

California Uniform Construction Cost Accounting Commission Minutes of Friday, January 13, 2023

The following minutes were officially approved by the California Uniform Construction Cost Accounting Commission (Commission) at the subsequent public meeting on May 12th, 2023.

1. Call to order

Chair John Nunan called the meeting to order at 10:01 AM

Present: Will Clemens, Leeann Errotabere, Nathaniel Holt, John Nunan, Chad D. Rinde, and Jennifer Wakeman

Via Teleconference: Eddie Bernacchi, Johannes Hoevertsz, Mike James, Chuck Poss, Hertz Ramirez, and Jeremy Smith

Excused Absences: Mary Teichert and Peter Worhunsky

State Controller's Office: Brett Haynes, Jenny Liu, and Daniel Basso

2. Introductions

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

3. Approval of the Minutes

A. Meeting held on September 9, 2022

There were no comments from the Commission or the public.

Commissioner Errotabere motioned to approve the meeting minutes of September 9, 2022 without any changes. Commissioner Holt seconded the motion. The motion passed on a roll call vote with ten yays, zero nays, and two abstentions.

4. Commission Updates

A. Participating Agencies

Daniel Basso, SCO staff, presented an update on participating agencies, noting that SCO had received 20 resolutions from agencies that opted into the California Uniform Public Construction Cost Accounting Act (Act) since the previous meeting. Of the 20 new participating agencies, there were 2 cities, 16 school districts and 2 special districts. The number of agencies participating in the Act, including newly opted-in agencies, currently totals 1,522.

There were no further questions or public comments.

B. Funding Update

Mr. Basso reported that the SCO received one grant since the last meeting. The California Construction Advancement Program donated a total of \$625.00 for the first and second quarter of 2022. There were two travel claims from a commissioner of \$1,378.49. A total of \$17,985.18 is available for unrestricted funds and travel reimbursement for the Commission to use.

There were no public comments.

C. Inquiry Update

Mr. Basso presented a report on inquiries received since the last meeting. He added that SCO received 9 inquiries following the September 9th meeting.

There were no comments or questions regarding the inquiry update.

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 mentioned that Form 700 forms are due by April 1st, 2023. All commissioners will have to fill out the Form 700 or be subject to a monetary fine.

Mr. Basso also stated that SCO will reach out to commissioners roughly 90 days before their terms are set to expire to see if the commissioners would like to be reappointed to the Commission.

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 travelling expenses.

B. Vice-Chair

Vice-Chair Errotabere mentioned that she gave a presentation about construction cost accounting policies and procedures to a conference, and found that of the agencies that had opted in to the Act, a vast majority did so for the increased threshold amounts.

C. Secretary

Nothing to report

8. Committee Reports

A. CUCCAC Manual

- I. Proposed changes – Legislative updates
Nothing to report.
- II. Proposed changes – Non-Legislative updates
Nothing to report.

9. Commissioner Comments/Requests

There were no additional comments from commissioners.

10. Old Business

A. Accounting Review – Tuolumne County

Kim MacFarlane, Public Works Director of the County of Tuolumne, thanked the Commission for the opportunity to present the County's perspective of the alleged violation. Kim MacFarlane then gave a brief overview of the Chicken Ranch Road Project. She claimed that the project was intended to be maintenance, and a collaboration with the Miwok Native American Tribe, who ordered the supplies used in the project.

Ms. MacFarlane argued that the project was properly classified as maintenance. She claimed that the Construction Industry Force Account Council's (CIFAC) evidence is not definitive in determining the actual amount of work done, as the sections of road used as evidence could be higher due to the amount of run-off created when paving a road. She admitted that there may be a few small sections of the road that go over the 1-inch classification in order to withstand the amount of heavy traffic in the area, but those small sections should not be indicative of the whole project. Tuolumne County will be spending over \$4 million in 2023 on road projects, all of which will be bid competitively.

Commissioner Will Clemens thanked Tuolumne County for their time. He then stated that he agreed with their assessment that the project should be maintenance, as the only way to definitively tell at this point would be to take a core sample of the road, which no party wanted to do.

Michelle Pickens, Executive Director of CIFAC then stated CIFAC's view that Public Contract Code section 22002(d)(3) is clear in defining maintenance as less than one inch. She argued that the Public Contract Code does not have any exceptions, or references to an average. Ms. Pickens asked interpretation of that definition to determine the case.

Chair Nunan thanked both Ms. MacFarlane and Ms. Pickens. Commissioner Hovertsz then noted that CIFAC has been a great resource for training, and would recommend that if any agency has any questions, to reach out to CIFAC.

Chair Nunan then suggested that the Commission allow Tuolumne County to have a pass on this instance due to inconclusive evidence, with the caveat that the County of Tuolumne will be compliant in their upcoming road paving projects as previously mentioned.

Ms. Pickens then stated that CIFAC would prefer the Commission arrive at a definitive answer for this case. Commissioner Poss then asked why it was not possible to figure out the total quantity of material used, since that would give an estimate of the amount of the thickness of the road. Chair Nunan then referenced that the County of Tuolumne did not purchase the road materials, the Native American Tribe did so, and they are not subject to the same level of public record act transparency as a government agency, as well as the possibility of the tribe purchasing other materials that were not used in this specific project.

Commissioner Clemens stated that the Commission should only vote based on the information and evidence provided in the complaint, and noted that the evidence is not conclusive to make a determination the County of Tuolumne violated the Act. Commissioner Clemens then motioned that the Commission vote to find that the County of Tuolumne did not violate the Act. Commissioner Errotabere seconded the motion, and Commissioner Rinde mentioned that he would recommend that the County of Tuolumne receive additional training on the Act in order to prevent future issues. The motion passed with nine yays, two nays, and one abstention.

B. Accounting Review – Lancaster School District

Dean Fourr, Director of Facilities and Construction at Lancaster School District thanked the Commission, thanked the Commission for the opportunity to present Lancaster School District's perspective of the alleged violation. He stated that he authorized the contractors to complete the work on the two additional roofs without considering if their costs would be over the \$60,000 threshold.

Commissioner Clemens asked for clarification on how many buildings in total were part of this project, with Mr. Fourr responding that they are four separate modular buildings. Commissioner Clemens then had a brief discussion of when projects should be considered separate projects. He noted that in a previous case, the Commission had ruled that different locations and different buildings have been considered separate projects, since the work being done on them was independent from the other locations and buildings. Ms. Pickens then added that in the previous case that Commissioner Clemens referred to, the projects were done at separate times. In this case, all four roofs were done in the same time frame.

Commissioner Holt then asked Mr. Fourr if the roof repairs would be considered a life safety issue. Mr Fourr agreed with that classification, and noted the fixes also served as a preventative measure for additional damage to the buildings' roofs. Commissioner Holt then noted that Lancaster School District failed to get

an emergency resolution for the repairs, which would then not have been an issue of compliance with the Act.

Commissioner Clemens motioned to find that Lancaster School District violated Public Contract Code section 22034. Commissioner Rinde seconded the motion. The motion passed with eleven yays, and one abstention.

C. Increasing the Current Bid Threshold Amounts Discussion

Out of respect for the City of Claremont's time Chair Nunan proposed moving the discussion regarding bid threshold increases to follow Item 11A – City of Claremont. There were no objections to this proposal. The following discussion took place following the discussion of Item 11A:

Commissioner Rinde opened discussion by mentioning that he was part of the working group established in the previous meeting. The Commission last raised the informal and bidding thresholds in 2019. Since then, construction costs have risen by 30%, and there has been a 25% increase in agencies opted into the Act since then. The working group did not come up with a consensus on what the proper amount should be if the Commission would raise the thresholds.

Commissioner Bernacchi, also a part of the working group, brought up possible additions to the penalties for agencies that have violated the Act. These provisions would help the industry and labor palate the possible increases to the thresholds. Commissioner Bernacchi mentioned that the working group came up with rough increases to either \$65,000, \$70,000 or \$75,000 as the informal bid threshold, and \$225,000 as the formal bid threshold. Commissioner Errotabere stated that as a public agency, an increase to \$65,000 would not be enough of an increase to be impactful, especially for the years following the raised threshold.

Commissioner Bernacchi mentioned that any proposals should be considered as package deals in order to satisfy all parties involved. Commissioner Smith, after conferring with labor representatives, stated that an increase to \$70,000 would be acceptable pending any other language added to the Act. Anything above that amount may be met with significant pushback, unless there were non-monetary items added to the Act in their favor. Those non-monetary additions have not yet been determined. Chair Clemens then asked Michelle Pickens of CIFAC if she believes that the industry would be accepting of a raise to the thresholds. She agreed with the idea of raising the thresholds as long as there are additional non-monetary items added, but referenced that she does not speak for the entire industry.

Commissioner Bernacchi proposed circulating the working group's rough draft of language to the rest of the Commission for review and thoughts. He also added that the Commission needs to be united in this issue, as any changes to the

Public Contract Code would be public, and invite discussion among all sectors. If the Commission would like to have the increase enacted on January 1, 2024, the deadlines to introduce bills is coming up soon, which would require the Commissioners to come to their decision soon.

Commissioner Clemens mentioned that the Commission previously operated under the assumption of a 3% annual inflation rate, which would put the informal bid threshold at roughly \$70,000.

Chair Nunan then thanked the working group for their work, and looks forward to further discussion.

11. **New Business**

A. Accounting Review – City of Claremont

Michelle Pickens from CIFAC presented the evidence against the City of Claremont regarding the Police Department Security Gates Project. CIFAC argued that the City of Claremont was in violation of Public Contract Code section 22034.

Robert Owens, from the City of Claremont's Attorney's Office, acknowledged that the City of Claremont did not follow the Act by not utilizing the informal bidding procedures. He stated that the project may have been a public safety issue, but the City of Claremont failed to go through the proper channels to claim it as an emergency.

Commissioner Clemens and Chair Nunan provided additional insight as to how the City of Claremont can avoid a similar error from happening in the future.

Chair Nunan motioned to find the City of Claremont violated Public Contract Code section 22034. Commissioner Wakeman seconded the motion. The motion passed with eleven yays and one abstention.

B. 2022 Report to California State Legislature

Daniel Basso introduced the draft of the 2022 Report to California State Legislature, which will be sent following the Commission's approval. There were no comments, and the draft was approved to send.

C. CUPCCAA and Change Orders Discussion

Commissioner Errotabere introduced the topic by mentioning that she frequently receives questions regarding change orders and CUPCCAA. She noted that her district allocates for a 10%-15% contingency for change orders in their public projects. She noted that change orders are often different for each project, and that there is no set answer for change orders in general.

Commissioner Holt added that the purchasing agents should have the knowledge to account for any potential challenges that may arise in a public project. He stressed that if a project is close to going over a threshold, additional reviews must be done to ensure compliance. Commissioner Errotabere mentioned that she is typically conservative with her project estimations, and will over-budget to account for any change orders. Commissioner Rinde agreed with the diligence required for project cost estimations. Legal counsel may be required when an agency undergoes a project that is new to the agency. Chair Nunan added that he would recommend that if a project is close to coming near a threshold, he would recommend the process as if the project will go above that threshold. Commissioner Bernacchi noted that agencies should not be reliant on change orders for their projects in order to circumvent thresholds.

Commissioner Rinde added that change orders may be a non-monetary item that can be added into the language of the increased bid thresholds proposal that will be distributed to the rest of the Commission.

No additional comments at this time.

12. **Next Meeting**

During the meeting, the Commission settled on May 19th, 2023 for the next meeting. Following the meeting, Chair Nunan asked the Commission to have the meeting on May 12th due to a scheduling conflict.

The Commission agreed to schedule the next meeting for:

Friday, May 12, 2023
10:00 AM – 12:00 PM

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 11:55 AM; 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