

# California Uniform Construction Cost Accounting Commission

## Minutes of Thursday, January 28, 2016

These minutes were officially approved by the Commission at the subsequent public meeting on April 8, 2016.

### **1. Call to order**

Linda Clifford, Chair called the meeting to order at 10:03 am.

Present: Linda Clifford, Will Clemens, Eddie Bernacchi, Robert Campbell, Steven L. Hartwig, Michael R. Hester, George Hicks, David Cruce, and David A. McCosker

Via Teleconference: Guiselle Carreon

Absent: Jeff Armstrong, Cesar Diaz, Lisa Ekers

Guest: Cathryn Hilliard, Michelle Tucker, Shari Bacon, Steve Blois, Bill Dildine, Nathaniel Holt

State Controller's Office: Ana Garza, Hitomi Sekine, Anita Dagan, Jenny Jones, Debbie Torres, Michael Gungon, Heather Asprey

#### **A. Voting by Roll Call**

The Commission recognized all votes will be taken by rollcall when one or more Commissioners participate in the meeting via teleconference, pursuant to the Bagley- Keene Open Meeting Act Government Code (GC) Section 11125.7.

### **2. Introductions**

The Commissioners, staff, and guests all introduced themselves.

Chair Clifford reminded the Commissioners that they need to provide the State Controller's Office notice of their planned attendance and the topics they would like to address at the upcoming meeting, ten days prior to the scheduled meeting date.

This is so the physical location of where they will be calling from can be published in accordance with the Bagley-Keene Open Meeting Act GC Section 11125.7. It will also allow the public the opportunity to bring any discussion items on the agenda to the meeting.

### **3. Approval of the Minutes**

A. Meeting November 17, 2015

The November 17, 2015, meeting minutes were approved with the following amendments brought forth by Commissioner Campbell and the State Controller's Office Staff Anita Dagan:

Commissioner Campbell

Incomplete sentence at the bottom of page one needs to be fixed: "By adopting ordinances that would make this local business."

On page 3, the word "importance" needs to be changed to "important"

Anita Dagan

Clarified that the Act for local business in regards to their local business.

Commissioner Clemens, motioned to approve the minutes with the amendments. Commissioner Hicks seconded the motion. (The motion passed 10-0 on a roll call vote)

#### **4. Commission Update (Refer to attachment Item 4)**

##### **A. Participating Agencies**

The State Controller's Office (SCO) presented an update on the participating agencies.

##### **i. New**

A total of 18 new agencies have opted into the CUPCCAA (Act) as of January 28, 2016, bringing the total number of agencies participating in the Act to 944. The SCO confirmed that all new participating agencies were sent welcome letters.

##### **B. Funding Update**

Chair Clifford, reported that the Commission has \$5,354.90 of unrestricted funds available for use.

Commissioner Bernacchi mentioned he had a returned check from the California Legislative Conference of the Plumbing, Heating, and Piping Industry (CLC) for \$1,000.00 and that he will mail it to the SCO.

At the meeting, Chair Clifford gave the SCO staff a check from the Associated General Contractors (AGC) for \$2,500.00 to be processed.

Chair Clifford, thanked the Construction Industry Force Account Council (CIFAC) for their generous donation.

Ms. Dagan mentioned that any donations and Form 700's, must be addressed to their Local Government Policy Section, Division of Accounting and Reporting, 3301 C Street Suite 740 Sacramento, CA 95816. This would ensure that all documents, donations, etc., are not returned to the sender.

Commissioner Bernacchi stated that there must be a change to Public Contract Code (PCC) Section 22015(a) to ensure SCO resources are available by mandate.

**C. Inquiry Update**

The SCO presented a report for all inquiries received since the last meeting.

Commissioner Bernacchi wanted to know what decision had been reached for the inquiry on “piggybacking” contracts. Chair Clifford, stated it was disallowed for services and labor.

Commissioner Carreon, stated that the Attorney General issued an opinion regarding modular buildings, and that opinion is being used as a legal determination to cover more than just modular.

Commissioner Hester asked if when the SCO is contacted by a member of the public is the SCO giving the public a direct answer or referring the inquirer to the manual or the FAQ’s. Chair Clifford stated that SCO is informing the Chair that the question was asked and then, in coordination with the Chair are directing the public to answers using the CUCCAC manual and FAQ’s.

**5. Public Comment**

Mr. Dildine, former CUCCAC Commissioner, commented that he had sent a memo to the Commission regarding establishing procedures for informing and training new commissioners on the work of the Commission. As a result of Mr. Dildine’s recommendations, Chair Clifford, and Commissioner Hicks were tasked to prepare an orientation package for new commissioners.

Mr. Dildine commented on how close the Commission was to receiving funding from the agencies participating in the Act in the recent past. He requested that the Commission continue to follow up on this effort.

**6. Staff Comment/Requests**

Ms. Dagan, SCO, introduced Ms. Torres as the new lead analyst who will be working with the Commission.

**A. Use of recorder**

Counsel Garza stated that if the Commission’s meetings are recorded, then the entire meeting would need to be recorded, since the meetings are open to the public.

Commissioner Bernacchi recommended establishing procedures for speaking during the meetings, to ensure that the minutes would accurately reflect which Commissioner was speaking.

Commissioner Campbell expressed the concern that this recording would be subject to the Public Records Act and should be made available to the public, unless these recordings would be used as a draft.

Commissioner Campbell motioned to allow recording of the meetings for the use of supplementing note taking, when the recording equipment is available, and to give the SCO the authority to delete the recording once the meeting minutes have been approved and published to the public. Commissioner Hartwig seconded the motion. (The motion passed 10-0 on a roll call vote)

## **7. Reports of Officers**

### **A. Chair**

Chair Clifford had nothing to report.

### **B. Vice Chair**

Commissioner Clemens had nothing to report.

### **C. Secretary**

Commissioner Carreon, provided an update on various presentations for CUCCAC in an effort to encourage more schools to participate in the Act. Commissioner Carreon, also stated that there are 977 school districts that are not participating in the Act.

## **8. Committee Reports (Refer to attachment Item 8a)**

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

Chair Clifford, made a request for the SCO, to correct errors found in FAQ No. 14, 17, 22, and add a disclaimer at the beginning of the FAQ documents stating the fact that FAQ's are intended to assist all agencies that are participating in the Act. Chair Clifford requested SCO Legal to review all FAQs prior to publishing.

### **B. Legislative Update**

The commissioners discussed possible legislative changes.

#### **i. Identify future legislative changes if needed**

Commission Bernacchi will work on changing legislation to provide funding and support from SCO.

Commission Carreon, will send the proposed changes to PCC Section 22034 to Commissioner Bernacchi to address the fact that school districts do not use "ordinances."

Commissioner Carreon, will also suggest some new/changes to language to PCC Section 22050, addressing the timing of emergencies and bringing them to a school district's board.

C. CUCCAC Manual Update

i. Current status of manual

Legislative changes and nonlegislative changes have been incorporated into the Cost Accounting Policies and Procedures Manual.

ii. Proposed changes – nonlegislative

Commissioner Bernacchi motioned, and Commissioner Cruce seconded the motion to publish the Cost Accounting Policies and Procedures Manual as presented by the SCO, after basic formatting changes are made by the SCO. **(The motion passed 10-0 on a roll call vote)**

Commissioner Hester motioned, to have Chair Clifford, work with Commissioner Carreon, and the SCO with regards to removing specified calculation tables in the Cost Accounting Policies and Procedures Manual, Commissioner Hartwig seconded the motion. **(The motion passed 10-0 on a roll call vote)**

iii. Proposed changes – legislative

There were no proposed legislative changes to the Cost Accounting Policies and Procedures Manual at this time although Commissioner Bernacchi noted that future changes would be necessary and would be identified in the next few meetings.

**9. Commissioner Comments/Requests**

Chair Clifford reminded the Commissioners that they need to provide the State Controller's Office notice of their planned attendance 10 days prior to the scheduled meeting date. The Commissioners stand as a representative for the constituency they represent, therefore attendance and engagement are very important to the success of the Commission's efforts. Chair Clifford also stated, "Without participation, there is no representation."

Commissioner Campbell asked if the Controller may rescind an appointment. Commissioner Bernacchi replied to Commissioner Campbell "Commissioners may resign but not rescind within the first three-year appointment."

The Commission stopped for a 15-minute break at 12:04 pm.

**10. Old Business**

Ventura County Chair Clifford, stated that the confusion that was being experienced by the Commission was due to the letter from CIFAC to the Commission, dated September 9, 2015, referring to PCC Section 22031(e), while the letter from to the Commission to Ventura County, dated August 18, 2015, referred to PCC Section 22043. Neither correspondence was right because the

reference should have been to PCC Section 22042.

Chair Clifford, stated the commission responded to a letter dated September 9, 2015 with reference to PCC Section 22031(e), under which the commission does not have “review” authority. The commission focused on the road commission issue which is not currently a citable offense, not the force account limit.

Commissioner Cruce motioned, and Commissioner Bernacchi seconded the motion to resend the letter to Ventura County, with the correction to change the reference of PCC Section 22031(e) to PCC Section 22042(b).

Chair Clifford, opened the motion up for discussion.

Commissioner Bernacchi stated that the rationale became complicated when the Road Commissioner was brought into the issue. If an agency was over their force account limit and they can demonstrate that they had declared the work, a road commissioner project, prior to starting, then the commission would not have any authority to sanction them. If they did not declare this, all that the Commission can look at is whether or not they went over the \$45,000 limit.

Chair Clifford, stated she did understand and referenced the letter from Ventura’s response on how they focused on PCC Section 22031(e).

Chair Clifford, opened discussion to the public for comment.

Mr. Blois, from Valley Vista Consulting, stated his background and that he is a retired contractor from Ventura County. Mr. Blois mentioned that, approximately a week into a project, a contractor in his area informed him that Ventura County was doing a project, but the contractor had not noticed any bids for the project and wanted to know if Mr. Blois knew what was going on.

Mr. Blois went over to Ventura County’s construction site and took pictures. Mr. Blois stated he knew that Ventura County was involved in the project and that Ventura County is a long-term member of the Act. Mr. Blois mention that he went out to the construction site and identified himself as being with CIFAC and handed his identification card to the foreman. Mr. Blois asked the foreman, “*What they were doing and who they are contracted with?*” Two days later, the construction site shutdown.

Mr. Blois stated that he was at this meeting to tell the Commission that Ventura County’s estimate of \$160,000 is inaccurate. Mr. Blois mentioned that the project was overpriced and a contractor could do the work for half the price and would have completed it in a quarter of the time.

Mr. Blois also mentioned there was a 10 to 12 man crew at the construction site for 2-3 months and a \$160,000 estimate is too low. Mr. Blois asked the Commission to check Ventura County’s records on this project and to review the information thoroughly, based on the estimate of \$160,000.

Mr. Blois also mentioned after the shutdown, there was a pile of dirt 15ft high, several stacks of 20-foot K-rails, and construction signs on the side of the road.

The job had shut down and left all the equipment in place. He stated they did not remove the K-rails because of the unsafe conditions caused by a 6ft drop off.

Mr. Blois recommended the Commission to not rescind the strike.

Ms. Bacon of CIFAC appreciates the motion to rescind the original letter dated September 9, 2015, and to send a new letter with PCC Section 22042(b).

Ms. Bacon recommends revisiting what constitutes a formal complaint.

Commissioner Hicks stated that the Commission should review the Ventura County's records to ensure it's over the \$45,000 limit before a new letter is issued.

Commissioner Bernacchi reiterated that the Commission does not have the power to find a strike based on PCC Section 22031(e).

Counsel Garza will conduct research to see if the 90 days timing in PCC 22043 (e) expires and starts again when a new letter is sent, with the new code cited.

Ms. Hilliard from CIFAC stated that Ventura County violated the force limit. She also asked, "*How do we make them understand that they need to be in compliance?*" She asked the Commission to review Ventura County's records.

Counsel Garza stated the strike is void because the commission has no authority to conduct a review under PCC 22031(e). She mentioned that the Commission can only look at the accounting procedures.

Commissioner Cruce amended the motion to resend the letter dated to Ventura County, with the correction to change the reference of PCC Section 22031(e) to PCC Section 22042(b), to table the discussion on Ventura County until the SCO Counsel provides ruling on timing, and Commissioner McCosker second the amended motion. (The motion failed 7 Noes, Commissioner Cruce and Commissioner McCosker voted yes with Commissioner Bernacchi abstaining)

Commissioner Campbell motioned, and Commissioner Hicks seconded to rescind the letter dated September 25, 2015, and send a new letter notifying Ventura County of the commission's investigation into their accounting procedures per PCC Section 22042(b). (The motion passed 10-0 on a roll call vote)

## **11. New Business**

There was no New Business to discuss.

## **12. Next Meeting**

The Commission tentatively scheduled the next meeting date for Friday, April 8, 2016, from 10:00 am – 2:00 pm at the State Controller's Office 300 Capitol Mall, Sacramento location, pending room availability.

**13. Adjournment**

Commissioner McCosker informed the Commission of his retirement effective as of this meeting and handed the Chair his resignation as he also motioned, and Commissioner Hester seconded to adjourn the meeting. (The motion passed 10-0 on a roll call vote) The Meeting was adjourned at 1:33 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](mailto:LocalGovPolicy@sco.ca.gov)