

## California Uniform Construction Cost Accounting Commission

### Minutes of Thursday, February 15, 2018

#### 1. Call to order

Chair Will Clemens called the meeting to order at 10:04 a.m.

*Present:* Will Clemens, Linda Clifford, George Hicks, Steven Hartwig, Michael Hester, Nathaniel Holt, Ken A. Kayser, Eddie Bernacchi, Guiselle Carreon, John Nunan, and Paavo Ogren

*Absent:* Robert Campbell – Guest Call-In

*Unexcused Absences:* Jeff Armstrong

*Guests:* Michelle Tucker, Justin Bochmann, and Tony Morelli from the Construction Industry Force Account Council

Lee Howard from North Coast Builder's Exchange and Sally Riley from Riley's Compliance Consulting

David J. Rapport, City of Ukiah's Attorney and Tim Eriksen, City of Ukiah's Public Works Director

Noe Negrete, City of Santa Fe Spring's Public Works Director and Yolanda Summerhill, City of Santa Fe Spring's Attorney

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

#### 2. Introduction

##### A. Introduction

Alexandria Green from the State Controller's Office (SCO) conducted roll call. The guests in attendance and SCO staff introduced themselves.

#### 3. Approval of the Minutes (Refer to attachment Item 3A)

##### A. Meeting held on December 14, 2017

Chair Clemens motioned to approve the minutes without any changes from the December 14, 2017 meeting, and Commissioner Hester seconded the motion **(Approved 8-0)**. **Commissioner Ogren abstained from voting**, as he did not attend the December 14, 2017 meeting.

**Commissioner Steven Hartwig arrived at 10:10 a.m.**

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

##### A. Participating Agencies

The SCO presented an update on participating agencies, noting that it had received 10 resolutions with 10 additional resolutions from agencies that had already opted into the California Uniform Public Construction Cost Accounting Act (Act). The participating agencies, including newly opted-in agencies, currently total 1,105.

##### B. Funding

###### I. Update

The SCO reported that there were no updates, and that \$13,854.90 of unrestricted funds were available to the Commission for its use and reimbursement.

###### II. Grant Letter

Chair Clemens wanted to address the change in the letterhead. Jim Reisinger, Manager at SCO, stated that the letterhead had been changed due to the requirements of the FPPC Act. Harpreet Nakhwal, SCO Legal Counsel, added that the Commission is a separate organization and not an entity of the SCO. Commissioner Clifford commented that she does not have a problem with the changed letterhead, because CUCCAC is not proposing to receive grants for SCO; however, she wanted to rephrase the statement indicating that SCO is an oversight of the Commission. Chair Clemens indicated an interest in changing some of the language in the grant proposal letter to reflect the recent findings.

##### **Commissioner George Hicks arrived at 10:14 a.m.**

Chair Clemens suggested some changes to the Grant Proposal Letter: throughout the document, removing the word “contribution” and replacing it with the word “grant”; eliminating the last sentence in the second paragraph because it is no longer current; and in the sixth paragraph, replacing the word “audits” with “reviews.”

Commissioner Clifford moved the motion to accept the changes to the grant letter. Commissioner Hartwig seconded the motion (**Approved 11-0**). Alexandria Green, from SCO, will make the changes to the document and send it back to Commissioner Clifford to be distributed to the rest of the Commission.

## C. Inquiry Update

### I. SCO Legal Response

Harpreet Nakhwal, SCO Legal Counsel, informed the Commission that, pursuant to Government Code section 11125.1(a) the inquiry update is a public record and can be distributed to the Commissioners prior to the meeting; however, they may not discuss the inquiry update with one another prior to the meeting. In addition, the Commission must have hard copies available at the meeting to distribute to the public upon request.

Chair Clemens stated that he would like to have the inquiry update more than two days prior to Commission meetings.

Commissioner Carreon would like inquiry numbers 431 and 437 to be amended, specifically the sentence that reads, "*The minimum criteria for development and maintenance of the list as determined by the Commission can be found on page 10 of the Cost Accounting Policies and Procedures Manual.*" Commissioner Carreon does not agree that there is a minimum criteria outlined in the manual; she believes that the statement should be restored in the manual as it was previously. She believes that it would answer many of participating agencies' questions regarding the minimum criteria for and maintenance of the contractors' list. Chair Clemens agreed, as he has received similar questions from participating agencies.

### II. Update to inquiry #352

Commissioner Holt contacted Debby Watson. Unfortunately, she has been out of the office due to a family emergency; she will contact Commissioner Holt when she returns. In the meantime, this inquiry is on hold.

### III. Update to inquiry #393

A response to the inquiry sent to James Galloway on January 9, 2018, has been included on the inquiry update.

## D. Frequently Asked Questions (FAQ)

Chair Clemens prepared FAQ #3, for approval by the Commission, due to a recent conversation with a participating agency. The participating agency felt that the information provided in the FAQ was inaccurate. Chair Clemens motioned to approve the edits, and Commissioner Hicks seconded the motion (**Approved 11-0**).

### I. FAQ #11

Commissioner Hicks did not have a chance to complete FAQ #11—it is pending.

II. FAQ Ad-Hoc Committee

Chair Clemens asked how big the FAQ Ad-Hoc Committee should be, and Commissioner Carreon replied that in the past it had comprised of only two Commissioners. Commissioner Clifford nominated Commissioners Hester and Carreon to be on the committee. Chair Clemens agreed and included Commissioner Hicks, as he is already working on FAQ #11. Commissioner Clifford moved the motion to create the FAQ Ad-Hoc Committee, and Chair Clemens seconded the motion. **(Approved 11-0)**

E. CUCCAC Manual Update

Chair Clemens asked the Commissioners if there is an existing CUCCAC Manual Ad-Hoc Committee in place. Commissioner Clifford responded that in the past Clifford, Carreon, and Bernacchi, when he was available, had participated in such a committee. Chair Clemens stated that there is no current need for a CUCCAC Manual Ad-Hoc Committee; however, in the future, one will be created, and similar proposed changes should be included in the meeting packet, as they are now.

I. Proposed Changes – Non-Legislative – Proposal from Chair Clemens

The proposed changes by Chair Clemens were written in response to recent complaints received by the Commission. There was no discussion about additional edits to section 1.08 of the Accounting Manual. Chair Clemens moved the motion to accept the edits that he had proposed, and Commissioner Holt seconded the motion **(Approved 11-0)**.

II. Proposed Changes – Legislative

No comment made.

5. Public Comment

No comment from the public.

6. Staff Comment/Requests

A. Form 700

Alexandria Green, from SCO, provided an update on the annual submissions of the Form 700s for the Commissioners. The Commissioners have until April 2, 2018, to e-file their Form 700s. The only Commissioner who does not have to file, due to assuming his appointed position recently, is John Nunan.

## B. FAQs

Alexandria Green suggested including a question in the FAQs regarding whether participating agencies need to opt in to the Act every year, as the Commission has recently received several repetitive resolutions. Chair Clemens asked the FAQ Ad-Hoc Committee to add the question to the FAQs.

## C. Strike Policy and Procedures

SCO staff suggested updating the CUCCAC Manual to include the strike policy and procedures regarding the hearing process to reflect the desires of the current Commission. Commissioner Clifford asked if SCO would be proposing the language for the Commission. Jenny Jones, Supervisor at SCO, stated that SCO staff members will not be proposing language and it is the responsibility of the Manual Ad-Hoc Committee to propose the manual language. Commissioner Clifford recommended that Chair Clemens create a permanent Ad-Hoc Committee for the CUCCAC Manual. Chair Clemens suggested that instead of an Ad-Hoc Committee – because he believes that those are created for a single purpose – he will propose suggested manual language regarding the hearing process to be discussed at the next meeting.

## D. Travel Expense Claims

SCO created a quick start guide to assist newly-appointed Commissioners with any questions they may have regarding the travel reimbursement process.

## 7. Reports of Officers

### A. Chair

Chair Clemens and Commissioner Ogren met with SamTrans, a special district on the San Francisco peninsula; this transit agency seems interested in becoming subject to the Act.

### B. Vice Chair

Nothing to report.

### C. Secretary

Nothing to report.

## 8. Committee Reports

Commissioner Bernacchi met with Caltrans regarding all the transit agencies in California. He suggested that, as Commissioner Ogren and Chair Clemens recently met with a transit agency, they could unite and lead all the transit agencies that are interested in becoming subject to the Act. Commissioner Ogren commented that the CUCCAC Manual may require revision if transit agencies become subject to the Act, because some transit agencies receive federal funding that may not allow 20-30% overhead allocation as currently prescribed for opted-in agencies in the

Accounting Procedures Manual. Commissioner Ogren also indicated that the Act allows agencies to use the OMB model, and that if they are going to become subject to the Act then it is best for agencies receiving federal funding to use that model.

## 9. Commissioner Comments/Requests

Commissioner Carreon stated that she had just presented at the Capitol, which is not usual for her. While she was there, she met representatives of a water district, who inquired about the Act; she gave them her card so that the district could contact her. Unfortunately, she did not remember the name of the water district.

## 10. Old Business

### A. Bid Limit Increase Letter

SCO informed the Commissioners that the EO Legislative Unit has asked Aguiar-Curry to author the CUCCAC bill, identified as AB 2249. Jim Reisinger, Manager at SCO, stated that the bill was introduced by Assembly Member Cooley and may be heard on March 16. Commissioner Hester stated that although all bills are passed and in effect January 1 of the following year, Public Contract Code (PCC) states that bid limit changes are not in effect until the following fiscal year. Therefore, the CUCCAC bill would not affect bid limits until July 1, 2019. Commissioner Hester asked if it would be possible to include the bill in the Budget Act or a budget trailer bill for earlier approval.

### B. Vacant Position—Labor Representative

Commissioner Bernacchi has conferred with the State Building and Construction Trades Council and the State Council of Laborers. He has not received feedback from either organization. Chair Clemens contacted his local labor union soliciting candidates, but has not received any nominations. Chair Clemens asked for any public comment and Sally Riley, with RCC, asked whether the vacancy letter could be posted on the SCO website. Jim Reisinger, Manager at SCO, indicated that he would find out whether the vacancy letter can be posted on the SCO website. Commissioner Campbell commented as a public guest, stating that he understood Commissioner Hicks has retired, and asking if outreach had begun related to his retirement. Chair Clemens confirmed that Commissioner Hicks has agreed to stay with the Commission until his term has finished.

**Chair Clemens announced a break at 10:58 a.m.**

**Chair Clemens re-convened the meeting at 11:10 a.m.**

## 11. New Business

Chair Clemens shared with the Commission and meeting participants how the hearing will be conducted. He informed them of the following procedural steps:

1. The complainant will have up to 10 minutes to present any findings and supporting documents that sum up their complaint.
2. The defendant will have up to 10 minutes to present a defense against the complainant.
3. The working group (two Commissioners assigned to review the complaint) will have up to 10 minutes to present their findings.

### A. Complaint - City of Ukiah

Sally Riley, with RCC, spoke on behalf of the North Coast Builder's Exchange (NCBE) and presented the complaint against the City of Ukiah's alleged "City Wide Three-Manhole Project." Ms. Riley presented a timeline of events indicating that the City of Ukiah's three-manhole project took place between 2014 and 2017. She informed the Commission that several documents had inconsistent dates regarding when the City began working on the project. Ms. Riley indicated that NCBE also regarded the three-manhole project as one project, and not three separate projects as stated in the City's paperwork. Ms. Riley further indicated that NCBE believes that the City of Ukiah has held multiple training sessions to ensure that City staff members understood how to account for their construction projects within the Act's guidelines. However, Ms. Riley argued, the City has not conducted due diligence to maintain accurate records to demonstrate that the City complies with the Act.

The Commission commented that Ms. Riley referred to multiple items that were not in the complaint packet.

Tim Eriksen, the City of Ukiah's engineer and Public Works manager; and David Rapport, the City of Ukiah's Attorney, responded to the complaint and explained that the city did not receive the complaint until about a week-and-a-half ago. Mr. Rapport argued that the three manholes had been constructed on a case-by-case basis, and the city council had not approved a citywide project. However, even if the city decided to group the projects together, the cost would not exceed the \$45,000 force account limit; Mr. Rapport presented a worksheet, which included calculations of the three separate projects. The city had never classified the construction project as "maintenance work." Mr. Eriksen reiterated that since the city had received the two strikes in 2008 and 2009, the City has in fact done its due diligence to ensure that it complies with the Act's guidelines and limits.

Commissioner Bernacchi commented that he was having a difficult time reconciling the City's worksheets, because the dates are not accurate or consistent, and asked if two of the projects were done jointly. Mr. Eriksen replied that they were not done jointly. Commissioner Bernacchi asked if Mr. Eriksen could provide the date for when one of the projects had begun, because it was not noted in the paperwork; Commissioner Bernacchi also noted that the address on the work orders did not correlate with the construction sites. Mr. Eriksen replied that he could not provide the date in question and that the address on the

work orders was a mistake; he named the three intersections where the construction took place.

Chair Clemens assigned Commissioners George Hicks and Linda Clifford as the working group to investigate the complaint brought forward by the NCBE. Commissioners Hicks and Clifford informed the Commission that one of their biggest concerns was whether the Commission should perform an accounting review of the complaint. The Commissioners did not move forward in performing an accounting review. They reviewed the definition of a “project” and “maintenance work,” but did not conclude whether the projects were a joint project or separate. Overall, the Commissioners felt that the NCBE did not provide sufficient evidence to suggest that the project was one project.

Lee Howard, representative for NCBE, gave an informative background and description of the pictures that were presented, and the scope of NCBE’s position on the complaint. He does not believe that the costs as presented on the work orders by the City of Ukiah are accurate, and he feels that they do not correlate with the construction projects.

Commissioner Ogren motioned to dismiss the complaint because the filed complaint did not provide sufficient evidence. Chair Clemens seconded the motioned. **(Approved 9-2).** **Commissioner Bernacchi and Hester opposed the motion.** Chair Clemens asked the working group to write up a draft letter of their findings for the Chair’s review and send it to the City as a follow-up within 30 days.

#### B. Complaint – Town of Corte Madera

Michelle Tucker, the Executive Director of the Construction Industry Force Account Council (CIFAC), informed the Commission that the complaint filed against the Town of Corte Madera has been rescinded. The Town and CIFAC reached an agreement regarding the complaint.

#### C. Complaint – City of Santa Fe Springs

**Commissioners Michael Hester and Eddie Bernacchi recused themselves at 12:33 p.m. due to their professional relationship with CIFAC.**

Michelle Tucker presented the complaint against the City of Santa Fe Springs. CIFAC is under the impression that the procedures used by the City are not in compliance for the paint and window installation restoration project. In 2015, the City advertised for bids on the project; the bids were subsequently rejected. The City decided to bid the painting project separately from the window and doorframe installation project, which was acceptable. The City accepted a bid for the painting project, but rejected the bids for the doorframe and window installation project in 2016. The City sent notification to the bidders that it would be postponing the project; however, the City did not issue a notice of the City self-performing the project. In December 2017, the compliance manager at CIFAC noticed that the city’s agenda indicated that the City needed additional funds to complete the doorframe and window installation project, which had already begun. CIFAC contacted the City of Santa Fe Springs multiple times hoping to receive more information, and never received a call back.



CIFAC is accusing the City of Santa Fe Springs of performing a project of approximately \$140,000, which well exceeds the force account limit of \$45,000. CIFAC further accuses the City of failing to perform cost accounting prior to beginning the project; and failing to follow proper procedures of informing bidders when the City rejected the bids.

Yolanda Summerhill, the City of Santa Fe Spring's Attorney; and Noe Negrete, the City of Santa Fe Spring's Public Works Director responded to the complaint by stating that the City has been in a transition phase and apologizes for not returning CIFAC's phone calls. Ms. Summerhill does not dispute that the City exceeded its force account limit. The City did bid the project out twice, and rejected both bids because it believed that the costs presented by the bidders exceeded the City's budget. The City believes that it did not violate PCC 22038.

Chair Clemens assigned Commissioners Paavo Ogren and Ken Kayser to investigate the complaint received by CIFAC. Commissioners Ogren and Kayser, after review and consideration, believe that the City exceeded the force account limits and was subject to a strike. Commissioner Hicks moved to uphold the complaint to define that the City exceeded the force account limits, and Commissioner Holt seconded the motion. **(Approved 9-0)**. Chair Clemens asked the working group to write up a draft letter of their findings for the Chair's review and send it to the City as a follow-up within 30 days.

## 12. Next Meeting

The Commission agreed to schedule the next meeting for:

Thursday, May 17, 2018  
10:00 a.m. – 2:00 p.m.  
State Controller's Office  
300 Capitol Mall, 6<sup>th</sup> Floor, 635 Terrace Room  
Sacramento, California 95816

## 13. Adjournment

Commissioner Clifford moved to adjourn the meeting at 1:25 p.m.; Commissioner Hartwig seconded the motion.

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](mailto:LocalGovPolicy@sco.ca.gov)