

California Uniform Construction Cost Accounting Commission

Minutes of Monday, November 7, 2016

These minutes were officially approved by the Commission at the subsequent public meeting on February 13, 2017.

1. Call to order

Linda Clifford, Chair called the meeting to order at 10:00 a.m.

Present: Linda Clifford, Will Clemens, George Hicks, Ken Kayser, Steven L. Hartwig, Cesar Diaz, Guiselle Carreon, Michael Hester

Via teleconference: David Cruce (Fresno), Nathaniel Holt (Pomona), Lisa Ekers (Santa Cruz)

Absent: Eddie Bernacchi, Jeff Armstrong, Bob Campbell

Guest: Amanda Rish - Fairfield Suisun Unified School District Cathryn Hilliard - Construction Industry Force Account Council Paavo Ogren - Oceano Community Services District

State Controller's Office: Ron Placet, Anita Dagan, Jenny Jones, Debbie Torres, and 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 (GC)§11123.

2. Introductions

The Commissioners, staff, and guests all introduced themselves.

No other members of the public were in attendance at either of the remote locations listed in the meeting notice, which were posted on the California Uniform Construction Cost Accounting Commission (CUCCAC) web page.

3. Approval of the Minutes

A. Meeting held on July 8, 2016

Commissioner Holt motioned and Commissioner Hartwig seconded to approve the minutes, of July 8, 2016 meeting. (The motion passed on a roll call vote with 8 yays, 0 nays, and 3 abstentions by Commissioners Diaz, Ekers, and Hester, who were not in attendance at July 8, 2016 meeting).

4. Commission Updates (Refer to attachment Item 4)

A. Participating Agencies

The State Controller's Office (SCO) presented an update on the participating agencies, noting 21 new agencies along with 3 additional resolutions who had already opted in the Uniform Public Construction Cost Accounting Act (UPCCAA). The SCO confirmed, that welcome letters had been sent to all 21 agencies opting into the Act. The participating agencies, including newly opted in agencies, had totaled 1019 to date.

Chair Clifford thanked Commissioner Carreon for her ongoing outreach to school districts on behalf of the Act. Chair Clifford requested that Debbie Torres, an analyst from SCO, identify the 1,000th agency to opt into the Act. Chair Clifford requested SCO staff to prepare a letter congratulating them for being the 1,000th agency to opt in. Furthermore, Chair Clifford requested Commissioner Carreon to sign the letter if that agency was a school district. If the agency is not a school district, Chair Clifford would sign the letter.

Commissioner Bernacchi and Commissioner Hicks were assigned to strengthening the CUCCAC Public Agency notification letter by recommending that the various agencies opt in and join the Act.

Commissioner Clemens stated that his title on the header was incorrect and the correction be addressed prior to sending the letter out.

Chair Clifford asked the SCO staff if they were going to mail the letter or send via email to suggested agencies. Ms. Torres stated that SCO has a staff person currently updating and verifying the contact information and would send the letter out via email upon approval.

B. Funding

I. Update

The SCO reported the Commission had \$8,854.90 of unrestricted funds available for its use to perform audits and outreach.

II. Sample Donation Letter

Chair Clifford mentioned that the Commission has used this letter for donations in the past and suggested that the SCO update the letter and have the Commission review the letter again. Chair Clifford asked Ms. Dagan (SCO Manager) if the Commission can send the letter out or does it have to be sent out by Ms. Torres from the SCO office. Ms. Dagan stated it was acceptable for the Commission to send the letter out for donations.

Chair Clifford mentioned that the Commission needs to find a member from Southern California Contractors Association (SCCA).

Commissioner Cruce is a member of SCCA and will send out the donation letter to that organization.

The Commission reviewed the letter and provided the following changes to the letter.

Current language:

“Just a month ago, while the public sector was able to increase the formal bidding threshold to \$175,000, we were able to hold the lower limits at \$30,000 thus providing more opportunities for bidding.”

Suggested change:

“While the public sector was able to increase the formal bidding threshold to \$175,000, we were able to hold the lower limits at \$45,000 thus providing more opportunities for bidding.”

Ms. Torres will make the corrections and send to Chair Clifford for her review. The goal is to send the letter out by the end of the year. Commissioner Diaz agreed to send the letter to the organizations he represents. Chair Clifford will make sure the letters are sent to the Associated General Contractors (AGC) and United Contractors (UCON), as well as the Construction Industry Force Account Council (CIFAC). Chair Clifford will request Commissioner Bernacchi to solicit donations from the organizations he represents. The goal is to solicit \$10,000 - \$12,500 in donations.

C. Inquiry Update

The SCO presented a report on inquiries received since the last meeting, which was held on July 8, 2016. Chair Clifford noted the Commission may need to update the Frequently Asked Questions (FAQs) to reflect the new inquiries received.

At the meeting held on July 8, 2016, Commissioners Hartwig and Campbell asked whether the inquiry updates are considered public information and should be shared. Chair Clifford immediately consulted with Counsel Brownfield about the sharing of the updated information. He indicated that he would need to research it and get back to the commission with an answer. On July 11, 2016, Counsel Brownfield emailed Chair Clifford and stated that there is currently no constraint that would require said document to be posted on the internet.

D. Commission Vacancy

Commissioner Ekers officially resigned from CUCCAC, effective December 3, 2016. Chair Clifford thanked Commissioner Ekers for all of her hard work and service.

Vice Chair Clemens mentioned that he reached out to several possible candidates, whom have sent their resumes to SCO staff. Paavo Ogren, from Oceano Community Services District, was in attendance at the meeting and introduced himself and his background to the Commission. Chair Clifford

recommended that the Commission send a letter for their recommendation to SCO on behalf of the candidates after the commissioners have a chance to review. Mr. Ogren noted that Oceano Community Services District was scheduled to join the Act in the next 10 days and during his discussion with the Commission, outlined the many positive reasons why the District is joining the Act.

5. Public Comment

Cathryn Hilliard, representing the Construction Industry Force Account Council (CIFAC), thanked the Commission for all the hard work they have done throughout the year. She also congratulated the Commission on reaching over 1,000 participating agencies.

6. Staff Comment/Requests (Refer to attachments for Items 6A)

A. Amended Bylaws

Ms. Torres referred to a segment of the amended bylaws. The Commission recommended the following three changes:

- 1) Added the word “that” to the following paragraph:

“At all meetings, all votes shall be by voice. The Commission will recognize that all votes will be taken by rollcall when one or more Commissioners participating in the meeting via teleconference, pursuant to the Bagley-Keene Open Meeting Act Government Codes (GC) §11123.”

- 2) Changed the following paragraph:

From: “A Commissioner shall be terminated from the Commission due to excessive absences.”

To: “A Commissioner may be terminated from the Commission due to excessive absences.”

- 3) On July 8, 2016, the Commission agreed to add to the bylaws the following new language regarding terminations and appointments:

“It is understood that the Commission serves at the pleasure of the Controller. The Controller makes the final decision on terminations and appointments. The Commission can only make recommendations.”

Commissioner Carreon motioned and Commissioner Hicks seconded the motion to accept the revisions to the bylaws and agreed the final recommendation would come from the Chair and the Vice Chair to the SCO. (The motion passed on a roll call vote with 11 yays, 0 nays).

B. Travel Claims

Ms. Torres shared an update about travel claims with all commissioners in attendance. She shared that a new requirement had been implemented due

to the recent FI\$CAL statewide accounting system update. The update would require all commissioners to have a standard form (STD 204) on file to process a travel claim. Commissioner Clifford recommended that all Commissioners complete their forms and mail them to the SCO in advance of their next claim.

7. Report of the Officers

A. Chair

Chair Clifford thanked Commissioner Ekers for her service and stated that it would be sad to see her leave the Commission.

B. Vice Chair

Vice Chair Clemens shared with the Commission about his experience presenting to the County Counsel Association's Public Works Conference. His presentation provided guidance to the organization on how they could better advise their clients, and how to avoid violating the Act. Additionally, he shared insight on key areas CIFAC focuses on when they visit project sites.

Vice Chair Clemens also shared he was invited back to speak next spring at the California General Services Association meeting. Vice Chair Clemens noted that the County of Santa Cruz has expressed interest in opting into the Act.

C. Secretary

Commissioner Carreon mentioned that she has completed 12 presentations to school districts throughout the state.

8. Committee Reports Refer to attachment Items 8A & 8C)

A. Frequently Asked Questions (FAQs) – Review and discuss

Commission reviews a set of drafted answers for the following questions:

Current language for FAQ 22:

Q. If public agencies are not following the advertising requirements in the Act, will the Commission address those agencies? Can a complaint be brought to the Commission?

A. No. The Commission cannot review any complaint of improper advertising by any public agency. The Commission can only review the accounting procedures of a public agency when a complaint from an interested party provides evidence that the participating agency:

- 1) Performs work, after rejecting all bids, claiming it can do it less expensively. (Section 22042(a))
- 2) The work performed exceeded the force account limits. (Section 22042(b))

- 3) The work has been improperly classified as maintenance. (Section 22042(c))
- 4) A public agency is accused of not complying with the informal bidding procedures set forth at Section 22034. (Section 22042.5)

Suggested change for FAQ 22:

Q. If public agencies are not following the informal advertising requirements in the Act, will the Commission address those agencies? Can a complaint be brought to the Commission?

A. Yes, refer to Public Contract Code 22042.5:

“The Commission shall review practices of any participating public agency where an interested party presents evidence that the public agency is not in compliance with Section 22034.”

Chair Clifford asked Ms. Torres to change the welcome letter to new agencies to include a reminder to agencies to be sure they comply with PCC 22034 as they opt into the Act.

Chair Clifford assigned Commissioner Carreon to prepare letters to the school districts to remind them about PCC 22034 and assigned Commissioners Hicks and Hartwig to prepare all letters to other agencies.

Current language for FAQ 26:

Q. How does a public agency process change orders when the standard code conflicts with the Act?

A. For contracts below \$45,000, the total cost of the contract may not exceed \$45,000. For informal contracts, under the Act, the limit is \$175,000. If the public agency is a school district, there may be additional limits and it is recommended the agency consult with their legal counsel for interpretation of change order limits.

Suggested change for FAQ 26:

Q. How does a public agency process change orders when the standard code conflicts with the Act?

A. For work that a public agency wants to do with its own forces, the total cost of the project may not exceed \$45,000. All costs are counted including design, demolition, engineering, supplies, materials, labor, equipment and all other costs. Over \$45,000 and up to \$175,000, the public project can be bid informally following the procedures in the Act. Again, all costs must be included. If the public agency is a school district, there after often additional limits and restrictions and it is recommended that the agency consult with their legal counsel to make sure that these additional requirements are met.

Chair Clifford asked Ms. Torres to put the discussion on change order limits on the agenda for the next meeting scheduled on February 13, 2017.

B. Legislative Update

- I. Commissioner Bernacchi was not present at the meeting to provide legislative updates. Chair Clifford asked Ms. Torres to put PCC 22042.5 on the agenda for the next meeting scheduled for February 13, 2017, and stated that Chair Clifford would notify Commissioner Bernacchi that the issue is of concern.
- II. Chair Clifford mentioned that Commissioner Carreon noted several PCC codes that still required updates (PCC 22050, PCC 22034 and PCC 22037) and would likely end up in an omnibus bill in the future. Chair Clifford also mentioned that Commissioner Bernacchi was looking into legislation to affirm the SCO's responsibility to fund audits. She mentioned this may be the only way to secure funding for the functions of the Commission under the requirements of the Act.

C. CUCCAC Manual Update

- I. Current state of manual
Chair Clifford mentioned that the manual was posted on the website, but Ms. Torres shared with the Commission that the manual is still being vetted through SCO management. Chair Clifford, mentioned that she would like to see the manual posted on the website by the end of November 2016.
- II. Proposed changes – non-legislative
None at the time.
- III. Proposed changes – legislative
Possible clarifications (school district issues primarily) and the SCO budget item may be proposed for the Omnibus bill in January 2017. As stated in the last meeting held on July 8, 2016, Commissioner Bernacchi will manage the process and keep the Commission informed.

9. Commissioner Comments/Requests

There were no Commissioner comments or requests.

10. Old Business

- A. Chair Clifford asked Ms. Torres if there were any outstanding items that the Commission would need to be aware of, i.e. Form 700, Ethics. Ms. Torres stated that all Commissioners were up to date with all paperwork. Ms. Torres stated that all Commissioners should have received an email about the new electronic filing of Form 700. Ms. Torres mentioned if the Commissioners had

forgotten their log-in or password for the site, they should contact her to reset it for them.

11. New Business

- A. Commissioner Carreon stated that some school districts would like to use volunteer labor from the California Conservation Corps. The school district would use the formal and informal bidding and the California Conservation Corps would do the labor for free.

Since labor was free, Commissioner Carreon asked whether or not the labor is bid out at value and included in the bid. It was agreed that volunteer labor for whom no one was paid was not a cost in the project. However, all equipment, materials, etc. falling within the limits in the Act would have to be bid in compliance with the Act.

Commissioner Carreon will submit an FAQ for this type of project.

12. Next Meeting

The Commission scheduled the next meeting date for Monday, February 13, 2017, from 10:00 am – 2:00 pm at the State Controller’s Office 300 Capitol Mall, Suite 635, Sacramento, CA 95814.

13. Adjournment

Commissioner Diaz moved and Commissioner Hartwig seconded to adjourn the meeting. The Meeting was adjourned at 11:52 p.m.

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