

CUCCAC Inquiries

August 27, 2022 – December 20, 2022

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Registration of Business and Enrolling into CUPCCAA

Q: I'm writing to inquire into the status of our registration as a business, as well as for assistance with enrolling in the CUPCCAA program. I have done extensive research on the website and would really appreciate a phone call with someone who can either walk me through or provide me with detailed and specific information.

A: Please contact Secretary of State to register/find the status of registering your business. More information regarding registering businesses can be found at <https://www.sos.ca.gov/business-programs/business-entities>.

Moreover, to opt into the California Uniform Public Construction Cost Accounting Act (CUPCCAA), the Governing Board must elect by resolution to become subject to the uniform construction cost accounting procedures promulgated by the State Controller pursuant to the [Public Contract Code section 22019](#). The resolution shall specify that the local agency will meet the requirements prescribed in the California Uniform Construction Cost Accounting Commission's *Cost Accounting Policies and Procedures Manual* and state the effective date the agency will implement the accounting and bidding procedures. Once a resolution has been passed, please email a signed copy of the approved resolution to LocalGovPolicy@sco.ca.gov.

A sample resolution can be found in section 1:02 on page 6 of the [Cost Accounting Policies and Procedures Manual](#).

More information regarding opting into the Act can be found on the [State Controller's Office website](#), specifically the [Cost Accounting Policies and Procedures Manual](#) section 1.01 on page 5.

Force Account and Bidding Process – Solar Streetlights

Q: Good Morning,

Staff recently sent a solar streetlight purchase to our City Council and received approval for the purchase. The solar streetlights will replace non-functioning lights on a series circuit.

The City planned to use regular City staff to install the streetlights once the purchased lights arrived. I have attached the Agenda Report which fully explains the details.

We were hoping to receive guidance on this purchase and wanted to set up a meeting with your Commission at your earliest convenience.

Would your staff have time for a meeting this next week to discuss the issue?

A: CUCCAC met last Friday and, although it was too late to formally agendaize any discussion about your situation, [Chair Nunan] did get a chance to discuss it with another commissioner and a staff member. We are in agreement that the replacement of the small number of lights in this case can be classified as “ maintenance “, thus eliminating any further compliance with the Act.

Should your minor replacement be successful and you later decide to replace larger portions of the street light system, that larger undertaking might be viewed differently and may indeed be a public project. It would also probably be advantageous to open it up to formal public bidding as such.

Thank you for your inquiry and being proactive in your decision-making.

CUCCAC Violation Process

Q1: I do not see where the manual addresses violations and what the process is. Is there a separate manual for this?

A1: [Section 1.09 of the Cost Accounting Policies and Procedures Manual](#) covers the review process for an agency undergoing an accounting review. [Public Contract Code Sections 22042-22044.5](#) establishes the basis of the accounting review process for the Commission, which is further detailed in Section 1.09 of the Manual.

Q2: How is an agency notified if there is a violation and what can they do to resolve? Is there a repository of violations so that other agencies can review and learn from other agency mistakes/resolutions?

A2: Typically, the agency accused of violating the Act is contacted by the person/agency making the complaint. This contact typically includes a request for documentation of the project, which is then reviewed and submitted as evidence of a violation of the Act to the Commission. Sometimes, the agency

making the complaint will withdraw their request for Commission review if the agency acknowledges their mistake (if any) and amends their work process to avoid what caused the complaint in the future.

Unfortunately SCO does not post a repository of violations and the Commission's findings, but the meeting attachments and minutes of meetings in which an accounting review is performed are available on the [CUCCAC webpage](#).

For example, at the most recent CUCCAC meeting (09/09/2022) there were two accounting reviews, with the complaint letter and supporting evidence, as well as draft meeting minutes discussing the reviews currently posted on the website. Additionally, you may want to refer to the materials related to the August 20, 2021 meeting, as those documents are posted and were more conclusive and indicative of a typical accounting review than those in the 09/09/2022 meeting. You may find other reviews by going through the list of past meeting agendas and materials.

Hopefully this was helpful. Please do not hesitate to contact us with any additional questions.

Training on Adoption of CUPCCAA

Q: Request for training on adoption of CUPCCAA

A: Unfortunately the State Controller's Office does not offer any "official" trainings regarding CUPCCAA, but the [Cost Accounting Policies and Procedures Manual](#) contains information regarding CUPCCAA and how to use it. More information regarding CUPCCAA can be found on the Controller's webpage at the following location: https://www.sco.ca.gov/ard_cuccac.html.

Additionally, Commissioner Clemens prepared a presentation about the basics of CUPCCAA for a conference last week. The PDF of his presentation is available at the following link: https://www.sco.ca.gov/Files-ARD-Local/cuccac_update.pdf.

Commissioners would also be willing to answer any additional questions that you may have, or even set up a training session. The Commissioners' contact information, including the Commission Chair, can be found at the following location: https://www.sco.ca.gov/ard_cuccac_members.html.

CUPCCAA Yearly Renewal

Q: I am the Acting Purchasing Director of a school district. I have been reviewing the CUPCCAA frequently asked questions link, on your webpage:

https://www.sco.ca.gov/Files-ARD-Local/frequently_asked_questions_faq_-_uniform_public_construction_cost_accounting_act.pdf

Our current Purchasing Director, who is out on leave, had specified that we, as a public agency, must renew our membership every November 1st. However, in the link above, question #5 states that "once an agency has opted into the Act, it will remain a part of the program."

So, my question is, are we supposed to renew or membership, or do we just stay a member? If we need to renew, can you please provide guidance on that?

A: No, once an agency has opted into the Act, they do not need to provide any additional information to the State Controller's Office. They are considered to be opted into the Act unless they submit an additional resolution specifically opting out of the Act. Therefore, agencies do not need to re-opt in to the Act if they have already done so.

The direction for yearly renewal may be referring to updating your agency's list of qualified contractors.

Per section 1.04.01 of the [Cost Accounting Policies and Procedures Manual](#):

At least once per calendar year, each public agency that 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 written notice to all construction trade journals designated for that Agency under Section 22036. 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.

In past editions of the manual, the date for the list maintenance was in November, but later revisions have amended the timeframe to at least once per calendar year to give agencies more freedom in when they perform their list maintenance.

More information can be found in the Cost Accounting Policies and Procedures Manual, as well as other sources on the [State Controller's Office CUCCAC webpage](#).

Authorization of Solicitation

Q: Is there anything in the California Uniform Public Construction Cost Accounting Act that states, a public agency's Council must specifically authorize to solicit proposals prior to releasing RFP to the public?

A: There is currently no guidance on how a public agency's governing board authorizes its projects. That should be determined by what best suits the public agency and its governing board.

Note that per Public Contract Code section 22034 (c), The governing body of the public agency may delegate the authority to award informal contracts to the public works director, general manager, purchasing agent, or other appropriate person.

Additional guidance regarding the Act can be found on the [State Controller's Office webpage](#), most notably the [Frequently Asked Questions](#) document, and the [Cost Accounting Policies and Procedures Manual](#).

General CUPCCAA Questions

Q1: Projects up to \$60k may be performed by own workforce, negotiated contract or purchase order:

Because of PCC 20123, can LA County issue purchase orders (*informal bidding*) for projects under \$50k without joining CUPCCAA?

A1: Public Contract Code (PCC) 20123 is not under the purview of CUPCCAA, and would exceed the State Controller's Office's authority to comment. Please discuss with your legal counsel.

Q2: Informal vs Formal bidding

Q2A: May I please have the definition of what constitutes as informal bidding vs. formal bidding?

A2A: For agencies that have opted into the Act, informal bidding may be used for public projects between \$60,000 and \$200,000. Typically, informal bidding includes less arduous methods of gathering bids from contractors, and are typically completed faster than projects that require formal bidding. See PCC 22034 for additional information.

Q2B: Is a purchase order the appropriate vehicle for pw projects? Construction, alteration, repair, demolition, installation, repair and maintenance?

A2B: CUPCCAA allows for public projects of \$60,000 or less to be performed “by the employees of a public agency by force account, by negotiated contract, or by purchase order”, per PCC 22032. It is up to the agency to determine the most appropriate vehicle of those allowed.

Q3: Is maintenance covered under CUPCCAA?

A3: Maintenance projects are not covered by CUPCCAA. Notably, the definition of “public projects” does not include maintenance. In CUPCCAA, maintenance includes all of the following, per PCC 22002 (d):

- (1) Routine, recurring, and usual work for the preservation or protection of any publicly owned or publicly operated facility for its intended purposes.
- (2) Minor repainting.
- (3) Resurfacing of streets and highways at less than one inch.
- (4) Landscape maintenance, including mowing, watering, trimming, pruning, planting, replacement of plants, and servicing of irrigation and sprinkler systems.
- (5) Work performed to keep, operate, and maintain publicly owned water, power, or waste disposal systems, including, but not limited to, dams, reservoirs, powerplants, and electrical transmission lines of 230,000 volts and higher

Participating Agency List Removal

Q: Why would an agency be removed from the participating agency list?

A: Agencies are removed from the participating agency list if they pass a resolution opting out of the California Uniform Public Construction Cost Accounting Act (CUPCCAA). Similar to how an agency opts in to CUPCCAA via a resolution from the agency’s governing board, an agency may opt out of CUPCCAA in the same process.

One other possibility would be if the agency accumulates three separate projects in a ten year period that the Commission finds to be in violation of California [Public Contract Code \(PCC\) section 22042](#). More information regarding this review process can be found in [PCC 22042-22044.5](#).

More information regarding CUPCCAA can be found on the [SCO website](#), especially the [Policies and Procedures Manual](#) and [FAQ document](#).

Third Party Procurements and CUPCCAA

Q: Often, we have come across agencies signatory to the Act, who have engaged a third party to handle the procurement process for them. We have observed that the third party is not following the required advertising/noticing guidelines as outlined in the Act. Are agencies required to follow the advertising/noticing guidelines as outlined in the ACT regardless of who they have engaged to handle the project procurement process on their behalf?

A: Chair Nunan's Response: I'm not sure that the code specifically addresses this situation as outsourcing is kind of a modern problem. However, common sense would dictate that the agencies in question are the ones that must ensure compliance with the Act and that would include making sure that any entity doing procurement on their behalf does as well. To utilize a "subcontracting" relationship to skirt the Act's guidelines violates its basic intent.

The contract between an agency and a third party for purposes of procurement should include language that notifies and requires the third party to adhere to the letter of the Act.

SCO may want to have the legal department to weigh in on this.

SCO Legal Response: Having taken a look at the inquiry, I concur with Chairman Nunan's response.

As a general doctrine of law, a third party agent stands in the shoes of the principal (the hirer). The third-party agent is still restrained by all the laws and regulations as the principal, and likewise, the principal is liable for the acts of their third-party agent.

Here, there is not really a gray area under the Act's code or under the general legal doctrine. A signatory cannot use a third-party procurement agent to circumvent compliance with the act. The best way to think about it is to understand that when a third-party agent acts on behalf of a principal, they act as though they are the principal.