

California Uniform Construction Cost Accounting Commission

Minutes of Thursday, May 17, 2018

These minutes were officially approved by the Commission at the subsequent public meeting on September 19, 2018.

1. Call to order

Chair Will Clemens called the meeting to order at 10:02 a.m.

Present: Robert Campbell, Will Clemens, Linda Clifford, George Hicks, Steven Hartwig, Michael Hester, Ken A. Kayser, Eddie Bernacchi, Guiselle Carreon, and Paavo Ogren

Via teleconference: None

Absent: Jeff Armstrong, Nathaniel Holt, and John Nunan

Unexcused Absences: None

Guests: Matthew Hilliard and Justin Bochmann from the Construction Industry Force Account Council (CIFAC)

State Controller's Office: Kimberley Chow, Renee Hszieh, Jim Reisinger, Jenny Jones, Heather Scott, Alexandria Green, and Don Lowrie

2. Introductions

Alexandria Green from the State Controller's Office (SCO) conducted roll call. The guests in attendance and SCO staff introduced themselves.

Chair Clemens announced the change made to the Commission subsequent to the last meeting: Commissioner Hicks and Commissioner Carreon are now retirees and will be able to participate in conversation but will abstain from voting.

3. Approval of the Minutes

A. Meeting held on February 15, 2018

Commissioner Clifford moved to approve the minutes without any changes from the February 15, 2018 meeting, and Commissioner Hartwig seconded the motion (Approved 8-0).

4. Commission Update (Refer to attachment Item 4A)

A. Participating Agencies

The SCO presented an update on participating agencies, noting that it had received 18 resolutions, with three additional resolutions from agencies that had already opted into the California Uniform Public Construction Cost Accounting Act (Act). The participating agencies, including newly opted-in agencies, currently total 1,120.

Alexandria Green, SCO staff, made the Commission aware that, due to the reconciliation process, she will be able to assist the Commission with a list of “city participating agencies that are general law versus charter law” (requested at the December 14, 2017 meeting). Chair Clifford stated that CIFAC has that list as well to assist with the process.

B. Funding Update

- I. The SCO reported that there were no updates, and that \$12,778.69 of unrestricted funds were available to the Commission for its use and reimbursement. Three travel expense claims have been expensed from CUCCAC’s fund account subsequent to the last meeting.

Chair Clemens announced that there was a change subsequent to the last meeting, and that travel expense claims will now be expensed from CUCCAC’s fund. Chair Clemens then asked SCO staff whether there was a reason for the change. Commissioner Bernacchi stated that this process was adopted roughly four years ago after the Commission reviewed Public Contract Code, and it was decided that the Commissioners would be reimbursed for their travel. In addition, he stated that it was the Commission’s understanding that the donations received on behalf of the Commission were primarily used for audits.

Jim Reisinger, SCO staff, explained that prior to the decision recently made, travel expenses were expensed from CUCCAC funds; the SCO made the decision to revert to the original procedure. Commissioner Bernacchi responded by informing SCO and the Commission that, in prior meeting minutes from four years ago, there was a legal opinion that SCO, by statute, was responsible for reimbursing Commissioners for their travel expenses and asked if there was an official position from SCO legal making the change. Kimberley Chow addressed Commissioner Bernacchi’s question, stating that the previous SCO legal counsel, Harpreet Nakhwal, had become aware that statute mandates the Commission to meet at the minimum once a year. Therefore, SCO will reimburse travel funds for Commissioners once a year and any additional meetings will be reimbursed from CUCCAC funds.

Commissioner Bernacchi asked the question: if there is a complaint, which the Commission is mandated to review within the timeframe, and the funds are exhausted, would the Commission not be able to meet? Kimberley Chow responded that she would have to look back at Nakhwal’s direction but she believes that if the Commission’s funds are depleted and the Commission must meet, SCO will reimburse the Commission members’ travel expenses. Commissioner Bernacchi also asked whether, if the Commission’s funds have been depleted and a review/audit must be done by a third party, will SCO also step in to cover that expense. Kimberley Chow could not respond to that question. Commissioner Campbell stated that it was always the intent that the CUCCAC fund would be used for audits, and Commissioner Clifford included outreach as well. Commissioner Ogren stated that these are valid points and

that the Commission should compose a letter or statement to SCO legal counsel addressing the Commission's concerns.

Commissioner Campbell stated that he believed that use of the funds would be restricted because the Commission's grant letter does not suggest that the funds are to be used for travel reimbursement. Commissioner Clifford stated that limits on the funds' use are not that restrictive because the grant letter does say that the use of funds will be for the Commission's activities, and does not specify what those activities are. Chair Clemens read the statute that specifies the minimal requirements for the Commission to meet and the reimbursement of travel. He stated that statute does not comment on how many times the Commission should be reimbursed for travel. Chair Clemens suggested that the Commission could let the funds run out and, regardless of how many times the Commission meets, SCO would have to reimburse the Commission members; otherwise, the Commission can return to prior procedures by meeting annually and only as needed. Commissioner Bernacchi responded by stating that the only reason the Commission was meeting frequently was due to the additional workload recently; however, he does not mind returning to the prior procedure and meeting only as needed. In addition, Commissioner Bernacchi stated that the Commission should not have to get into a debate with the Controller's Office on how often to meet.

Chair Clemens suggested that an ad-hoc committee be formed to include Commissioners Ogren, Bernacchi, and Campbell. Commissioner Hartwig stated that some kind of communication within the SCO generated the SCO's decision and he would like to see that opinion or communication first before responding to SCO with a letter questioning the SCO's intent. Chair Clemens stated that he had never received written communication regarding the decision, but had a meeting with Harpreet Nakhwal via telephone. Commissioner Hicks asked if George Lolas was involved in the SCO's decision on reimbursement of funds, and Reisinger replied that he does not recall George Lolas being involved. Commissioner Bernacchi reiterated that there had been a conversation that the SCO would reimburse the Commission its travel expenses.

Commissioner Bernacchi moved that SCO staff provide the Commission with information regarding what prompted the conversation and the exact policy regarding travel reimbursement. Chair Clemens asked if that question should be included in the letter, and Commissioner Bernacchi responded that the Commission could not respond with an intent to agree or disagree because the Commission does not have any compelling explanation. Commissioner Hartwig seconded the motion (Approved 8-0).

C. Inquiry Update

Commissioner Carreon commented that inquiry number 469 should be addressed the same way across all public documents and in inquiries, as it has been re-written in the FAQ redline document. Chair Clemens agreed and responded that it will be discussed later in the agenda.

No further comment.

D. 2017 Legislative Report

No comment

5. Public Comment

No comment from the public.

6. Staff Comments/Requests

A. Form 700

Alexandria Green, SCO staff, provided an update on the annual submissions of the Form 700s for the Commissioners. All Commissioners had completed their Form 700s as of March 29, 2018.

B. Revision of By-Laws

Alexandria Green, on behalf of SCO, recommended that the Commission review and revise the by-laws to incorporate Commission members' retirement during their term being served, as well as for formatting issues. Commissioner Clifford asked if the SCO legal office provided a legal opinion regarding Commissioners retiring and, and if so, who made the decision. Commissioner Bernacchi commented that statute does not require current employment, but asks for experience instead; Commissioner Campbell agreed. Commissioner Clifford asked if this subject is only a by-law issue, because she is confused why the Commission was told this morning that two Commissioners would be abstaining from voting, without a compelling explanation from the SCO. Although SCO did not comment at this time, she continued by stating that somebody within SCO can explain the policy change.

Commissioner Campbell asked if the decision was prompted by Commissioner Hicks' retirement conversation from two meetings ago. Commissioner Clifford commented that this situation is very disconcerting. Commissioner Bernacchi agreed that it is a concerning situation, because decisions were made without any back-up information or rationale. Commissioner Ogren asked SCO why there was a change, and what prompted the change in policy. Commissioner Clifford said that she would volunteer for a subcommittee, if one was needed, but would like to receive more information from SCO.

Commissioner Campbell asked that if legal counsel does not believe retired Commissioners can serve, could counsel provide explanation and support for their position? Commissioner Ogren seconded the motion (Approved 8-0). Commissioner Hester asked whether the Commission could receive a response prior to the next meeting so that it could be discussed. Chair Clemens confirmed that the Commission would not move forward with an ad-hoc committee to revise the by-laws until the Commission receives correspondence from SCO addressing the Commission's concerns by September 1.

C. ListServ Notification

SCO staff announced that, as part of the improvements being introduced to the Commission, ListServ notification would be a beneficial program for sending updates and changes to participating agencies.

7. Report of the Officers

A. Chair

Chair Clemens had a phone conference with North County Transit District to move forward with it becoming a participating agency of CUPCCAA.

B. Vice Chair

Vice Chair Hester thanked Commissioners Carreon and Hicks for taking the lead in his absence during the revisions of the FAQ.

C. Secretary

Nothing to report – not in attendance.

8. Committee Reports

A. FAQ Ad-Hoc Committee

The following changes were made to the FAQ redline revisions:

FAQ # 9: The second sentence in the answer, “Since maintenance does not constitute a ‘project’ under the Act, the cost accounting procedures do apply to such work.” Action: Include the word “not” in between “do” and “apply” and end it with a period; remove the rest of the sentence.

Change incorporated: “Since maintenance does not constitute a ‘project’ under the Act, the cost accounting procedures do not apply.”

FAQ # 10: The first sentence in the answer, “Yes. During November each year, each Public Agency which has elected to become subject to the Uniform Public Construction Cost Accounting Act and intends to utilize the notice provisions outlined in section 22034(a) shall establish a new list or update its existing list of qualified contractors by mailing, faxing, or emailing a written notice to all construction trade journals designated for that Agency under Section 22036.”

Action: Remove “...during November each year...” and replace with “at least once per calendar year.”

Change incorporated: “Yes. At least once per calendar year, each Public Agency which has elected to become subject to the Uniform Public Construction Cost Accounting Act and intends to utilize the notice provisions outlined in section 22034(a) shall establish a new list or update its existing list of qualified contractors by mailing, faxing, or emailing a written notice to all construction trade journals designated for that Agency under Section 22036.”

FAQ # 11: The question and the answer shall be changed to reflect the following

Action: the question – Remove the ending of the sentence beginning with, “...or can they only register from November to January?” **the answer** – Remove the sentence, “The Agency may include any contractor names it so desires on the list, but the list must include, at a minimum, all contractors who have properly provided the Agency with the information required.”

Change incorporated: May an agency that chooses to maintain a list add a contractor at any time during the year? Yes.

Chair Clemens moved to approve the FAQs with the changes proposed.
Commissioner Clifford seconded the motion (Approved 8-0).

B. CUCCAC Manual Ad-Hoc Committee

i. Proposed Changes – Legislative Update

No comment.

ii. Proposed Changes – Non-Legislative Update

Commissioner Clifford moved to approve the Cost Accounting Policies and Procedures manual as modified. Commissioner Ogren second the motion (Approved 8-0).

1. Minimum Requirements for Contractors’ List

Change the heading: from 1.04 to 1.04.01

1.04.01 #1: The first sentence currently reads, “During November each year, each Public Agency which has elected to become subject to the Uniform Public Construction Cost Accounting Act and intends to utilize the notice provisions outlined in section 22034(a) shall establish a new list or update its existing list of qualified contractors by mailing, faxing, or emailing a written notice to all construction trade journals designated for that Agency under section 22036.”

Action: Remove “During November each year...” and replace with “At least once each calendar year....”

Change incorporated: “At least once each calendar year, each Public Agency which has elected to become subject to the Uniform Public Construction Cost Accounting Act and intends to utilize the notice provisions outlined in section 22034(a) shall establish a new list or update its existing list of qualified contractors by mailing, faxing, or emailing a written notice to all construction trade journals designated for that Agency under section 22036.”

1.04.01 #1: The second sentence currently reads, “The notice shall invite all licensed contractors to submit the name of their firm to the Agency for inclusion on the Agency’s list of qualified bidders for the following calendar year.”

Action: Remove the end of the second sentence, "...for the following calendar year."

Change incorporated: "The notice shall invite all licensed contractors to submit the name of their firm to the Agency for inclusion on the Agency's list of qualified bidders."

1.04.01 #3: Action: Remove the first sentence from the third paragraph.

1.04.01 #3: The second sentence currently reads, "The Agency may include any contractor names it so desires on the list, but the list must include, at a minimum, all contractors who have properly provided the Agency with the information required under #2 above, in response to the written notice at any time during the preceding calendar year."

Action: Remove the end of the second sentence, "...at any time during the preceding calendar year."

Change incorporated: "The Agency may include any contractor names it so desires on the list, but the list must include, at a minimum, all contractors who have properly provided the Agency with the information required under #2 above, in response to the written notice."

1.04.01 #3: The third sentence currently reads, "The Commission recommends that the Agency automatically include the names of all contractors who submitted one or more valid bids to the Agency during the preceding calendar year."

Action: Remove the end of the second sentence, "...during the preceding calendar year."

Change incorporated: "The Commission recommends that the Agency automatically include the names of all contractors who submitted one or more valid bids to the Agency."

2. Responsibilities of the Account Review Process

No changes made.

3. General Inquiries Process

No changes made.

9. Commissioner Comments/Request

Commissioner Carreon thanked the Commission, as this may be her last meeting with them, and stated that she had pleasure serving on the Commission and that she will continue to fight for CUCCAC. She also stated that she has a few speaking engagements that she is still planning to attend.

Commissioner Bernacchi thanked Commissioners Carreon and Hicks for their service and all they have done for CUCCAC.

Commissioner Hicks thanked the Commission and stated that they have been a great group to work with these past years.

10. Old Business

- A. Response letter from CUCCAC to the City of Ukiah

No comment.

- B. Response letter from CUCCAC to the City of Santa Fe Springs

No comment.

- C. AB 2249 "Bid Limit Threshold"

There was discussion to obtain clarity on the exact effective date. Pursuant to PCC 22020, the earliest effective date would be July 1, 2019. However, Commission members decided they wanted to change the effective date so that it is effective January 1, 2019. PCC 22020 currently reads in regards to the effective date, "Any adjustment shall be effective beginning with the fiscal year which commences not less than 60 days following the Controller's notification to all public agencies of the adjustment. That notification shall also describe the provisions of this chapter and the benefits of using its provisions."

Heather Scott, SCO Legislative Unit staff, stated that the Commission could make a revision in the current bill to make the effective date sooner than the next fiscal year. The following changes were made: the first sentence and second sentence will be removed and replaced with the following: "The Controller shall notify all participating public agencies of the adjustment prior to the effective date." Chair Clemens moved to make the change in the current bill as modified for PCC 22020. Commissioner Clifford seconded the motion (Approved 8-0).

11. New Business

- A. PCC 22034(d) Legislative Change

Commissioner Clifford moved to keep the changes made with Heather Scott prior to the meeting in PCC 22034(d), to increase the monetary value from \$187,500 to \$212,500. Commissioner Hartwig seconded the motion (Approved 8-0).

12. Next Meeting

The Commission agreed to schedule the next meeting for:

Wednesday, September 19, 2018
10:00 a.m. – 2:00 p.m.
State Controller's Office
300 Capitol Mall, 6th Floor, 635 Terrace Room
Sacramento, California 95816

13. Adjournment

Commissioner Clifford moved to adjourn the meeting at 12:25 p.m.; Vice Chair Hester seconded the motion.

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