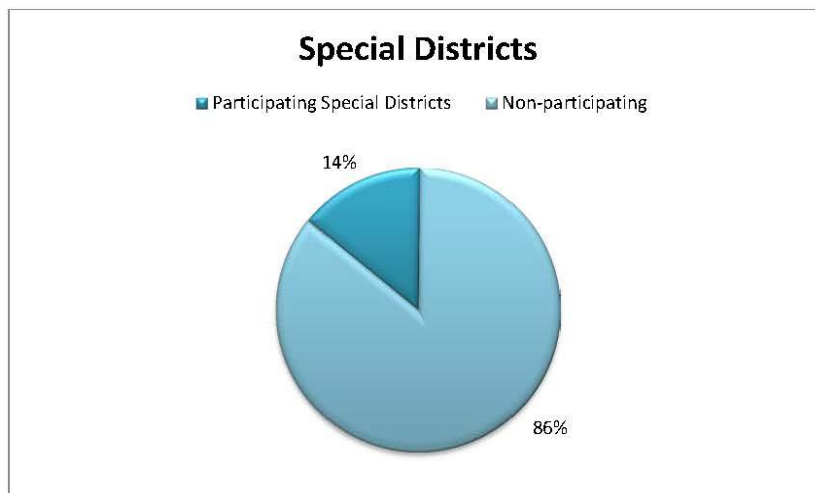
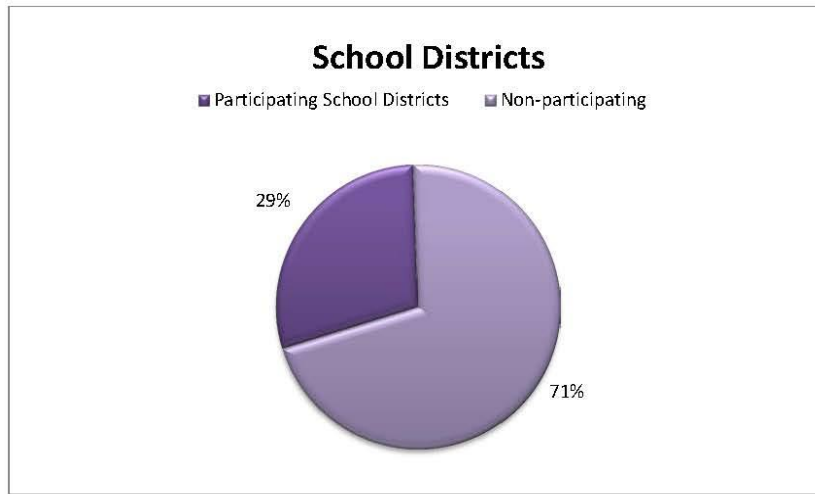
Total Participating Agencies (892)



Cities







5b. Funding update.

The Commission has \$4,872.39 of unrestricted donations available for its use.

	<b>Conditional</b>	<b>Unconditional</b>	<b>Total</b>
Beginning Balance 4/1/2014	\$ -	\$ 5,472.49	\$ 5,472.49
Expenditures			
Travel Expense Claims	\$ -	\$ (600.10)	\$ (600.10)
Ending Balance 07/31/2014	\$ -	\$ 4,872.39	\$ 4,872.39

## Old Business

## 9a. Public Outreach Welcome Letter.

Welcome letters have been sent to 17 new agencies that have opted into the UPCA for the period January 1 to July 31, 2014.

	<b>Agency</b>	<b>Date Opted In</b>	<b>Agency Type</b>
1	Norwalk-La Mirada Unified School District	1/6/2014	School District
2	Fresno Unified School District	1/8/2014	School District
3	City of Calexico	1/21/2014	City
4	Wasco Union High School District	2/13/2014	School District
5	Alameda Unified School District	2/25/2014	School District
6	City of Orange Cove	2/26/2014	City
7	Calistoga Joint Unified School District	3/3/2014	School District
8	City of Ojai	3/13/2014	City
9	Kern Sanitation Authority	4/8/2014	Special District
10	Ford City-Taft Heights Sanitation District	4/8/2014	Special District
11	City of South Lake Tahoe	4/15/2014	City
12	Russian River Recreation and Park District	5/1/2014	Special District
13	Blochman Union School District	5/13/2014	School District
14	Alhambra Unified School District	5/14/2014	School District
15	San Leandro Unified School District	5/20/2014	School District
16	Exeter Unified School District	6/11/2014	School District
17	Inglewood Unified School District	6/27/2014	School District



July 24, 2014

George R. Hicks, Chair and to the Members of the  
California Uniform Construction Cost Accounting Commission  
California State Controller's Office  
300 Capitol Mall  
Sacramento, CA 95814

Re: Formal Complaint: Sonoma County  
Exceeded Force Account Limit-Main Adult Detention Facility Sewer Project

Dear Chairman Hicks and Members of the Commission,

This letter is to notify you of our formal complaint against the County of Sonoma in reference to work performed by County Forces and others in improvements to the Main Adult Detention Facility (MADF) and kitchen. We are objecting to their self-performing the work under Public Contract Code Section, 22042 (b), "exceeded force account limit." The County has provided us accounting documents showing their costs at \$743,000.

The County had anticipated this project for a number of years. It was part of their capital project plan. It was estimated to cost approximately \$473,000 clearly exceeding their force account limit and bidding threshold of \$45,000 under CUCCAA rules. After they completed the work with their forces, a letter was written for their files. They claim that they could exempt themselves from bidding the work by virtue of a legal decision in a court case that doesn't apply to the County's action. We have attached a copy of this letter claiming exemption under Graydon vs. Pasadena. For the benefit of the commission, CIFAC asked for an evaluation of that case by our Legal Counsel. That letter is also attached to this complaint. We maintain that the use of this Court case is not an appropriate method for a public entity not to follow the Act. If, in fact, the County had gone through the process of making an emergency declaration, we would not be filing this complaint. There is no record of such a declaration.

As this project was not bid or advertised, and was not brought before the Board of Supervisors, this was our first opportunity to ascertain what work had been performed by the County. We ask the Commission to evaluate the cost accounting that we have enclosed, along with this complaint, and then proceed to issue a violation ruling against the County of Sonoma for this project.

I am available to answer any questions you may have. I can be reached at (925) 957-1700.

Sincerely,

Cathryn Hilliard, Executive Director  
Attachments: 7



*construction industry force account council*

Steve Harris, President

Dave Thomas, Vice President

Bill Koponen, Secretary

Mike Hester, Treasurer

July 24, 2014

Ed Buonaccorsi,  
Deputy Director, Facilities Development and Management  
County of Sonoma  
General Services Department  
2300 County Center Drive, Suite A220  
Santa Rosa, CA 95403-2821

Re: Improvements to MADF Sewer System and Kitchen

Dear Mr. Buonaccorsi,

This letter is to notify the County of Sonoma that the Construction Industry Force Account Council (CIFAC) is filing a formal complaint against the County with the California Uniform Construction Cost Accounting Commission for exceeding your force account limit, in reference to work, self-performed, on the Main Adult Detention Facility sewer system and kitchen. This complaint is filed per California Public Contract Code Section 22042 (b).

The County became signatory to the California Uniform Construction Cost Accounting Act (the Act) in 1995. Your force account limit is \$45,000. The documents and accounting that you provided us show expenditures in excess of \$743,000. In addition, the Act requires a 30% markup on all equipment, labor and materials. It requires that all departments follow the laws contained therein. We understand that you feel that making a finding that it was in the best interest of the County to do the work in this manner, after the project was completed, removed the necessity to comply with the Act. We have reviewed this information, and have evaluated your use of the Graydon vs. Pasadena court decision that we believe does not apply to this work. It is our opinion based on this review that the County is out of compliance with the Act.

CIFAC is a non-profit organization that represents members of the Construction Industry. We work to ensure compliance with the Public Contract Code and act as a resource when requested. This qualifies us as an interested party per the Act.

Please contact me if you should have any questions regarding this matter. I can be reached by phone at 800-755-3354.

Sincerely,

Cathryn Hilliard  
Executive Director

Cathryn Hilliard, Executive Director  
837 Arnold Drive, Suite 200, Martinez, CA 94553 • phone 800-755-3354 • fax 925-957-1800 • email [info@cifac.org](mailto:info@cifac.org) • web [www.cifac.org](http://www.cifac.org)







**COUNTY OF SONOMA  
FACILITIES DEVELOPMENT  
AND MANAGEMENT DIVISION**

**GENERAL SERVICES DEPARTMENT**

COUNTY ADMINISTRATION CENTER  
2300 County Center Drive, Suite A220  
SANTA ROSA, CALIFORNIA 95403-2821  
TELEPHONE (707) 565-2550  
FAX (707) 565-2691

JOSÉ OBREGON  
GENERAL SERVICES DIRECTOR  
(707) 565-2977

ED BUONACCORSI  
GENERAL SERVICES DEPUTY DIRECTOR  
(707) 565-3193

DATE: 11/12/13

TO: To Whom It May Concern

FROM: Ed Buonaccorsi, Deputy Director General Services

SUBJECT: Graydon finding for MADF kitchen sewer project

The sewer in the kitchen of the Main Adult Detention facility (MADF) has failed and is currently inoperable. Meanwhile, the Sheriff department is still required to provide meals to inmates in the MADF. Due to the secure nature of the facility and the additional costs incurred to put this project out to bid, Facilities Development and Management (FDM) will be utilizing in-house construction crew to complete the sewer replacement.

Security

Work in the MADF Building requires background clearances for workers, and the ability to work around and within existing 24/7 critical operations. FDM already provides ongoing maintenance within the MADF Building and around inmates. These activities require maintenance staff not only to pass extensive security background checks, but also for the staff to learn the many aspects of working around inmates. FDM staff does not need to be escorted throughout the building, nor do they need close supervision to assure security policy compliance. Use of an outside contractor would require temporary security measures as well as supervision, adding to the overall project cost. Over the years we have seen reluctance on the part of private contractors to work in secure facilities.

Cost

It is not unusual to have low number of bidders turnout for projects in secure facilities, which usually translates into high bid prices. The special procedures and administrative process required for these types of projects drives the prices higher and discourages competitive bids. All workers that come on site will be required to undergo security background checks and require the ability to work around inmates, as well as detention safety training. These requirements will result in higher costs. For these reasons, competitive bidding would not produce an advantage to the County within the meaning of

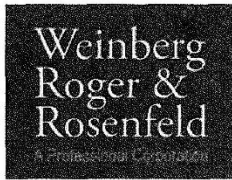


Graydon v. Pasadena, 104 Cal. App. 3d 631, but would instead increase the cost of the project and cause delays. Soliciting bids for the project is therefore undesirable and impractical and does not meet the purpose of the Public Contract Code to obtain the best price for the work.

Thank you,

A handwritten signature in blue ink that reads "Ed Buonaccorsi". The signature is written in a cursive style with a large initial "E" and "B".

Ed Buonaccorsi, General Services Deputy Director



1001 Marina Village Parkway, Suite 200, Alameda, California 94501  
TELEPHONE: (510) 337-1001  
FACSIMILE: (510) 337-1023  
Patricia M. Gates  
pgates@unioncounsel.net

## MEMORANDUM

**To:** Ms. Cathryn Hilliard, CIFAC  
**From:** Patricia M. Gates  
**Date:** July 8, 2014  
**Subject:** Exemption from Competitive Bidding Requirements Based on  
*Graydon v. Pasadena Redevelopment Agency* (1980) 104 Cal.App.3d 631

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### I. QUESTION

You have asked if the County of Sonoma may avoid its competitive bidding obligations by relying on the above-referenced 1980 California Appellate case abbreviated hereafter as *Graydon*.

### II. ANSWER

The County of Sonoma may not rely on *Graydon* to avoid its competitive bidding obligations. It must follow the mandatory requirements for bidding public works projects contained in the Uniform Public Construction Cost Accounting Act ("Act") at Public Contract Code Sections 22030 *et seq.* that the governing board for the County has elected by resolution to follow. In particular, Section 22032 permits only work of \$45,000 or less to be performed by employees of the County by force account.

### III. FACTS

In August of 2013, the Sonoma County Main Adult Detention Facility (MADF) experienced a sewer line failure. Replacement of the sewer line and renovation of the kitchen had been anticipated by the County for a number of years. The Sonoma County Department of General Services did not put this work (estimated at \$750,000) out to competitive bid. Instead they used County employees by force account.

The Deputy Director of the County's Department of General Services prepared a memorandum dated November 13, 2013 entitled "Graydon Finding for MADF Kitchen Sewer Project." In this memorandum he concluded that "competitive bidding would not produce an advantage to the County within the meaning of *Graydon v. Pasadena*, 104 Cal App 3d 631..." The Sonoma Board of Supervisors by Resolution dated February 7, 1995 (currently on file with the California State Controller's Office) has opted for coverage under the Act.

#### IV. LEGAL ANALYSIS

It appears the County, through its Deputy Director of General Services, seeks to avoid the applicable competitive bidding laws by claiming that dicta in *Graydon v. Pasadena Redevelopment Agency* (1980) 104 Cal.App.3d 631 gives it the right to circumvent mandatory competitive bidding requirements in the Act because it “would not produce an advantage to the County.” (See Buonaccorsi Memorandum dated 11/12/13, attached.) Nothing could be farther from reality.

##### **A. The Applicable Competitive Bidding Statute**

The County of Sonoma is governed by the provisions of the Uniform Public Construction Cost Accounting Act (“Act”) found at Public Contract Code Section 22000, *et seq.* The Act contains a provision that supersedes other competing provisions in the Public Contract Code in the event of conflict. (See Pub. Con. Code §22030.) The applicable provisions of the Act include clear limitations on the County’s authority to perform “public projects” using employees of the public agency. The limitation expressed in Public Contract Code Section 22032(a) applies to all public projects of the County. A public project is defined at Public Contract Code Section 22002(c) to include “renovation, improvement, demolition, and repair work involving any publicly owned, leased or operated facility.” While there are certain explicit exemptions to competitive bidding found in the Act, there is no exemption that would apply to this sewer replacement and kitchen renovation project. (See Pub. Con. Code §§ 22041 and 22050.)

Furthermore, under Public Contract Code Section 22042 there is a dispute resolution procedure calling for the California Uniform Construction Cost Accounting Commission established under the provisions of the Act, to “review the accounting procedures of any participating public agency where an interested party presents evidence that the work undertaken by the public agency....(b) Exceeded the force account limits.” Under Public Contract Code Section 22043, a request for the Commission’s review must be filed not later than eight days from the date the interested party formally complains to the public agency.

##### **B. The Graydon Case**

The *Graydon* case does not give the Deputy Director of General Services the discretion to avoid competitive bidding. *Graydon* is an appellate case holding that a lawsuit challenging a particular competitive bidding statute (not Sections 22000 *et seq.*) was subject to the bond validation statutes because the construction contract, while it may not have been a direct challenge to the agency’s issuance of bonds to fund the project, was “an integral part of the whole method of financing the public costs associated with the retail center. The financing is by bonds issued by the Agency.” (*Id.* at p. 645.) Thus, the public agency action (letting of a construction contract) being challenged indirectly in *Graydon* was determined by the court to be a public financing

Memorandum  
July 8, 2014  
Page 3

arrangement: “These bonds were intimately and inextricably bound up with the award of this contract [to construct the subterranean garage].” (*Id.* at p. 646.)

Sonoma County’s MADF project involves no such challenge (direct or indirect) to a public financing arrangement. Therefore the *Graydon* Court’s holding does not apply. Repayment of bonds is not an issue in the MADF project. Completion of the project would not be affected by litigation over the construction contract had the County let the work to bid as required by law.

Furthermore, *Graydon* was decided in 1980, three years prior to the passage of the Act wherein the Legislature adopted explicit and mandatory language concerning the force account limits for public agencies who opt into the Act and specific remedies for interested parties who allege work is performed by a covered public agency in excess of the force account limits. Thus the clear language of the statute itself prevails.

Finally, any discussion in *Graydon* of the competitive bidding laws is purely dicta and may not be relied upon to allow a public agency the right to circumvent mandatory competitive bidding requirements because it “would not produce an advantage” to the public agency.

#### V. SUMMARY

The Sonoma Board of Supervisors by Resolution dated February 7, 1995 (currently on file with the California State Controller’s Office) has opted for coverage under the Act. The Act contains a provision that trumps other competing provisions in the Public Contract Code. The Act is clear in its prohibition against using in-house employees for public projects in excess of \$45,000. The so-called *Graydon* exemption has been narrowed in its holding by subsequent appellate decisions and, in any event, does not apply here to allow the Department of General Services to avoid competitive bidding.

PMG:js  
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**COUNTY OF SONOMA  
FACILITIES DEVELOPMENT  
AND MANAGEMENT DIVISION  
GENERAL SERVICES DEPARTMENT**

COUNTY ADMINISTRATION CENTER  
2300 County Center Drive, Suite A220  
SANTA ROSA, CALIFORNIA 95403-2821  
TELEPHONE (707) 565-2550  
FAX (707) 565-2691

JOSÉ OBREGÓN  
GENERAL SERVICES DIRECTOR  
(707) 565-2977

ED BUONACCORSI  
GENERAL SERVICES DEPUTY DIRECTOR  
(707) 565-3193

DATE: 11/12/13

TO: To Whom It May Concern

FROM: Ed Buonaccorsi, Deputy Director General Services

SUBJECT: Graydon finding for MADF kitchen sewer project

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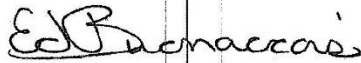
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Graydon v. Pasadena, 104 Cal. App. 3d 631, but would instead increase the cost of the project and cause delays. Soliciting bids for the project is therefore undesirable and impractical and does not meet the purpose of the Public Contract Code to obtain the best price for the work.

Thank you,

A handwritten signature in cursive script that reads "Ed Buonaccorsi".

Ed Buonaccorsi, General Services Deputy Director



construction industry force account council

Steve Harris, President

Dave Thomas, Vice President

Bill Koponen, Secretary

Mike Hester, Treasurer

July 24, 2014

George Hicks, Chair and Members of the  
California Uniform Construction Cost Accounting Commission  
California State Controller's Office  
300 Capitol Mall  
Sacramento, CA 95814

Sacramento, CA 94250

RE: Request for discussion and Action by the Commission on August 14, 2014  
Pre-Qualification for Informal Bidders List

Dear Chair Hicks and Commissioners,

A recent inquiry was sent to the Commission regarding the use of a pre-qualification process being allowed by a signatory agency in the formation of their informal bidders list. We received a copy of that inquiry and your response that current language does not allow a jurisdiction to prequalify contractors who ask to be placed on that list.

We request that the Commission discuss the current wording of the Cost Accounting Procedures Manual and adopt an additional sentence to allow the use of this process as an option, at the discretion of the agency.

The current Public Contract Code Section dealing with the informal bidding procedure, Section 22034 (a), states that *the minimum criteria for development and maintenance of the contractor list shall be determined by the commission.*

The Commission currently requires the minimum criteria be name, address, phone number, type of work and the type of work the contractor is currently licensed to perform. The manual further allows the agency to include any contractor they wish to on the list, but at a **minimum must include all contractors who have provided the information above in the previous 14 months.**

Through interaction with a wide variety of signatory agencies, we have found that there is extensive use of a pre-qualification process in the development of an informal bidders list. These agencies maintain that they require the pre-qualification of all contractors for work, but with an even heavier emphasis on informally bid projects. They feel the need to be sure that these projects, which are bid under the informal process, have immediate time constraints, and need the extra assurance that they are going to get bidders who have the required expertise and experience. These agencies allow contractors to be added to their lists during the year, after they have completed the pre-qualification process. For many agencies, the use of the informal process is their reason for being signatory to the Act.

Cathryn Hilliard, Executive Director  
837 Arnold Drive, Suite 200, Martinez, CA 94553 • phone 800-755-3354 • fax 925-957-1800 • email [info@cifac.org](mailto:info@cifac.org) • web [www.cifac.org](http://www.cifac.org)



Pre-qualification of contractors was not a commonly used practice when the Act was developed and adopted. It has become an accepted and widely used tool within the construction industry in the last 10 years. It is not meant to reduce the bidder's pool, but assure an agency that the interested parties meet their minimum experience requirements. Legal constraints and requirements of allowing for dispute resolution over not meeting an agencies pre-qualification standards, ensure that the process maintain objectivity.

We would suggest that the Commission adopt an additional sentence to item number 3 of page 7 of the *Cost Accounting Policies and Procedures Manual*.

**Suggested Addition:** *A Public Agency may, at their discretion, use an objective pre-qualification process in the formation and maintenance of their list.*

As this is at the discretion of the Commission, we request that you adopt the addition of the pre-qualification allowance today.

The Construction Industry Force Account Council is a non-profit organization that is supported through the construction industry. We monitor and work as a resource to public agencies throughout the State. We will be available at the Commission meeting to answer any questions you may have.

Sincerely,



Cathryn Hilliard  
Executive Director





SCOTT H. QUADY, PRESIDENT  
DIVISION 2

ANDRES SANTAMARIA, SECRETARY  
DIVISION 4

STEVE BLOIS, DIRECTOR  
DIVISION 5



THOMAS L. SLOSSON, VICE PRESIDENT  
DIVISION 1

ANDY WATERS, TREASURER  
DIVISION 3

SUSAN B. MULLIGAN  
GENERAL MANAGER

web site: [www.calleguas.com](http://www.calleguas.com)

2100 OLSEN ROAD □ THOUSAND OAKS, CALIFORNIA 91360-6800 805:526-9323 □ FAX: 805:522-5730 □ FAX: 805:526-3675

July 1, 2014

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

Subject: Requested Clarification in the California Uniform Construction Cost Accounting Commission  
Cost Accounting Policies and Procedures Manual Handbook

Dear Commissioners:

We hereby request that the California Uniform Construction Cost Accounting Commission (Commission) place on its agenda consideration of a change to its Cost Accounting Policies and Procedures Manual Handbook (Handbook) to clarify its intent with respect to the requirements for establishing a list of prequalified contractors for informal bidding.

Our agency recently investigated this matter in the process of considering whether to participate in the California Uniform Public Construction Cost Accounting Act and found that there are differing interpretations of the intent of the Handbook. A strict reading of Page 7 of the Handbook seems to indicate that any contractor who is properly licensed and submits the required information must be placed on the list. However, we understand that other agencies have been interpreting the Handbook as providing flexibility for agencies to establish their own criteria for contractors to be placed on the list.

We suggest that at the time of the next update to the Handbook, the Commission modify the language on Page 7 to clarify its intent. Thank you for your consideration of this matter. If you have questions or would like additional information, please feel free to contact me at (805) 579-7115 or [smulligan@calleguas.com](mailto:smulligan@calleguas.com).

Sincerely,

A handwritten signature in blue ink that reads "Susan B. Mulligan". The signature is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

Susan B. Mulligan  
General Manager

cc: *(email only)*

Steve Blois, Bob Cohen, Kristine McCaffrey, Walt Wendelstein / Calleguas MWD  
Cathryn Hilliard, Sally Riley / Construction Industry Force Account Council



Steve Harris, President      Dave Thomas, Vice President      Bill Koponen, Secretary      Mike Hester, Treasurer

July 28, 2014

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

RE: Request for Clarification  
Can a CUCCAA participant use job order contracting for informally bid projects?

Dear Chairperson Hicks and Commissioners:

I understand the Commission has scheduled a meeting for August 14, 2014 and hope this request can be included on the agenda. I am writing on behalf of the Construction Industry Force Account Council (CIFAC) to ask if a County signatory to the California Uniform Public Construction Cost Accounting Act (§22000 et seq.) can informally bid an annual job order contract in amounts of \$1.5 million and \$3 million each and give the same awarded contractor public projects throughout the one year term of contract of up to \$175,000 each.

- Although a County may award Job Order Contracts as seen in **\*\*PCC §20128.5.**, it clearly states “for repair, remodeling, or other repetitive work to be done according to unit prices. No annual contracts may be awarded for any new construction”.
- The County of Ventura, who is signatory to the Act, may informally bid per **CUCCAA - \*PCC §22032 (b)** “Public projects of \$175,000 or less may be let to contract by informal procedures”  
(\* / \*\* Please see below for these PCC sections in their entirety)

CIFAC’s concern is the County of Ventura is combining the rules of CUCCAA with the project delivery method of a Job Order Contract.

1. The County informally bids specialty (trade) Job Order Contracts for amounts not to exceed \$1.5 million or \$3 million annually.
2. The annual JOC is awarded to one contractor.
3. Purchase Orders (task orders) are issued for public projects to awarded contractor, not to exceed \$175,000 each to the cap of \$1.5 or \$3 million annually.
4. The County of Ventura has recently renewed 2 option years for several JOC’s without bidding.
5. The County of Ventura has stated in bid invitations, agenda reports and in correspondence with CIFAC that the annual JOC’s include new construction.
6. The County of Ventura has notified CIFAC they “have a long history of managing and utilizing a very successful JOC contracting program which effectively achieves timely and competitive completion of our budgeted public projects.”




Although Field Representative, Shari Pence, has communicated concerns with this method of contracting, the County of Ventura states "we remain confident that our County of Ventura JOC program and contracts are fully in compliance to Public Contract Code." We have exhausted our efforts in conveying to the County of Ventura they may be in violation of the PCC and request the Commission's opinion for the following reasons:

1. How can a participating agency use informal bidding for contracts awarded in excess of \$1.5 million to \$3 million when the total value exceeds the CUCCAA informal bid limit of \$175,000?
2. How can a participating agency assign purchase orders (task orders) of up to \$175,000 each to the same contractor under an annual job order contract (cap of up to \$3 million annually) and not let each individual public project to contract by informal bid procedures?
3. How can a participating agency renew options on informally bid annual JOC's, without public bidding, for an estimated total value of \$7.5 million (total of three JOC contracts renewed in 2014 to date) to be used for individual projects of up to \$175,000 each throughout the year 2014?
4. How can a participating agency award annual "Specialty (trade) Job Order Contracts" and include public projects of new construction when the PCC specifically states JOC's are for repair, remodeling, or other repetitive work (maintenance) to be done according to unit prices?

CIFAC is a non-profit organization that monitors governmental agencies to ensure they abide by the California Public Contract Code. The Commission's response to this inquiry will help CIFAC ensure the proper use of the rules of CUCCAA for the County of Ventura and other counties which could be using job order contracts in the same manner. We appreciate your consideration of our request for clarification and look forward to your response.

Sincerely,



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

Attachments: County of Ventura, Invitation to Bid #5614 (Paving)  
County of Ventura, June 17, 2014 Agenda Report (renewal of option year for JOC's)  
County of Ventura email response dated December 2, 2103 (see highlighted paragraphs)

**\*PCC §22032.** (a) Public projects of forty-five thousand dollars (\$45,000) or less may be performed by the employees of a public agency by force account, by negotiated contract, or by purchase order. (b) Public projects of one hundred seventy-five thousand dollars (\$175,000) or less may be let to contract by informal procedures as set forth in this article.

(c) Public projects of more than one hundred seventy-five thousand dollars (\$175,000) shall, except as otherwise provided in this article, be let to contract by formal bidding procedure.

**\*\*PCC §20128.5.** Notwithstanding any other provisions of this article, the board of supervisors may award individual annual contracts, none of which shall exceed three million dollars (\$3,000,000), adjusted annually to reflect the percentage change in the California Consumer Price Index, for repair, remodeling, or other repetitive work to be done according to unit prices. No annual contracts may be awarded for any new construction. The



contracts shall be awarded to the lowest responsible bidder and shall be based on plans and specifications for typical work. No project shall be performed under the contract except by order of the board of supervisors, or an officer acting pursuant to Section 20145. For purposes of this section, "unit price" means the amount paid for a single unit of an item of work, and "typical work" means a work description applicable universally or applicable to a large number of individual projects, as distinguished from work specifically described with respect to an individual project. For purposes of this section, "repair, remodeling, or other repetitive work to be done according to unit prices" shall not include design or contract drawings.







INVITATION TO BID #5614 (PAVING) - Bid Opening 4:00 P.M.

Sealed bids will be received by the Ventura County Purchasing Agent until the indicated bid opening time on **Friday, April 6, 2012** at Ventura County General Services Agency/Procurement Services, Hall of Administration-Lower Plaza, 800 South Victoria Avenue, Ventura, California 93009-1080, for the following project. Time is of the essence, and all bids received after the appointed hour for submission, whether by mail or otherwise, will be returned unopened. **Bids may not be submitted by facsimile machine.**

(1) JOB ORDER CONTRACT

A Job Order Contract (hereinafter called JOC) is a competitively bid, firm fixed priced indefinite quantity contract. It is placed with a Contractor for the accomplishment of **repair, alteration, modernization, maintenance, rehabilitation, construction, etc., of buildings, structures, or other real property.** It includes a collection of detailed repair and construction tasks and specifications that have established unit prices. In order to be considered responsive, the bidder must submit adjustment factors to the published unit prices contained in the contract documents. Individual projects are priced by selecting the proper construction tasks and multiplying them by the correct quantity and appropriate adjustment factor. Ordering is accomplished by means of issuance of a Work Order against the Contract.

Contractor, under the JOC contract, furnishes all management, labor, materials and equipment needed to perform the work.

Contractors must have a valid license, as issued by the Contractors' State License Board. **Classification C-12.** Proper license is required prior to award of contract in order to be considered a responsive bidder.

It is the intention to award one (1) JOC Contract under this solicitation. This solicitation has two (2) one year options to extend, for a total contract duration of three (3) years maximum. The maximum potential aggregate value of each contract is \$3,000,000, adjusted annually to reflect the percentage change in the California Consumer Price Index since January, 1998. The term of each contract will be for one year or expenditure of the maximum potential value of the contract, whichever occurs first.

There is no minimum value associated with individual Work Orders issued under this contract. The maximum value of individual Work Orders issued under this contract will be \$175,000. The County reserves the right to make additional awards under this solicitation for a period of one year after the opening of bids.

Bidders must attend a **Mandatory** Pre-Bid conference to be held at the County of Ventura, Service Complex, General Services Agency, Training Room, 800 South Victoria Avenue, Ventura, California, at **11:00 a.m. (PT), Thursday, March 29<sup>th</sup>** for the purpose of explaining the JOC concept, discussing JOC from the contractors' perspective, distribution of documents and answering questions. **Be early, the door will be closed at the appointed time.**

Prospective Bidders may obtain one set of the bid and contract documents at the Pre-Bid Conference, or thereafter at Procurement Services, County of Ventura, 800 South Victoria Avenue, Ventura, California 93009-1080.

The County of Ventura reserves the right to accept or reject any or all bids and to waive all technicalities and formalities.

For additional information, contact Boyd Donavon, Assistant Purchasing Agent, via e-mail at [boyd.donavon@ventura.org](mailto:boyd.donavon@ventura.org)

- END OF INVITATION TO BID -



# county of ventura

**Paul S. Grossgold**  
Director

June 17, 2014

**GENERAL SERVICES AGENCY**  
800 South Victoria Avenue, L#1000  
Ventura, CA 93009  
(805) 654-3700

County of Ventura  
Board of Supervisors  
800 South Victoria Avenue  
Ventura, CA 93009

**SUBJECT: Approval of and Authorization for the Purchasing Agent to Renew Three Informally Bid Job Order Contracts**

**RECOMMENDATIONS:**

1. Authorize the Purchasing Agent to renew for second option year a general Job Order Contract (JOC) for general trades projects to MTM Construction, Inc., not to exceed \$3 million for which the value of each individual project undertaken will not exceed \$175,000.
2. Authorize the Purchasing Agent to renew for second option year a specialty JOC for paving, to J&H Engineering, not to exceed \$3 million for which the value of each individual project undertaken will not exceed \$175,000.
3. Authorize the Purchasing Agent to renew for second option year a specialty JOC for security electronics to LJ & Associates Inc., not to exceed \$1.5 million for which the value of each individual project undertaken will not exceed \$175,000.

**FISCAL/MANDATES IMPACT:**

The JOC serves as a mechanism to facilitate completion of certain types of planned and budgeted projects. All project costs are charged to the specific fund in which each project is budgeted.

Mandatory:	No
Source of Funding:	Facilities Projects, Required Maintenance, and other Departments
Funding Match Required:	N/A
Impact on Other Departments:	Improves service delivery

Paul R. Young  
Chief Deputy Director  
Facilities & Materials

Greg Bergman  
Deputy Director  
Administrative Services

Ron Van Dyck  
Deputy Director  
Parks Department

Rod Lohof  
Interim Manager  
Fleet Services

<b>Summary of Revenues and Costs:</b>	<b>FY 2013-14</b>	<b>FY 2014-15</b>
Revenue:	\$50,490	\$ 454,410
Costs:		
Direct	\$50,490	\$ 454,410
Indirect-Dept.	\$ 0	\$ 0
Indirect-County CAP	\$ 0	\$ 0
TOTAL Costs	\$50,490	\$ 454,410
Net Gain/(Loss):	\$ 0	\$ 0

\* Revenue and Total Costs are estimated GSA Project Management Fees.

<b>FY 2013-14 Budget Projection as of March 31, 2014</b>				
<b>GSA Facilities Projects - Budget Unit 7112</b>				
	Adopted Budget	Adjusted Budget	Projected Budget	Estimated Savings / (Deficit)
Appropriations	\$ 7,144,308	\$ 7,922,425	\$ 3,886,482	\$ 4,035,943
Revenue	\$ 7,132,897	\$ 7,132,897	\$ 3,058,123	\$(4,074,774)
Operating Gain/(Loss)*	\$ (11,411)	\$ (789,528)	\$ (828,359)	\$ (38,831)

\*Other Financing Uses are included. The Projected Operating Loss will be covered by Unrestricted Net Position.

**DISCUSSION:**

On May 1, 2012 your Board awarded the informally bid JOC for the services listed in the three recommendations. Each informally bid JOC has an initial term of one year and provision for two one-year renewal options, which may be exercised by mutual written agreement and dependent upon our client workload and satisfactory contractor performance. On June 18, 2013, your Board authorized first option year renewal of the three contracts. We are requesting your Board's approval for the Purchasing Agent to renew these three JOCs for the second option year. Renewal will be to MTM Construction Inc., City of Industry, California, for general trades; J & H Engineering General Contractors, Inc. of Camarillo, California, for paving; and LJ & Associates Inc., Tustin, California, for security electronics. Upon your Board's approval of these recommendations, the Purchasing Agent will execute standard form renewals of the JOCs with each contractor within thirty (30) days.

Work is assigned by issuance of standard purchase orders incident to approval of each task order for individual projects. These purchase orders will be used to issue JOC task orders for our clients' budgeted informally bid projects when project costs are less than \$175,000. Award of informally bid JOCs is authorized under the California Uniform Public Construction Cost Accounting Act (CUPCCAA) Sections 22030-22045. Public projects of \$175,000 or less may be let to contract by the informal bid procedures set forth in the California Public Contract Code 22032(b). Although CUPCCAA does not call for a cap on the aggregate value of projects undertaken, it does cap the value of each separate project task order at \$175,000.

General Services Agency (GSA) has set a \$3 million annual cap for the general construction JOC and for the paving specialty JOC, based upon our projected Client workload. GSA has set a \$1.5 million annual cap for the security electronics specialty JOC, based on a lower annual projected workload. JOCs are subject to prevailing wage, and therefore are exempt from the Living Wage Ordinance.

This letter has been reviewed by the County Executive Office, Auditor-Controller's Office, and County Counsel.

If you have any questions regarding this item, please call Rosa Cenicerros at 654-5133.

  
Paul Grossgold  
Director

c: Rosa Cenicerros, General Services Agency Procurement, L#1080  
Paul Young, General Services Agency Facilities, L#3000



-----Original Message-----

From: Glenn Hemme [<mailto:Glenn.Hemme@ventura.org>]

Sent: Monday, December 02, 2013 4:17 PM

To: Shari Pence

Cc: Paul Grossgold; PAUL Young; Rosa Ceniceros

Subject: County of Ventura GSA Job Order Contracts awarded per CUPCCAA

Shari

I and several other County Managers involved with managing functions of procurement and facilities contracting do routinely give significant attention that each public project and each JOC contract bid and awarded by the Board of Supervisors is fully in compliance with all applicable sections of the Public Contract Code(PCC). Your letter has prompted our internal review of PCC statute basis and contracting procedures which apply to each of the two types of County of Ventura JOC contracts. We are confident that both types of our JOC contracts are respectively fully in compliance to PCC sections of the Local Agency Public Construction Act and to PCC sections of the Uniform Public Construction Cost Accounting Act(CUPCCAA). I have pasted below links and key excerpts to PCC sections for my discussion below of both types of our JOC contracts. I have also attached several references relevant to the County of Ventura initiating our JOC contracting program, now in-place for 18 years, and still proving very effective and cost efficient for executing the County's public project budgets each year.

As you note, PCC section 20128.5. of the Local Agency Public Construction Act is a primary reference for JOC contracting. County of Ventura uses that section specifically as basis for our general JOC contract type which we formally advertise and bid; to be utilized to award JOC Task Orders for public projects exceeding \$175k which involve repair, remodeling, or other repetitive work. Our first general JOC of that type was awarded by the Board of Supervisors in 1998; copy attached. We fully concur that type of general JOC cannot be used for public projects for new construction work, which may generally be identified as adding footprint to existing facilities & improvements or as adding a new facility. At County of Ventura, such new construction public projects exceeding \$175k are routinely referred to the Public Works Agency for formal bidding; and are not managed by the General Services Agency.

Our second type of County of Ventura JOC is the Informally Bid CUPCCAA JOC contracts which you reference in your letter. Our Informally Bid JOC contracts are specifically based on and cite CUPCCAA sections 22030-22045; to be utilized to award JOC Task Orders not exceeding \$175k and to perform public projects defined by CUPCCAA section 22002 which includes minor construction and the renovation, alteration, painting, or repair of existing facilities. Our advertising and bidding of the Informally Bid JOC contracts is pursuant to the procedures of the CUCCAC Cost Accounting Policies and Procedures Manual.

The essential issue which you pose in your letter is if a county may enter into a JOC for the performance of public projects as defined within the CUPCCAA sections and within the current \$175k informal contracting limit. A related question and several related clarifications were previously addressed by a 1993 opinion of the CA Attorney General. Note that CUPCCAA section 22032 as published in the CUCCAC Cost Accounting Policies and Procedures Manual has a footnote to "76 Op. Atty. Gen. 126,7-14-93". I have attached the 1993 opinion and pasted below key excerpts indicating such applicability to utilize JOC contracting for CUPCCAA public projects. Our first County of Ventura JOC contract was based on CUPCCAA sections 22030-22045 and was awarded by the Board in

December, 1995. The 1993 Attorney General opinion was a key consideration to determine basis for setting up our initial JOC as a multi-year CUPCCAA type.

At that time, we could issue CUPCCAA JOC Task Orders for public projects not exceeding \$75k as the informal contracting limit. Our motivation for implementing JOC was to improve GSA's efficiency to award and manage specifically the significant volume of such informal facilities contracts for infrastructure requirements of GSA and for remodeling requirements of our other County Clients. See the attached

1995 Board Letter. Note also the attached follow-up 1997 internal summary analysis which outlines decision to also award the other type of general JOC per PCC 20128.5 to be complementary to our CUPCCAA JOC. I note that a goal stated by PCC section 100 is for public contracting to be efficient and the product of the best of modern practice. For informal scale public projects, our JOC program achieves that while still complying and realizing all requirements and intent of the CUPCCAA sections.

We specifically bid our CUPCCAA JOC's competitively and per the informal bidding procedures of the CUCCAC Cost Accounting Policies and Procedures Manual. This provides bidding opportunity for local Contractors to compete favorably, particularly for the speciality trade JOC's. Award of JOC Task Orders for individual public projects quickly and efficiently gets budgeted public projects under contract. That results in local journeymen and craftsmen being quickly employed to complete the public projects work required by the County. I note that we do also utilize our CUPCCAA JOC contracts to issue JOC Task Orders for public projects less than \$45k and for maintenance projects as defined by CUPCCAA section 22002. GSA has in-house maintenance staffing sufficient to perform only the daily maintenance functions. GSA Maintenance staffing is not sufficient to even consider potential in-house performance of public projects exceeding the \$45k force account limitation.

Our JOC Contractors are under one year contract term; and our volume of JOC Task Orders to be issued is very much dependent on the JOC Contractor demonstrating prompt, effective and cost efficient performance of each public project. My experience is that the JOC Contractors quickly recognize that operating in a Teaming environment is to their advantage. PCC precludes us from so specifying, but JOC Contractors also tend to select local subcontractors to a significant extent; primarily to realize the advantages of least cost and of responsiveness to promptly start and complete each project, as inherent to employing local journeymen and craftsmen as more readily available to be on the job site each day. Overall, our JOC contracting program is a win-win situation for the County and for our Contractors and their employees, achieving prompt and effective budget execution at least cost for each of our public project requirements.

During my initial telephone discussions with you, I noted some extent of disconnect in our respective use of the term "new construction". A reason for that became clear when I noted the definition of NEW CONSTRUCTION as posted on the CIFAC website, as essentially borrowing the CUPCCAA section 22002 definition for "public project". Then CIFAC also applies that definition to the CIFAC definition of JOC. I therefore prefer to use for clarity the PCC defined "public project" terminology. I understand PCC section 20128.5, to prohibit "new construction" in the more traditional definition of added footprint as I have discussed above. I note that the CUPCCAA section 22002 definition for public project does include the tasks of "construction, reconstruction, erection, & alteration", each of which may result in added footprint. Our understanding is that our CUPCCAA JOC contracts can indeed be utilized for informal public projects involving these tasks and not exceeding \$175k. As you comment in your letter, I have

already acknowledged that only a very few public projects with those tasks have infrequently been issued by JOC Task Order under a CUPCCAA JOC. In practice, such added-footprint projects are extremely limited. As a practical matter, our function for serving our Clients relates to budgeted public project requirements for repair and remodeling of existing facilities and infrastructure. As a practical matter, "new construction" defined as adding footprint cannot typically be performed within the informal public project limit of \$175k, or within the previous informal limits in-place over the last 18 years of our JOC program.

I am available to further discuss details of our JOC contracting program as you desire when you have had opportunity to review this material and the references. I regret that your August 30 letter did not get promptly to my attention. I appreciate your accommodation for opportunity to do this Team review at our end, and for me to prepare appropriate response.

Sincerely  
Glenn Hemme  
Manager, GSA Projects Group  
805/645-1356; [c]340-7536