

Memorandum

To : Michael Havey, Chief
Division of Accounting and Reporting

Date: February 17, 2009

From : State Controller's Office
Jeffrey V. Brownfield, Chief
Division of Audits

Subject: CALIFORNIA UNIFORM PUBLIC CONSTRUCTION COST ACCOUNTING
COMMISSION REVIEW – CITY OF UKIAH, GOLF COURSE TRIBUTARY PROJECT

At the request of the California Uniform Public Construction Cost Accounting Commission, the Division of Audits reviewed the records of the City of Ukiah's Golf Course Tributary Project pursuant to Public Contract Code (PCC) section 22042(b).

The objective of our review of the City of Ukiah's project was to determine whether the total project costs for the Golf Course Tributary Project, did not exceed the force account limit.

Our review determined that the City of Ukiah did not comply with the PCC section 22042(b) because total costs for the Golf Course Tributary Project exceeded the force account limit (see the attached schedule for details).

At the exit conference on February 11, 2009, the results of our review were discussed with Jane Chambers, City Manager; Gordon Elton, Finance Director; and Leigh Halverson, Accounting Manager. Ms. Chambers stated that the City of Ukiah exceeded the force account limit because the city had incurred \$1,200 in regulatory agreement payments (recorded as Permit Fees), had unanticipated labor costs of \$1,345 (Chamberlain Creek crew) during the actual performance of the work, and contracted services costs for hydro seeding of \$1,320.

Our working papers supporting our findings are complete and available for review by your staff, if needed. Please contact Steven Mar, Chief, Local Government Audits Bureau, at (916) 324-7226 to make arrangements as warranted.

JVB/wm

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Attachments:
Schedule of Costs-Golf Course Tributary Project
City of Ukiah's Response to Findings

City of Ukiah Schedule of Costs-Golf Course Tributary Project

	(1)	(2)	(3)	(4)	(5)
	Cost Per City	Overhead Costs * 20%	Total Cost Per City	Cost Per SCO (With 20% Overhead Where Applicable)	Difference (Col. (4) – Col. (3))
Salaries/Benefits	\$ 9,370	\$ 1,874	\$ 11,244	\$ 11,244	\$ —
Equipment	2,121	424	2,545	2,545	—
Materials	12,841	2,568	15,409	15,409	—
Hydro Seeding	1,100	220	1,320	1,100	(220)
Miscellaneous Costs (Permit Fees)	1,000	200	1,200	1,000	(200)
Contracted Services	1,121	224	1,345	1,121	(224)
Total	<u>\$ 27,553</u>	<u>\$ 5,510</u>	<u>\$ 33,063</u>	<u>\$ 32,419</u>	<u>\$ (644)</u>

* PPC §22017(b)(1) states, "Cities with a population of less than 75,000 shall assume an overhead rate equal to 20 percent of the total costs of a public project, including the costs of material, equipment, and labor."

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February 10, 2009

State of California
State Controller's Office
Attn: Gus J. Castro
300 Capitol Mall, Suite 418
Sacramento, CA 95814

Re: City of Ukiah Golf Course Creek Enhancement Project

Dear Mr. Castro:

Section V.B of the Accounting Procedures Review provisions in the Cost Accounting Manual ("Manual") provides: "The consultant [appointed to conduct a review of a complaint] will interview the public agency involved and submit as a part of the findings a **complete statement of the public agency's position** with respect to the review being conducted." (Emphasis added.)

I have been asked to provide this letter to assist you in including in your proposed findings a complete statement of the City's position, concerning the CIFAC complaint about the City's golf course creek enhancement project. In making these points, the City does not want to give the Commission the impression that it is trying to evade its obligations under the Cost Accounting Act. All of the City departments involved in performing public projects are striving to understand and improve their performance of estimating projects and tracking the actual cost of projects. I hope the Commission takes this into account in acting on the CIFAC complaint.

1. Estimate under \$30,000. As recognized in CIFAC's complaint, and as explained to you during your visit to the City, the estimate for this project was under \$30,000. At the Commission meeting on February 4, 2009, in which I participated by telephone, several Commissioners expressed the opinion that if the actual cost of a project, as tracked by the public agency, exceeds the \$30,000 force account limit by any amount, no matter

how little, the agency has violated the force account limit and the Commission should so determine.

As previously stated by the City, this position seems inherently unfair to participating agencies, because they have no choice but to proceed with a project by force account based on the estimated cost. Actual costs can only be determined after the decision to proceed by force account has been made. Numerous circumstances can arise which result in unanticipated costs, sometimes substantial, which will result in the actual costs exceeding the estimate, no matter how conservative the estimate is, no matter what size contingency is included in the estimate.

The Cost Accounting Manual adopted by the Commission does not appear to the City to support this interpretation by the Commission. The Manual appears to allow a project to proceed by force account based on the estimate; not actual project cost. Section II.H of the Manual provides as follows:

Each cost element - personnel; materials, supplies, and subcontracts; equipment; and overhead - **shall be estimated for each public project. This estimation determines what bidding criteria the public project must come under.**

1. Discussion of Example

The cost of remodeling the Main Street School has been estimated in Exhibit II-3. No standard format is required for the preparation of this estimate, but the estimate of the cost elements must be recorded to the project tracking system. An example of recording the estimate to a project ledger card is shown in Exhibit II-4. **The total cost of performing the remodeling is less than the \$25,000 limit and can therefore be performed by force account.** (Manual at p. 49. Emphasis added.)

These provisions address estimating project cost and expressly state that the estimate determines on what basis the project may proceed. The example involves an estimate of cost for remodeling a school and specifically states that because the total cost estimate is under the force account limit, the project ". . . can therefore be performed by force account."

Moreover, when the Manual addresses tracking actual cost, it states: "The accurate estimating, tracking and costing of personnel costs is imperative to ensure accurate reporting and future estimating of these costs."

When read with the Manual statement that the estimate determines whether the project can proceed by force account, this statement about the purpose of tracking appears to require accurate reporting so that the information about actual cost can inform and make more accurate future estimates.

Taken together, these provisions of the Manual support determining whether a project can proceed by force account based on the estimate, not the actual cost. Actual costs must be accurately tracked so that future estimates can be refined and made more accurate. An agency should not be found to have violated the force account limit, where its estimate of project cost is less than the force account limit, even if the actual cost exceeds the limit, as long as the agency accurately tracks costs and does not repeatedly exceed estimates without substantial justification. These provisions of the Manual interpret and make specific and do not appear to conflict with Public Contract Code §22032, which refers to "Public projects of twenty-five thousand dollars (\$25,000) or less [or such greater amount as is approved by the Controller]. . ." Projects "of" a stated amount could refer to projects estimated to cost that amount or the actual cost of the project. It appears within the combined rule-making authority of the Commission and the Controller to adopt the interpretation contained in the Manual.

Basing the Commission's determination on whether the actual cost exceeded the limit, regardless of the amount of the estimate and regardless of the circumstances, can place an agency attempting to comply with the limits in a no-win position. For example, if an agency decided to terminate a force account project part way through, because it could see that the actual cost was going to exceed the limit, it cannot avoid violating the limit, even if it ceased all work and went out to bid and contracted to complete the project. The cost of contracting to complete would be considered a cost in determining the actual force account cost of the project. (See Manual, p. 67.) Since that cost would exceed the force account limit, the agency would have violated the force account limit.

For all of these reasons, the City believes that the Commission must follow its own Manual and determine whether a project can proceed by force account based on the estimate, not the actual project cost.

2. Excluding regulatory approvals from cost. The Manual requires the cost of permits to be included in calculating project cost as miscellaneous costs. (Section E.1.e, p. 43.) This makes sense as to typical building permits which a contractor generally must include in a bid on a public project. However, in this case the City was required to obtain a certification from the North Coast Regional Water Quality Control Board (NCRWQCB) and an exemption or an agreement with the California Department of Fish and Game, because the project involved work on the banks of a creek. These approvals are normally obtained by the City as part of planning projects of this type and are never included in the scope of work for a publicly bid project. The City pays this cost before a project goes out to bid. For this reason, the City does not believe these costs should be included in the

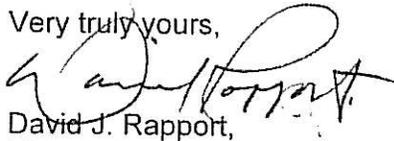
cost of the project for purposes of determining whether the project can be performed by force account or should be bid. The word "permit" should be limited to permits normally obtained by the contractor, when the projects are bid.

3. Unanticipated labor costs. Parks department labor on this project cost close to \$10,000. When the City began performing this project, it had planned for a substantial portion of the labor to be provided by the Chamberlain Creek work crew which performs this type of work for public agencies at a daily cost of \$224. However, the City finally got approval to proceed with the project on October 17. Under the terms of the Fish and Game exemption, the City was required to complete all work that could affect the creek prior to first rain or November 1 at the latest. Because of this time constraint, the City was forced to use its own employees rather than the Chamberlain Creek work crew. As a result, the labor costs were increased by, at least, \$5,000. This was unexpected and unavoidable. The City could not halt work and wait until after the rainy season, because work had already been performed which could have caused unacceptable erosion and damage to the creek. The City had no choice but to finish the work before the beginning of the rainy season, using its own employees, or risk environmental damage and potential fines or other sanctions from the regulatory agencies.

If the \$1,000 to obtain the 401 Certification from the NCRWQCB and the exemption from Fish and Game were excluded, the actual cost of the project would have exceeded the force account limit by \$1,800.¹ If allowance were given for the unanticipated labor costs, the actual cost would have been approximately \$25,800.

The City recognizes its obligation to make accurate estimates. It is attempting to track actual costs accurately and to use that information to refine future cost estimates so that the estimate and the actual costs are the same and below the force account limit.

Very truly yours,



David J. Rapport,
Ukiah City Attorney

¹ \$33,042.77 - \$1,200 (\$1,000 + \$200 (\$1000 x 20%).