

California Uniform Construction Cost Accounting Commission

Minutes of Friday, May 12, 2023

The following minutes are not official and are subject to change until approved by the California Uniform Construction Cost Accounting Commission (Commission) at a subsequent public meeting.

1. Call to Order

Chair John Nunan called the meeting to order at 10:00 a.m.

Commissioners present: Eddie Bernacchi, Will Clemens, Mike James, Johannes Hoevertsz, Nathaniel Holt, John Nunan, Chad D. Rinde

Commissioners present via Teleconference: Chuck Poss, Hertz Ramirez, Jeremy Smith, Jennifer Wakeman, Peter Worhunsky

Excused Absences: Leeann Errotabere and Mary Teichert

State Controller's Office Staff present: Jia Liu, Daniel Basso, and Luis Gonzalez

Members of the Public present: None

2. Introductions

Daniel Basso from the State Controller's Office (SCO) conducted roll call.

3. Approval of the Minutes

A. Meeting held on January 13, 2023

There were no comments from the Commission or the public.

Commissioner Bernacchi motioned to approve the meeting minutes of January 13, 2023 without any changes. Commissioner Holt seconded the motion.

The motion passed unanimously 12-0 on a roll call vote.

4. Commission Updates

A. Participating Agencies

Daniel Basso, SCO staff, presented an update on participating agencies, noting that SCO had received 14 resolutions from agencies that opted into the California Uniform Public Construction Cost Accounting Act (Act) since the previous meeting. The 14 new participating agencies include one city, two special districts, and 11 school districts. The number of agencies participating in the Act, including newly opted-in agencies, currently totals 1,536. He also noted that in the weeks

since the meeting documents were finalized, SCO had received one agency opting out of the Act, as well as one additional agency opting in.

There were no further questions or public comments.

B. Funding Update

Mr. Basso reported that SCO received one grant since the last meeting at the time of the preparation of the meeting documents. The California Construction Advancement Program donated a total of \$625.00 for the fourth quarter of 2022. There were four total travel claims from commissioners totaling \$1,309.10. A total of \$17,301.08 is available for unrestricted funds and travel reimbursement for the Commission to use.

Commissioner Bernacchi asked Mr. Basso if there are templates that commissioners can utilize in order to try to solicit more funds for the Commission. Mr. Basso will distribute those templates to the rest of the Commission following the meeting.

C. Inquiry Update

Mr. Basso presented a report on inquiries received since the last meeting. He stated that SCO received 13 inquiries following the meeting held on January 13.

Commissioner Bernacchi commented on an inquiry regarding bid splitting, stating the importance of consistency with how the Commission handles bid splitting in its decisions and interpretations.

5. Public Comments

Chair Nunan asked if there were any comments from the public.

There were no comments from the public at this time.

6. Staff Comments/Requests

A. SCO Staff Update

Mr. Basso opened by stating that the SCO Local Government Policy Unit has a new analyst, Luis Gonzalez. Then, Mr. Basso thanked the Commissioners for filling out their Form 700s. He also mentioned that he will be sending out reminders for commissioners to complete their ethics course requirements.

Mr. Basso also noted that reappointments to the Commission are experiencing some delays, and thanked the Commission for their patience in this process.

7. Report of the Officers

A. Chair

Chair Nunan commented that he appreciated the commissioners who were able to attend the in-person meeting and he hopes that more commissioners are able

to attend the next in-person meeting as they have funds to cover the commissioners' travel expenses.

B. Vice-Chair

Vice-Chair not present to give report

C. Secretary

Commissioner Holt mentioned that he is currently working on a variety of projects, including the Compton High School Project. He also mentioned that he has been doing outreach trying to get more students to go into trade schools, as those jobs are in constant demand.

8. Committee Reports

A. Cost Accounting Policies and Procedures Manual

I. Proposed changes – Legislative updates

Nothing to report

II. Proposed changes – Non-Legislative updates

Nothing to report

9. Commissioner Comments/Requests

Commissioner Clemens mentioned that he will be presenting to the California Special Districts Association at the annual conference in August to generate more interest from special districts to opt-in to the Act.

10. Old Business

Nothing to report

11. New Business

A. Accounting Review – Conejo Valley Unified School District

Michelle Pickens, Executive Director of the Construction Industry Force Account Council (CIFAC), introduced the Thousand Oaks High School Marquee Replacement Project. Ms. Pickens reported that the district had acted as the construction manager for the project and had split the project into nine different contracts. She stated that each contract was valued under the \$60,000 project limit and were all negotiated. Ms. Pickens then reported the district purchased various project materials and performed a portion of the work. She stated that CIFAC believes that due to the total value of the project, Conejo Valley Unified School District was in violation of Public Contract Code (PCC) 22034.

Chair Nunan turned the meeting over to the appointed working group for the case. Commissioner Poss introduced himself and Commissioner Ramirez as the

appointed working group for the Conejo Valley Unified School District. Commissioner Poss noted he had received a summary of the project costs from the district and that all costs had been listed under the same heading. He reported the summary had multiple different contractors who had been paid for work on the project, a list of materials purchased, and a small amount of labor performed by the district's own employees. He noted that the summary totaled the project costs to over \$180,000. Commissioner Poss reported that he and Commissioner Ramirez had concluded that whether this was an intentional case of bid splitting or not, this case would be considered bid splitting under the PCC. He noted the total cost of the project was over \$100,000 and that there was no indication of an informal bid process.

Chair Nunan turned the meeting over for response from Conejo Valley Unified School District. Tim McCabe, Director of Planning and Construction at Conejo Valley Unified School District, said his understanding of the code was that any project under \$60,000 could be informally bid or directly negotiated, or a purchase order could be created. He said the district had engaged in a multi-prime construction of the project, where they had reached out directly to the subcontractors of each discipline, and negotiation a contract with them. He said he was having trouble understanding how this was a case of bid-splitting and asked the Commission for an explanation.

Chair Nunan said that the project being discussed should be considered a single project. He explained that all of the separate components of a project go should be considered as a single project. He explained that the PCC does not allow the district to act as a construction manager on a single project and have multiple prime contractors. He explained that the district took the place of a general contractor that should have been allowed to bid the project as a single project. Chair Nunan explained that what should have occurred under the rules was an informal bidding process and an attempt to solicit general contractor bids.

Dr. Hayek, Chief Business Official for Conejo Valley Unified School District, asked if the district would be prohibited from doing the project in-house if he had invited bids for the project and the resulting bids totaled over \$200,000, and the district believed they could perform the work for a lower amount. Chair Nunan explained that there is a process under PCC 22038 which requires the district to get 80 percent approval of their governance board to work outside of the principles of the Act.

Commissioner Ramirez thanked Dr. Hayek for being so responsive to the inquiries of the working group. He stated he did not believe the project was performed intentionally as a bid split but noted that it was an obvious case of bid splitting and was in violation of the PCC. Commissioner Clemens gave guidance to Conejo Valley Unified School District regarding PCC 22034. Commissioner Holt gave guidance to the school district regarding multi-prime projects.

Commissioner Clemens motioned to find the Conejo Valley Unified School District to be in violation of PCC 22034. Commissioner Smith seconded the motion.

The motion passed 11-0 with one abstention.

Dr. Hayek asked if there is an appeal process for the Commission's decision. Chair Nunan stated the Commission is the deciding body, and that the Commission's decision is final.

B. Accounting Review – Turlock Unified School District

Ms. Pickens introduced the Turlock High School R Wing 1-10 Flooring Project. She reported the school district used a cooperative purchasing contract through Sourcewell to remove and replace flooring in 10 rooms. She reported the project was split into 10 separate projects, all performed at the same time and location, were of the same scope of work, and performed by the same contractor. She noted that the individual rooms totaled over \$6,600 each and the entire project totaled \$66,500.

Ms. Pickens gave a brief introduction of Sourcewell. She explains Sourcewell is a Minnesota local government agency and service cooperative created under the laws of Minnesota. Sourcewell facilitates a competitive solicitation process and contract award process for the benefit of their members nationwide. She notes that the Sourcewell solicitation process complies with Minnesota law. She reports that the contract was awarded to Tarquet Alliance and that the advertisement was placed in June 2019 in various newspapers, the Sourcewell website, and other procurement journals. She notes there were no advertisements specific to California. She stated Tarquet Alliance subcontracted the work to a subcontractor located in Modesto, CA. She reported that CIFAC believes the Turlock Unified School District did not advertise this project in compliance with the PCC, and that Turlock Unified School District was in violation of the PCC.

Ms. Pickens noted that CIFAC had previously requested an opinion from the Commission on whether or not a third party agency must comply with the requirements of the Act when they are handling the procurement process. She noted that they had received a reply that third party agencies are required to follow the requirements of the Act.

Chair Nunan turned the meeting over to the appointed working group for the case. Commissioner Holt stated that in the working group's opinion, this was a straightforward case and that the district was in violation of PCC 22034. Commissioner Holt noted that districts may use a cooperative agreement outside the state of California if they go through the proper channels of the agency's legal council and board of governance. He noted that the advertising requirements of the Act apply to the cooperative agreement if the agreement was approved by the agency's governing board. He reported that the working group reached out to the district to ask if they had board approval of their cooperative agreement. The reporting group received a letter stating the district did not solicit a single contractor for all 10 buildings for several reasons. First, each of the classrooms are separate non-connecting classrooms. Second, the district was unaware of how many classrooms the district could have carpeted and replaced related to timing and funding availability for all scope of maintenance to be completed over the summer months. The letter from the district continued to state that the district requested quotes for 10 separate classrooms and that the district made a

determination to move forward with only six classrooms. Upon further review of available funding, the district made a purchase order for an additional four classrooms. Commissioner Holt specified that the district did not advertise or get board approval for the advertising to use a cooperative agreement. He concludes this puts the district in violation of the PCC.

Commissioner Clemens motioned to find the Turlock Unified School District to be in violation of PCC 22034. Commissioner Rinde seconded the motion.

The motion passed 11-0 with one abstention.

C. Accounting Review – Vacaville Unified School District

Ms. Pickens introduced the Dally Center MPR Building Exterior Paint and Chapel Project aka Dally Center Paint Project #2. She explained Vacaville Unified School District had hired Athens Painting to perform work at the Shelley Dalley Center in August 2022. During the project, the district requested a quote from Athens Painting for two additional buildings, which became the separate Dally Center Paint Project #2. She reported the quote was submitted in the amount of \$68,100 and the work was completed at \$72,300. CIFAC believed the district was in violation of the PCC as the project exceeded the bid threshold and was not competitively bid.

Commissioner James, part of the working group, reported his conclusion that there was no issue with the first project but due to the value of the second project, the district should have followed the informal bidding process. He stated, on behalf of the working group, Vacaville Unified School District was found in violation of the PCC. Dan Banowetz, Director of Facilities for Vacaville Unified School District, admitted his employee did not follow procedures correctly.

Chair Nunan motioned to find the Vacaville Unified School District to be in violation of PCC 22034. Commissioner Ramirez seconded the motion.

The motion passed 11-0 with one abstention.

D. Increasing the Current Bid Threshold Amounts Discussion

Commissioner Bernacchi reported that Commissioner Rinde, Commissioner Smith, and Commissioner Errotabere, and himself sat on a sub-committee tasked with looking into increasing the thresholds pursuant to the requirements in the Act. He shared a document (Item 11D) which contains four items to be updated if the Committee would like to proceed with a legislative update of the code. The first item is a change to PCC section 22002 (c)(3) to add the word “electric” in front of the phrase “utility system” in order to add clarity that the Act covers electric utility systems and not other systems. The second item introduces PCC section 22042 subsections (d) and (e) to provide clarity that if bid-splitting occurs or if the informal bid limit is violated, the Commission can find the agency in violation and subject the agency to the three-strike rule. The third item updates PCC section 22042.5 to clarify the Commission can review violations under section 22037 and provide a determination.

The fourth item focused on the actual raising of the current threshold amounts, found in PCC section 22032.

Commissioner Bernacchi mentioned a discussion he had with organized labor representatives in which it was agreed to increase the bid thresholds for force account, negotiated contract, or purchase order from \$60,000 to \$70,000, and the informal bidding threshold from \$200,000 to \$220,000. This would result in formal bidding for any project over \$220,000. Commissioner Bernacchi asked the Commission members to inquire if their respective organization will be in support of the proposed changes if introduced in legislation. A formal plan to introduce the proposed legislation was discussed among the commissioners, and will be an agenda item at the next meeting.

12. Next Meeting

During the meeting, the Commission settled on September 15, 2023 for the next meeting.

The Commission agreed to schedule the next meeting for:

Friday, September 15, 2023
10:00 a.m. – 12:00 p.m.
California State Controller's Office
300 Capitol Mall
6th Floor, Terrace Room
Sacramento, CA 95814

13. Adjournment

Chair Nunan moved to adjourn the meeting at 11:39 a.m., all in favor with zero opposing to adjourn.

If you would like more information regarding this meeting, please contact:

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