

California Uniform Construction Cost Accounting Commission Minutes of Friday, September 9, 2022

The following minutes were officially approved by the California Uniform Construction Cost Accounting Commission (Commission) at the subsequent public meeting on January 13th, 2023.

1. **Call to Order**

Chair John Nunan called the meeting to order at 10:03 AM

Present: John Nunan, Chad D. Rinde, Johannes Hoevertsz, Nathaniel Holt and Will Clemens

Via Teleconference: Chuck Poss, Jennifer Wakeman, Jeremy Smith, Leeann Errotabere, Mike James and Peter Worhunsky

Excused Absences: Eddie Bernacchi, Hertz Ramirez and Mary Teichert

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

2. **Introductions**

Sheirlyn Singh from the State Controller's Office (SCO) conducted roll call.

3. **Approval of the Minutes**

A. Meeting held on May 6, 2022

There were no comments from the Commission or the public.

Commissioner Rinde motioned to approve the meeting minutes of May 6, 2022 without any changes. Commissioner Clemens seconded the motion. The motion passed on a roll call vote with seven yays, zero nays, and four abstentions.

4. **Commission Updates**

A. Oath of Office

Chair Nunan informed the Commission that there are two new Commissioners. First, he administered the Oath of Office to Jennifer Wakeman, who was appointed to a three-year term representing cities that began on August 26, 2022. Second, Chair Nunan administered the Oath of Office to Johannes Hoevertsz, who was appointed to a three-year term representing counties that began on September 6, 2022.

B. Participating Agencies

Ms. Singh, SCO staff, presented an update on participating agencies, noting that SCO had received 17 resolutions from agencies that opted into the California

Uniform Public Construction Cost Accounting Act (Act) since the previous meeting. Of the 17 new participating agencies, there were 5 cities, 1 county, 6 school districts and 5 special districts. The number of agencies participating in the Act, including newly opted-in agencies, currently totals 1,501.

There were no further questions or public comments.

C. Funding Update

Ms. Singh reported that the SCO received two grants since the last meeting. The California Construction Advancement Program donated a total of \$1,250.00 for the first and second quarter of 2022. There were two travel claims from a commissioner of \$1,125.22. A total of \$18,738.67 is available for unrestricted funds and travel reimbursement for the Commission to use.

There was no public comments.

D. Inquiry Update

Ms. Singh presented a report on inquiries received since the last meeting. She added that SCO received a total of 15 inquiries following the May 6th meeting.

Chair Nunan commented that agencies are asking good questions related to their projects. Commissioner Clemens added that the responses to the questions are informative. He mentioned that the Commission had previously discussed cooperative agreements (co-ops), which deal with purchasing goods and services, but now agencies are asking regarding adding co-op agreements to their public projects. He added that the answer given to the inquirer was good. He also mentioned agencies cannot use a co-op agreement for projects, unless that co-op agreement was bid properly according to the CUCCAC procedures.

There were no further comments or questions regarding the inquiry update.

5. Public Comments

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

Courtney Moore from the Sacramento Metropolitan Fire District had a question in regards to the cooperative agreements. She mentioned that her district does not use cooperative agreements for construction, and gave an example of surveillance cameras. She asked if the installation portion of the camera project would fall under the classification of a construction project, and thus be considered a public project. She added that her district wants to follow the rules and procedures of the Act. Chair Nunan commented that agencies should submit an inquiry and describe the project if they do use cooperative agreement as mentioned by Ms. Moore to receive guidance if they are on the right track.

Commissioner Errotabere added a comment in regards to using the co-op agreements for public works. She mentioned that many school districts, county office and legal guidance can vary district by district, and that majority of legal guidance recommends that school districts should not exceed 10% of the value of public works because the purpose of co-op along with CMAS (California Multiple Award Schedules) is for goods. She also mentioned that CMAS has a larger threshold in their documents but some county offices and legal offices still do not agree with the large threshold. She added that she knows some people who are promoting CMAS which is causing obstacles for some schools. Chair Nunan added that the Commission can address the situation if it starts being an issue with other agencies, such as CIFAC. Commissioner Errotabere clarified that she is not implying that agencies should not use CMAS, but added that agencies should not utilize co-op agreements if a project is 70-80% public works. Commissioner Holt commented that that it depends from county to county on how they interpret their guidance, and gave an example of Los Angeles County, where there is a little room for negotiation, whereas Orange County is very strict. Commissioner Errotabere added that she is from a strict county and the county office/legal office has recommended that they 10% of the project value is the maximum that they should be utilizing. Commissioner Holt mentioned that the Commission is supposed to notify what the Act supposed to be, and the county offices should interpret the details of the project.

6. Staff Comments/Requests

A. SCO Staff Update

Mr. Basso introduced Brett Haynes, staff counsel, who will be assisting with CUCCAC legal duties. Mr. Basso also added that the SCO Local Government Policy Unit's supervisor, Jenny Liu, is attending the in-person meeting.

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 is working with the California IT in Education association to develop procurement guidelines and procedures for their members to include on how to use the procedures of CUPCCAA.

C. Secretary

Secretary Holt mentioned that Commissioner Errotabere has been a great support to the Commission as she has been doing extraordinary work. He also added that he was pleased to see El Segundo and Lawndale school districts opted into the Act.

8. Committee Reports

A. CUCCAC Manual

I. Proposed changes – Legislative updates

Nothing to report.

II. Proposed changes – Non-Legislative updates

Chair Nunan mentioned that CIFAC proposed a Non-Legislative change. He added that it can be discussed in the future meetings and opened the topic for comments from the commissioners. Commissioner Clemens commented that the update will be a good addition, but any change to that section of the manual would require a legislative change, since the section of the manual is a direct reference to Public Contract Code Section 22034. The Commission agreed to circle back to this proposed addition at a later meeting.

9. Commissioner Comments/Requests

Commissioner Rinde mentioned that he is back to his previous role with Yolo County as the Chief Financial Officer. Commissioner Clemens mentioned that he will be presenting at the State Controller's Fall Conference with County Auditors in October in Chico. Chair Nunan added that like Commissioner Errotabere, Commissioner Clemens also goes above and beyond when it comes to helping the Commission.

There were no further comments from commissioners.

10. Old Business

No Old Business to report.

11. New Business

A. Accounting Review – Tuolumne County

Chair Nunan explained the process of the accounting reviews to the two new Commission members and opened the topic for discussion. Commissioner Clemens asked if anyone representing CIFAC and Tuolumne County were attending the meeting virtually. Michelle Pickens, CIFAC Executive Director, informed the Commission that she is representing CIFAC and she briefly

explained CIFAC's role in making sure that public agencies are in compliance with the Public Contract Code (PCC) by monitoring the actions of public agencies related to construction projects, and investigating potential violations of State bidding laws. She added that in late 2021, CIFAC was contacted by the reporting party in regards to the pavement work on Chicken Ranch Road. She informed the Commission that the project was a partnership between the county and Miwok Native American Tribe who owns a casino on Chicken Ranch Road. When CIFAC questioned the county why the project was not bid, the county replied that the work was considered maintenance work. Ms. Pickens stated that according to the Public Contract Code, maintenance work is classified as resurfacing of streets and highways at less than one inch, and referenced the pictures provided with CIFAC's complaint which allegedly shows that the paving part exceeded one inch. She added that CIFAC believes that the county has misclassified the work as maintenance and that the project should have been competitively bid and performed via contract. Ms. Pickens stated that CIFAC has provided all supporting documents, and thanked the Commission for reviewing their concerns.

Commissioner Rinde asked if there is Tuolumne County representative so they can hear their perspective of the project. No one attended the meeting from Tuolumne County to share their perspective. Commissioner Clemens thanked CIFAC for their in-depth submittal of the review. He added that the Public Contract code is very clear, stating that if the project requires less than once inch of overlay, then the project should be classified as maintenance, and if the project requires more than one inch, then it is not to be considered maintenance. He referenced a picture on Attachment G which shows a measurement of the overlay, and asked if that was the only picture submitted that shows that the work done was more than one inch. Ms. Pickens responded that they have submitted several pictures which reflect that the work done was more than one inch. Commissioner Clemens disagreed with Ms. Pickens statement and stated that the pictures are not adequate evidence that the entire project was more than one inch. He added that a better way to determine if the project exceeded one inch would be to calculate the material tonnage, how much tonnage one inch of work would require, and the width of the road and use those calculations to determine if the work done exceeded one inch.

Chair Nunan responded that from his perspective, the pictures clearly show that the pavement work done exceeded one inch and said maybe the county is not aware of the restriction. Commissioner Errotabere commented that some small districts are having issues finding qualified contractors and some projects are not being done due to the lack of contractors. She referenced that some schools are using school staffs for small projects and are having challenges finding local contractors. Ms. Pickens commented that CIFAC was contacted by two separate

contractors in Tuolumne County who were interested in bidding for this project. Chair Nunan then commented that someone should have notified Tuolumne County that their project was under review by the Commission. Commissioner Hoevertsz added that he agreed with Ms. Pickens statements in regards to the project and stated that he believes that project should have been bid.

There was a brief discussion among the commissioners on how they can determine that resurface exceeded one inch. Since no one from the County of Tuolumne was available to present their perspective on the project, Chair Nunan then came to a conclusion that the Commission can draft a letter to the county to inform that it appears by the evidence given by CIFAC that have exceeded the one inch parameter. He further added if the county would like to present their perspective, they can submit additional documents to the Commission for review. Thus, this will inform the county that moving forward if a resurfacing project is more than one inch, then the project will need to be bid. He then asked Ms. Pickens on her thoughts on this conclusion. Ms. Pickens added that she agrees with Chair Nunan, and would like the commission to inform the county that they have violated the Public Contract Code.

Commissioner Rinde asked if the Commission can inform the county of the accounting review so the Commission can hear the county's perspective. Commissioner Smith added that he agrees with Ms. Pickens about sending a message to Tuolumne County, which will also inform other agencies. In addition, Commissioner Clemens agreed to Chair Nunan's conclusion that the pictures appear to show the project exceeding one inch, and requested CIFAC to submit more evidence for future accounting reviews. There was brief discussion on how to notify Tuolumne County so they can present their perspective of the project. Ms. Pickens added that CIFAC notified Tuolumne County about the accounting review and when they first requested information regarding the project, it took them about three months to respond to their inquiry. She then added that after CIFAC found the county in violation of the Act, the County of Tuolumne did not respond back to them and did attend the meeting to present their side of the case. Commissioner Clemens agreed with Ms. Pickens and added that this meeting was their opportunity to provide their evidence to the review that they did not violate the Act. He then added that his concern is that they were not notified of this meeting. Commissioner Clemens also mentioned that the Commission should discuss this review in the next meeting and notify the county. Commissioner Rinde agreed that the county were likely not aware about this meeting and stated that the Commission should give Tuolumne County a chance to present their case. Commissioner Holt asked Ms. Pickens if Tuolumne County responded to the letter that CIFAC sent in regards to the violation of the Act, Ms. Pickens responded that they did not receive a reply, though the county is not required by law to respond.

Chair Nunan motioned that the Commission should draft a letter to Tuolumne County stating that preliminary review of the project on Chicken Ranch Road shows that the county has violated the public contact code and to present their side of the case if they want to dispute CIFAC's review. He added that we can add this to next meeting agenda so Tuolumne County is given a chance to present their perspective. Commissioner Clemens seconded the motion. The motion passed on a roll call vote with eleven yays and zero nays.

B. Accounting Review – Lancaster School District

Chair Nunan asked if anyone is representing Lancaster School District in the teleconference. There was no representation from the school district. He then asked Ms. Pickens to present CIFAC's case against Lancaster School District. Ms. Pickens thanked the Commission and added that they were contacted in regards to roofing project at the El Dorado Elementary school. She added that there were several buildings on the property that were receiving new roofs and the reporting party informed CIFAC that the project was not advertised for bid. During their investigation, CIFAC found four buildings at the site where new roofs were being installed. Based on the documents received from the school district, it appears that the project was split into two. Furthermore, Ms. Pickens added that the purchase order was issued at the same time with the same amount of work done at the same site. Based on their investigation, CIFAC concluded that the aggregate value of the project should have been taken into consideration and the project should have been competitively bid.

Commissioner Errotabere commented that she agrees with CIFAC's finding with this complaint because the project was being done at the same school site. Commissioner Clemens respectfully disagreed with Commissioner Errotabere and stated that the Commission had discussed this same issue in the past and the Commission agreed that different buildings can be separate projects. He added that he believes that it is not required to combine the projects as they are separate buildings. Chair Nunan disagreed with Commissioner Clemens comments since the work was done on the same site simultaneously with the same contractor with the same start and end dates. He commented that he believes that by separating the project into two projects, the school district tried to be below the threshold for informal bidding. Commissioner Rinde agreed that an agency can separate projects but there is not enough evidence of why the school separated the projects and it could have been performed as one project. Commissioner Rinde and Commissioner Holt stated that the Commission needs to find out why they separated the project. Commissioner Holt also agreed with Commissioner Errotabere that the school cannot separate the projects on the same site.

Commissioner Smith questioned the Commission on what is the protocol to reaching out to the agencies in regards to the reviews submitted by CIFAC. Mr. Basso, SCO staff, informed the Commission that SCO did not receive an email address to inform the agencies and in the past, the chair assigned a working group to each case who then contacted the agencies to gather more information. Commissioner Smith volunteered to be part of a working group to receive more information from the agencies and stated that there should be a method where an agency should be notified of the concerns so they can present their perspective. Chair Nunan added that going forward, if the Commission receives accounting reviews, the Commission should send a formal invitation letter to the defendant agency with the meeting date and time so they can present their side of the case. Mr. Basso will work with Chair Nunan in drafting a template for a formal invitation letter.

Commissioner Rinde commented that the Commission should take a similar approach to Tuolumne County. He then motioned to send a letter to Lancaster School District to notify them of a potential violation of the Act and give them time to provide additional information. He also asked to add this item to the agenda for the next meeting to come to a conclusion if the district in fact violated the Act. Commissioner Smith seconded the motion. The motion passed on a roll call vote with eleven yays and zero nays.

C. Revision of FAQs

Chair Nunan asked the Commission if there are any additional proposals to revise the Frequently Asked Questions (FAQ).

There was no comment from the Commission.

The SCO will add the questions from Item 11C to the listed FAQ document on the CUCCAC website.

D. Discussion about potentially increasing the current bid threshold amounts

Chair Nunan commented that as discussed in the last meeting, it is time for the Commission to begin discussing an increase to the bid thresholds, and stated that the bids have previously been increased every five years. He stated that due to the pandemic and the current inflation rate being high, the Commission would likely need to adjust the thresholds. Chair Nunan asked Commissioner Clemens on how the process worked when the threshold increased from \$45,000 to \$60,000. Commissioner Clemens replied that the Commission added a proposal to the agenda to increase the threshold from \$45,000 to \$60,000 and informal bid from \$175,000 to \$200,000. He then added that the Commission

needs to make a proposal to State Controller to increase the bid limits and the State Controller will need to agree to the increase. Commissioner Clemens added that any potential threshold increase would have to pass through the state legislature, which can be a long process.

Chair Nunan asked the Commission and Ms. Pickens on ideas of how much the threshold should be increased by. Commissioner Rinde commented that he would prefer to utilize data related to construction cost escalation to determine how much the threshold should be increased to. Commissioner Poss agreed with Commissioner Rinde's comments. Commissioner Holt added that he would like to hear Ms. Pickens's thoughts on the threshold increase. Commissioner Errotabere noted that the Commission should be consistent to the amount that the threshold which was increased last time in 2019. Ms. Pickens commented that the bid increase is a concern to CIFAC since CIFAC wants its contractors to be able to bid for projects in a fair manner. She mentioned that smaller contractors do not prefer a threshold increase. There was a discussion among Commission members on how the data will be collected to determine how much the threshold should increase by. Commissioner Clemens commented that there is a minimum increase of \$15,000 since it takes time for the State Controller's Office to get the increase passed through the state legislation. He added that when the thresholds were low, there was no incentive for agencies to opt-in to the Act. Commissioner Clemens also added since the last increase, the Commission can see that the participating agencies have been increasing due to the Act's usefulness to agencies. He also recommended to increase the threshold once it reaches five years since the previous threshold increase.

Chair Nunan commented that to collect data and have a realistic number, the Commission should create a working group to research this project. Commissioner Smith, Commissioner Rinde and Commissioner Errotabere volunteered to be part of the working group. Commissioner Rinde added that if any data was used in 2019 that would be useful, or needs to be updated, to please send the data to the working group Commissioners. Commissioner Smith also mentioned that Commissioner Bernacchi may wish to be a part of the working group. Chair Nunan agreed with Commissioner Smith's recommendation of Commissioner Bernacchi, and will reach out to Commissioner Bernacchi regarding being on the working group. Chair Nunan concluded by stating that this item will be added to the agenda of the next meeting for further discussion.

12. Next Meeting

The Commission agreed to schedule the next meeting for:

Friday, January 13, 2023
10:00 AM – 2:00 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 11:51 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