

California Uniform Construction Cost Accounting Commission

Minutes of Wednesday, September 9, 2015

These minutes were officially approved by the Commission at the subsequent public meeting on November 17, 2015.

1. Call to order

Chair George Hicks called meeting to order at 10:05 am.

Present: George Hicks, Linda Clifford, Jeff Armstrong, Robert Campbell, Will Clemens, Steven L. Hartwig, Michael R. Hester and David A. McCosker.

Via teleconference: Guiselle Carreon, Nathaniel Holt

Absent: David Cruce, Cesar Diaz, Lisa Ekers

Guests: Cathryn Hilliard, Construction Industry Force Account Council (CIFAC), Shari Bacon (CIFAC), Sally Riley (CIFAC), Greg Dormbach, Dan Maguire

Via Teleconference: David Fleisch - County of Ventura

State Controller's Office: Anita Dagan, Robert Szabo, Michael Gungon,

A. Voting by Roll Call

The Commission recognized all votes will be taken by roll call when one or more Commissioners participate in the meeting via teleconference, pursuant to the Bagley-Keene Open Meeting Act, Government Code section 11125.7.

2. Introductions

The commissioners, staff, and guests all introduced themselves.

3. Approval of the Minutes

A. Meeting June 25, 2015

Commissioner Campbell

Requested to rework item 2 to show on record an emergency state voted on pursuant to Government code section 11125.3. This emergency state would place a discussion and review of the FAQs as a standard agenda item.

Vice Chair Clifford motioned and Chair Hicks seconded to approve the minutes of the June 25, 2015 meeting. The motion passed.

4. Commission Update (Refer to attachment Item 4)

A. Report on new participating agencies

The SCO presented an update on the participating agencies, noting 19 new agencies have opted into the CUPCCAA (Act), bringing the number of agencies participating in the Act to 915. The SCO confirmed all new participating agencies were sent welcome letters.

B. Funding update

The SCO reported the Commission had \$1,354.90 of unrestricted funds available for its use.

C. Inquiry update – The SCO reported all inquiries received since the last meeting.

Vice Chair Clifford asked whether CMD Construction (Line item #12 from the inquiry report) has been updated and included in the new updated manual. SCO confirmed that it has been updated as well as included in the most recent final version of the manual available on the SCO website.

5. Public Comment

There was no public comment.

6. Staff Comment/Requests

Anita Dagan (SCO) announced Robert Szabo's departure as the current SCO lead analyst to support the Commission.

7. Reports of Officers

A. Chair – There was no report from Chair.

B. Vice Chair – Vice Chair Clifford provided the SCO with two sample letters asking for funding support for the commission.

C. Secretary – No comment.

Commissioners discussed the need for sending out letters to counties and agencies to receive support and legislative funding. Vice Chair Clifford agreed to draft a letter of support. Chair Hicks and Commissioner Campbell had also agreed to work on the letters to CSAC and the League of Cities to make them aware of the work CUCCAC does, in hopes of receiving funding.

Commissioner Carreon will send out funding request letters to CSEA and other agencies.

8. Committee Reports

A. Draft letter to CIFAC – Chair Hicks mentioned that the letter to CIFAC has been accepted by CIFAC as is. Cathryn Hilliard, Executive Director of CIFAC stated that JOC's cannot be used for bidding projects. She also suggested to

add these to the FAQs. Commissioner Campbell clarified JOC's can be used as long as it complies with the Act.

9. Commissioner Comments/Requests

Commissioner Clifford presented Commissioner Bernacchi's legislative update. SB184 is on its way to the Governor to be signed. Commissioner Campbell added that it's already been approved by the Governor on 9/4/15. Chair Hicks recommended updating the manual with new info from the bill. Vice Chair Clifford and Commissioner Bernacchi will work on updating it.

Commissioner Carreon added that sections in the manual that no longer apply should be removed. The manual will be up to date with the Public Contract Code and will be clearer.

10. Old Business

- A. Changes to the FAQ have been presented to the commission for approval. Chair Hicks motioned to approve. Commissioner Hartwig has seconded the motion. FAQ changes have been approved.
- B. Changes to the welcome letter have been approved. Chair Hicks motioned and Vice Chair Clifford seconded.

11. New Business

- A. CIFAC complaint against the County of Ventura - Shari Bacon, field representative of CIFAC, presented the case against Ventura County. Ms. Bacon stated that the County of Ventura had exceeded their force account. She stated that she had informed the County of Ventura on how to remedy the violation and gave them options. However, the county decided to proceed despite the violation. She stated that the county instead took the advice of their own legal counsel and set their own limits without accountability.

David Fleisch, representative of County of Ventura, commented on the issue via phone line. He admitted that they started the project but stopped immediately as soon as they realized that they were in violation. However, later they resumed working and thereby continuing to violate the Act since they already bought the materials and contracted out.

Commissioner Campbell restated and confirmed Ventura County's violation. Commissioner Clemens expressed his disappointment over the issue of having brought Ventura County before the commission. He stated that he considers CIFAC's complaint petty, and regrets they have to rule on this issue. Vice Chair Clifford said she doesn't feel compelled to strike them since they stopped working and tried to do it the right way. She stated the commission has the right not to strike them. Commissioner Clemens asked if the commission has the right to strike. Vice Chair Clifford reiterated that the county was proactive. Commissioner Hartwig stated the county tried and

there was an intent to rectify the situation. Commissioner Campbell posed the question whether if they stopped when they were below the \$45K threshold would they have been in violation or not. He also elaborated that the manual does not say what to do to remedy the violation. Chair Hicks reiterated CIFAC's position.

Commissioner McCosker asserted if there have laws, they should be followed. Otherwise, the precedent would be set that others could also violate the laws without being given a strike. Chair Hicks pointed out that counties have the most possibility to violate since they have the highest rate of participation. Commissioner Clemens asked again if the commission retains the right to not strike. Chair Hicks asked if there is a possibility that CIFAC can withdraw complaint. Commissioner Clemens also asked whether the complaint can be withdrawn. Cathryn Hilliard (CIFAC) stated CIFAC cannot withdraw the complaint. It's the law.

David Fleisch of Ventura County stated there is nothing in PCC code that says how to remedy once violation occurs. Commissioner McCosker reiterated that they were warned, and it is the law. Commissioner Hester restated the issue at hand. Chair Hicks stated the way to avoid a strike is to follow the bid limits. Commissioner McCosker asked what the original bid amount was. David Fleisch of Ventura County stated the bid was \$165K. Commissioner Campbell said we have to look also at the intent of the law, not just the dry wording.

As a closing comment, Shari Bacon (CIFAC) stated the county of Ventura was warned of the violation and they said they "don't care". She stated to the commission if they were not to strike, they would set the wrong precedent.

Vice Chair Clifford clarified the details with David Fleisch from the county, who objected to CIFAC's comment of "we don't care". David Fleisch stated that actually the contract exceeded the original bid amount and was over \$170K. Commission asked whether they should vote on whether or not to strike. Commissioner Campbell and Vice Chair Clifford discussed whether code is clear enough to remedy a violation, and therefore to justify a strike. David Fleisch stated again that there seems to be no remedy once you violated the law. Commissioner Campbell requested to add to FAQ clarification on how to remedy a violation. He asked David Fleisch of Ventura County whether they asked any of the commissioners' advice on a remedy because that could justify the commission not to strike. David Fleisch stated no, they have not.

A vote was called to strike and passed. Commissioner McCosker motioned and Commissioner Armstrong seconded. Vice Chair Clifford again reiterated to state in the strike letter that the county was proactive. She also reminded the county that they will have to take it to their board. Commissioner Hartwig

asked to add clarification to this in the future. Vice Chair Clifford agreed.

Chair Hicks asked that staff put on next agenda as a discussion item for commission to clarify the act, how to rule on these in the future.

Vice Chair Clifford and Chair Hicks asked SCO counsel could be present at the next meeting to give an opinion on this issue. Anita Dagan commented that they would need time to research and review the material first.

Commissioner Clemens was appointed to send a draft FAQ on noticing work under the County Road Commissioner to Anita Dagan (SCO). Chair Hicks also suggested to send a letter of warning out to the counties/agencies, even using the County of Ventura as an example (David Fleisch agreed to this), on what to do to avoid a violation.

- B. CIFAC complaint against City of Winters - Cathryn Hilliard introduced Sally Riley, field representative of CIFAC to present the case against the City of Winters.

Sally Riley had stated that the city has exceeded their force account and was in violation of the Act. They didn't use their informal qualified bidders' lists, failed to post their projects online and did not use licensed contractors. She asked to let the complaint stand.

Dan Maguire of the City of Winters addressed the commission and responded to the CIFAC complaint. Commissioner Clemens asked if no force account was used; he requested to view PCC 22042. Sally Riley (CIFAC) clarified meaning of force account. Dan Maguire clarified amounts in the complaint.

Commissioner Campbell asked for clarification on each project, demo, railroad and who owned property and the successor agency. Vice Chair Clifford stated she does not see this as a bid limit issue or force account issue. She also stated she would consider the projects of the city of Winters as two separate projects because two different agencies owned these properties prior to the city acquiring it. Commissioner Clemens stated again that this should not have been on the agenda, they did not violate the law or exceeded force account limits.

Commissioner Hartwig asked for clarification between properties and projects. Commissioner Carreon commented that they should have bid out since the initial bid was \$60K. Commissioner Campbell clarified the amounts and the projects with Dan Maguire. (City of Winters). Commissioner Hicks, Commissioner Hartwig and Sally Riley of CIFAC discussed to do a "public records act" in the future. Vice Chair Clifford reiterated that these are 2 separate projects, and also that records should have been acquired prior to the hearing as proof of violation.

Commission voted to find no violation. Commissioners Clemens motioned and Commissioner Hartwig seconded. Chair Hicks stated commission cannot find a violation.

- C. Bid limit review – SCO states PCC code section 22020 in reference to the commission having to review bid limits every 5 years. Commission debated on what the law says. Anita Dagan (SCO) was tasked to research how SCO pushed through bills in the past (omnibus bill) to implement changes. CIFAC (Shari Bacon) stated that AB720 raised the bid limit last time. Chair Hicks and Vice Chair Clifford asked for Anita Dagan to bring it to next meeting, clarify process and also to update the manual.

Commissioner Campbell asked Anita Dagan if they can change the guidance and legislation will follow. Vice Chair Clifford asked what if it did not pass. She asked if SCO could review paragraph 2 of the “Forward” section of the manual. Anita Dagan stated the SCO is currently understaffed. Vice Chair Clifford asked if SCO can forward a list, email to their legal counsel. Also offered commission’s help in putting it together. Vice Chair Clifford and Commissioner Carreon will work with staff on letter. Vice Chair Clifford also requested this item to be included on the next meeting’s agenda.

- D. Election of Officers - Chair presented the officers’ election.

Chair Hicks motioned for Vice Chair Clifford to be the next chair. Commissioner Bob Campbell seconded the motion. For the Vice Chair vacancy, Commissioner Campbell motioned for Commissioner Clemens to be appointed. Commissioner Hester seconded the motion. For secretary Carreon’s re-election, Commissioner Hartwig motioned and Commissioner Campbell seconded.

12. Next Meeting

The Commission tentatively scheduled the next meeting date for Wednesday, December 16, 2015 from 10:00am – 2:00pm at the State Controller’s Office downtown Sacramento location, pending room availability.

13. Adjournment

Meeting was adjourned at 1:35pm.

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