

California Uniform Construction Cost Accounting Commission

Minutes of Thursday, December 14, 2017

These minutes were officially approved by the Commission at the subsequent public meeting on February 15, 2018.

1. Call to order

Chair Will Clemens called the meeting to order at 1:02 p.m.

Present: Will Clemens, Linda Clifford, Robert Campbell, George Hicks, Steven Hartwig, Michael Hester, Nathaniel Holt, Ken A. Kayser, Eddie Bernacchi, Guiselle Carreon, Jeff Armstrong, and John Nunan

Absent: Paavo Ogren

Unexcused Absences: None

Guests Maghan Hunt and Justin Bochmann, from the Construction Industry Force Account Council (CIFAC)

State Controller's Office: Harpreet Nakhwal, Jim Reisinger, Jenny Jones, Jason Narayan, Alexandria Green, and Joshua Buchanan

2. Introductions

A. Introductions

Alexandria Green from the State Controller's Office (SCO) conducted roll call.

B. Chair Clemens' first action of the day was to swear in the new Commissioner, John Nunan, who had been appointed to the California Uniform Construction Cost Accounting Commission (CUCCAC). Chair Clemens administered the Oath of Office to John Nunan. Commissioner Nunan was appointed by the Controller on November 1, 2017, to represent General Contractors.

3. Approval of the Minutes

A. Meeting held on September 28, 2017

The September 28, 2017 meeting minutes were approved with the following amendments brought forth by Chair Clemens:

Change language on page five (5), first sentence of the fifth paragraph. Item 11(B): Increase in the Informal Bid Limit Pursuant to Public Contract Code Section 22032.

Change from:

General consensus to change the \$45,000 limit to \$60,000 and the \$175,000 limit to \$200,000.

Change to:

Unanimous decision to change the \$45,000 limit to \$60,000 and the \$175,000 limit to \$200,000.

Commissioner Clifford motioned to approve the minutes from the September 28, 2017, meeting with the change in language, and Commissioner Hartwig seconded the motion (Approved 10-0). Commissioner Bernacchi abstained from voting, as he had not been present at the September 28, 2017, meeting. Commissioner Nunan abstained from voting, as he was appointed after the September 28, 2017, meeting.

4. Commission Update (Refer to attachments for Item 4)

A. Participating Agencies

The SCO presented an update on participating agencies, noting that the SCO received four (4) resolutions with one (1) additional resolution from agencies that had already opted into California Uniform Public Construction Cost Accounting Act (Act). The participating agencies, including newly opted-in agencies, current total 1,108.

Commissioner Clifford asked for an update on the cities listed as non-members of the Act on the CIFAC website.

Commissioner Hartwig stated that he had begun working on the members list available on the CIFAC website and he is taking the list at face value. He indicated that, when he checked on Solano and Napa County agencies, he found the information on the CIFAC website to be incorrect. Commissioner Hartwig will contact Solano and Napa County agencies to have their information corrected.

Commissioner Bernacchi asked whether Commissioner Hartwig's statement (above) was in response to the Commission not having a formal list of participating agencies.

Commissioner Clifford suggested, as CIFAC maintains a members list, looking at the list and sending them information about joining the Act.

Chair Clemens indicated that the goal was to identify charter cities.

Commissioner Hartwig expressed his interest in determining what percentage of charter cities are not going to opt into the Act regardless of what the Commission does.

Commissioner Bernacchi stated his belief that the State Building Construction Trade Council has a list of charter cities, and he intends to verify that.

Jenny Jones of the SCO shared that SCO staff members are in the process of reviewing every agency on file, are discovering discrepancies, and will report back to the Commission once they have completed this task.

Commissioner Clifford asked Jenny Jones if the discrepancies he is referring to are agencies already in the Act, but not accounted for in the 1,108 number.

Jenny Jones replied that the SCO is also reviewing physical copies from the archives to verify every single participating agency.

Commissioner Clifford indicated his belief that the Commission should postpone its research until the SCO finishes its research, so as to avoid duplicate work.

Commissioner Clifford then asked if Commissioner Bernacchi would be able to verify whether charter cities are on the websites once the SCO is done.

Chair Clemens agreed, and stated that no vote was necessary for an update or for the subcommittee to postpone its research.

B. Funding

I. Update

The SCO reported that there were no updates, and that \$13,855 of unrestricted funds were available to the Commission for its use to perform audits and outreach.

Commissioner Clifford recommended that Commission members appeal to their regular agencies for donations of \$2,500 a year to continue to increase the fund balance.

Commissioner Hester asked if donation request letters should be on the CUCCAC letterhead.

Commissioner Clifford responded that she would draft the letter and send it to the SCO to be inserted into the CUCCAC letterhead. Commissioner Clifford informed the SCO that once the letter is on the CUCCAC letterhead, it should be sent to Commissioners Hester, Clifford, Nunan, Bernacchi, and Armstrong so that they can forward the letter to their respective agencies.

C. Inquiry Update

The SCO presented a report on inquiries received since the last meeting, which was held on September 28, 2017. Copies of the inquiries were sent via email to Commissioners Hicks, Carreon, and Holt, who participated via teleconference.

Commissioner Clifford asked the SCO if there was a way to obtain the inquiries ahead of time.

SCO Manager Jim Reisinger asked legal counsel if the inquiries must be posted to the website prior to sending them to the Commission, or if they could be sent to the Commission prior to the meeting.

Commissioner Clifford specified that receiving the inquiries ahead of time would give Commissioners time to verify the proposed answers and to determine whether anything should be added or redacted.

Commissioner Campbell reminded the Commission that the FAQs were a later item on the agenda, and that the Commission must be careful to follow the agenda discussion order.

Chair Clemens clarified that the current topic of discussion was not FAQs, but was instead a list of inquiries regarding who had asked what questions, and what the answers had been.

Chair Clemens recommended that the Commissioners review the inquiry list; he requested that, if Commissioners found anything to add, they should bring it up at the next meeting.

SCO ID 393

Question 1. In my manual (January 2017 Edition) page 10(a) it says: "All contractors on the list for a category of work being bid shall be mailed, faxed, or emailed a notice inviting informal bids unless the product or service is proprietary."

Does this mean that if only one or two vendors on my list are certified to install a particular system by the manufacturers, they would be the only ones to get the bid request?

Answer 1. Yes, that is correct. A contractors' list is not mandatory; however, you may want to use a list for your convenience. If so, please make sure you that you advertise each November in order to keep the list current and updated and provide an opportunity for additional contractors who may want to be included on your list. As an alternative, you may send notice to all trade publications for each County project.

Commissioner Carreon affirmed that she had asked a question about the November advertising date, and had been told by the SCO that the advertisement is no longer required and that the requirement is no longer stated in the manual.

SCO Supervisor Jenny Jones confirmed that the SCO has updated the manual to reflect this change.

Chair Clifford asked if the answer to inquiry number 393 should be changed, as the answer provided by the SCO was that "effective January 1, 2016, the need to publicize a contractors' list in November is no longer needed."

The SCO will update the answer to inquiry number 393 and send the corrected information to the person that submitted the question.

SCO ID 413

Question 2. In order for a contract to be reimbursable under Federal Emergency Management Agency (FEMA) guidelines, an agency must comply with federal guidelines. Since CUCCAC is a State construct, does FEMA accept CUCCAC contracting terms in determining eligibility?

Answer 2 FEMA is a federal agency; therefore, the CUCCAC contracting terms are a state guideline and do not determine eligibility for a federal agency. You would have to confirm with FEMA whether CUCCAC contracting terms are FEMA-compliant for a specific given situation.

Commissioner Campbell requested more information about inquiry number 413, specifically, clarification pertaining to CUCCAC versus FEMA.

Chair Clemens clarified that the questioner wanted to know whether, by following CUCCAC and the Act's contracting terms, they were also in compliance with FEMA. The response was that the questioner should verify with FEMA whether CUCCAC contracting terms are FEMA-compliant.

Commissioner Carreon replied that for all projects that receive Federal funding, contractors must comply with both State and Federal requirements.

Commissioner Campbell added that compliance with FEMA does not override compliance with CUCCAC, and indicated his belief that compliance with FEMA most likely entailed compliance with CUCCAC.

Commissioner Clifford replied that the Federal Acquisition Regulation (FAR) discusses reimbursement rules.

5. Public Comment

No comment from the public.

6. Staff Comment/Requests

SCO Supervisor Jenny Jones introduced Alexandria Green and stated that her presence on the staff has allowed the SCO an opportunity to review old records and get caught up on several things.

Jenny Jones also complimented the rest of his staff members for their efforts to keep the Commission running in Debbie Torres' absence, in addition to completing their regular duties.

7. Reports of Officers

A. Chair

Nothing to report.

B. Vice Chair

Nothing to report.

C. Secretary

Nothing to report.

8. Committee Reports

A. Frequently Asked Questions

I. Contractor's list advertising in trade journals in November

Chair Clemens stated that this requirement is not in the manual or statute, so modification of the Frequently Asked Questions (FAQs) is in order; he asked for volunteers to write this Frequently Asked Question.

Upon review by the committee, number two (2) in the FAQs will remain. There is nothing in the FAQs regarding November.

Commissioner Clifford asked if the list is required any longer.

Chair Clemens stated that districts can have lists, but they are not required to maintain them.

Commissioner Clifford suggested that number eleven (11) in the FAQs be deleted, as it is not required anymore.

Chair Clemens suggested replacing number eleven (11) in the FAQs, effective

January 1, 2016, stating that advertising in November is no longer required.

Commissioner Clifford suggested that the Commission form a subcommittee to address this question, and either amend the answer or delete FAQ number eleven (11).

Commissioner Carreon read FAQ number eleven (11), "Can a public agency disqualify or exclude certain contractors from the Qualified Contractors' list required in Public Contract Code section 22034(a) (1)?"

Commissioner Carreon suggested that the portion that says "required" should be eliminated, but the question and answer should remain to clarify that districts may exclude or disqualify contractors from the lists that they maintain.

Chair Clemens asked whether Commissioner Carreon was suggesting just eliminating the word "require."

Commissioner Carreon confirmed that her suggestion was to rewrite FAQ number eleven (11) as, "Can a public agency disqualify or exclude certain contractors from the Qualified Contractors' list in Public Contract Code section 22034(a) (1)?"

Commissioner Hicks suggested that Commissioner Clifford refer the matter to the subcommittee that had been established at the last meeting, and that he would be happy to initiate that process with the two other commissioners instead of forming a second subcommittee.

Chair Clemens agreed with Commissioner Hicks, and requested that the matter be added to the agenda for the next meeting.

Chair Clemens asked if Public Contract Code section 22034(a) (1), had been changed, and suggested that the answer to FAQ number eleven (11) either be a list or refer to “qualified contractors” (in lower case) rather than to a “Qualified Contractors’ list.”

Commissioner Hicks will prepare verbiage for FAQ number eleven (11) for the next CUCCAC meeting.

Commissioner Armstrong left the meeting at 2:30 p.m.

B. CUCCAC Manual Update

I. Proposed Changes – Non-legislative

None at this time.

II. Proposed Changes – Legislative

Commissioners Bernacchi and Carreon will work together to compare all different sections and make sure that they are consistent with each other.

9. Commissioner Comments/Requests

Commissioner Bernacchi was not in attendance at the last CUCCAC meeting; he noticed that, according to the meeting minutes, Commissioner Carreon would support the increase only if soft costs were included.

Chair Clemens explained that the topic of discussion was that any amount up to \$45,000 can be paid either by force account or by negotiated contract, but payment by force account must be included in “direct” costs. Soft costs are equal to “indirect” costs. Indirect costs are included in the force account, but bids from contractors already include the overhead and the contractors’ profits.

SCO Manager Jim Reisinger informed the Commission that a letter inquiring about this topic had been routed to the State Controller, and that he had not received a response yet.

SCO Supervisor Jenny Jones asked Chair Clemens if, when the SCO receives letters from the Commission, the Chair is giving the SCO approval to send these letters out or if the Chair would prefer to send the letters out himself.

Commissioner Clifford replied that the SCO should send the letter out and that it should not come from the Chair.

Jenny Jones asked the Chair for clarification on specific letters that go through internal channels for approval; he inquired whether the Chair would send these letters out once they have been approved.

Chair Clemens replied that the matter required further consideration. He indicated that he would send this letter to the Commission, and that he will inform the SCO of how he would like to proceed with any future letters.

Returning to the bid limit increase, Commissioner Nunan stated that he was seeking clarity regarding what costs (e.g., design, indirect, or direct costs) are to be included in the force account limit.

Commissioner Clifford and Commissioner Campbell will revise the code language to clarify which costs should be included in the force account limits.

Other Comments

Chair Clemens asked when the Commission planned to discuss the complaint that had been made against it, and stated that—as the complaint was not on the agenda—it would be necessary to schedule a meeting to talk about the complaint.

The complaint was addressed to the Chair, and sent to the SCO at 300 Capitol Mall #1850, Sacramento, California, 95814. The letter was mailed on November 29, 2017. As of the meeting date, the letter still had not been accounted for or received.

Commissioner Campbell asked whether, under public comment, the Commission could formally speak on the formal complaint that had been received by the Chair.

Commissioner Clifford volunteered to review the complaint because it refers to an accounting review.

The Commission reviewed both Public Contract Code sections 22042 and 22043 (c) to determine how much time the Commission has to reply to the letter.

Recess was called by SCO Counsel at 2:37 p.m. to review information regarding the complaint and the stipulations regarding it.

Commission meeting back in order at 3:02 p.m.

SCO Counsel advised the Commission on how to proceed; informed the Commission that, at that point in time, some information was still missing; and expressed a need for more time to reach a decision. SCO Counsel also recommended that the Commission schedule a meeting within the timeframe of reviewing the letter, as it is easier to cancel meetings than to schedule them.

Chair Clemens stated that the Commission would wait and see if it has received a complaint, note the official date, and factor that in when scheduling the next meeting and writing the agenda.

Commissioner Bernacchi asked SCO Counsel if requests by the Commission must be by letter, or if they can be made by mail or email.

SCO Counsel indicated the intent to research that matter as well.

Commissioner Clifford recommended that a group be assigned by the Commission to review the complaint.

Chair Clemens decided to assign at least two Commissioners, but indicated his intention to wait for further information from SCO Counsel before doing so.

10. Old Business

There was no old business to discuss.

11. New Business

A. Vacant Position – Labor Representative

Chair Clemens stated that Cesar Diaz had resigned and that the Chair has sent a letter to each Commissioner seeking nominations. Commissioners Armstrong and Bernacchi will submit names of nominees; all other Commissioners were in the process of reviewing the letter.

12. Next Meeting

The Commission agreed to schedule the next meeting for Thursday, February 15, 2018, from 10:00 a.m. – 2:00 p.m. at the State Controller’s Office, 300 Capitol Mall, Suite 635, Sacramento, California, 95816.

13. Adjournment

Commissioner Hartwig moved and Commissioner Clifford seconded the motion to adjourn the meeting at 3:14 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