

## California Uniform Construction Cost Accounting Commission Minutes of Friday, August 20, 2021

The following minutes were officially approved by the California Uniform Construction Cost Accounting Commission (Commission) at the subsequent public meeting on January 7<sup>th</sup>, 2021.

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

Chair Will Clemens called the meeting to order at 1:00 PM

Video Conference: Will Clemens, Leeann Errotabere, Brad Farmer, Steven L. Hartwig, Mike James, John Nunan, Chuck Poss, Hertz Ramirez, Chad D. Rinde, Jeremy Smith and Peter Worhunsky

Absent: Eddie Bernacchi, Mary Teichert

Unexcused Absences: Nathaniel Holt

State Controller's Office: Arica Presinal, Sandeep Singh, Jia (Jenny) Liu,  
Daniel Basso and Sheirlyn Singh

### 2. **Introductions**

Daniel Basso from the State Controller's Office (SCO) conducted roll call.

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

#### A. Meeting held on July 29, 2021

Commissioner Hartwig motioned to approve meeting minutes of July 29, 2021, without changes. Commissioner Ramirez seconded the motion. The motion passed on a roll call vote with eleven yays, zero nays, and three abstentions.

### 4. **Public Comment**

Chair Clemens asked the public if they had any comments.

There were no public comments

### 5. **Staff Comments/Requests**

#### A. SCO Staff Update

Daniel Basso introduced Arica Bryant who will be the Commission's SCO Legal Office Staff Counsel. Ms. Bryant is taking over Commission responsibilities from David Brownfield.

### 6. **Report of the Officers**

#### A. Chair

Nothing to Report.

B. Vice-Chair

Nothing to Report.

C. Secretary

Nothing to Report.

**7. Committee Reports**

No Committee Reports

**8. Commissioner Comments/Requests**

No Commissioner comments or requests

**9. Old Business**

No Old Business to report

**10. New Business**

A. Accounting Review – City of Tracy (Commission Review of the Corral Hollow Road Skin Patch Paving Project)

Chair Clemens briefly introduced how the Accounting Review process will be conducted. First, the alleging agency, the California Industry Force Account Council (CIFAC) will have ten minutes to present their case to the members of the Commission. After that, the City of Tracy's representative will have ten minutes to present the City of Tracy's side of the allegation. After both agencies have presented their side of the case, the Commission working group consisting of Commissioners Farmer and Poss will present their findings before letting the rest of the Commission discuss.

Michelle Pickens, CIFAC Executive Director, first thanked the Chair and Commissioners before presenting CIFAC's case against the City of Tracy. She briefly explained CIFAC's role in making sure that public agencies are in compliance with the Public Contract Code (PCC) by monitoring the actions of public agencies related to construction projects, and investigating potential violations of State bidding laws. She added that the City of Tracy's project did not go to the city council for approval nor posted on the city's website. After the start of the project, CIFAC was contacted by several industry members stating their disappointment that they were unable to submit a bid on the project. CIFAC then followed up by submitting a public records act request for the project. After reviewing the documents, CIFAC noted that the cost estimate of the project performed by the city exceeded their force account limit. Per CIFAC, the work performed is considered a Public Project and should have been competitively bid. Ms. Pickens stated that CIFAC has provided all the backup documents needed, and thanked the Commission.

Don Scholl, the City of Tracy's Director of Public Works, thanked the Commission and Ms. Pickens. He stated that the cost of the temporary repairs completed by the public works staff exceeded the \$60,000 force account limit, with the total cost being slightly

over \$82,000. Mr. Scholl then briefly added that due to the circumstances that led to the repair, the City of Tracy's actions were justified and should not warrant a negative ruling by the Commission. He stated that the project should qualify for an emergency exemption as described in the Commission FAQ document. He stated that the Corral Hollow Road had deteriorated over several years and will eventually need complete reconstruction. Mr. Scholl stated that on May 19<sup>th</sup>, 2021, he received an email from Scott F. Wilson, a committee relations officer of Lawrence Livermore National Laboratory, stating that the one-half mile section of the road needed maintenance as this road was used to transport high explosives materials to the lab. On May 20<sup>th</sup>, street superintendent David Murphy and Don Scholl provided a rough outline of temporary repair. This information was also provided to the Director of Development Services, City Manager and City Engineer. Mr. Scholl added that bidding this project could have taken weeks or months to complete, so on June 7<sup>th</sup>, 2021, the city manager directed the public works department to make temporary emergency repairs. Repairs began on June 15<sup>th</sup>, 2021 and ended on July 21<sup>st</sup>, 2021. Per Mr. Scholl, the action by the city and the repairs qualified for the exception per PCC Section 22035(a). He thanked everyone for their time and consideration.

Chair Clemens then turned over discussion to the Commission working group. Commissioners Farmer and Poss provided a memo to the rest of the Commission prior to the meeting stating the working group's opinion that the City of Tracy did not follow the requirements of the Act. Commissioner Farmer stated that the memo contains all relevant information. Chair Clemens opened discussion to the public for comments, with no comments. Chair Clemens then affirmed that the dollar amount exceeded the \$60,000 threshold, but the City of Tracy is contending that they proceeded under the allowance of PCC Section 22035 for emergencies. Chair Clemens explained that Section 22035 can be used for emergencies as long as the agency also complies with PCC Section 22050. Chair Clemens then asked if the City of Tracy had any evidence that the city followed the requirements of Section 22050, to which Mr. Scholl replied that he did not. Chair Clemens then asked if the City of Tracy's Public Works Department reported to city council at their subsequent meeting, which Mr. School also replied that he did not.

Chair Clemens motioned that the Commission find in favor of the complaint based on the review to find that the City of Tracy exceeded the force account limits of PCC Section 22042 (b) in repairing of the Corral Hollow Road Skin Patch Paving Project. Commissioner Farmer seconded the motion. The Commission voted in favor of CIFAC 11-0 via roll call vote.

B. Accounting Review – County of Tuolumne (Five Mile Creek Road Storm Damage Repair Project)

Chair Clemens then introduced the second accounting review for the County of Tuolumne. This review will follow the same procedures as the previous review, with CIFAC first presenting their allegations.

Michelle Pickens presented CIFAC's allegations. She thanked Chair Clemens and the Commissioners. First, she mentioned that this project was competitively bid, with all bids rejected due to the county thought they can do it less expensively. CIFAC appreciated that the county competitively bid the project and followed the proper procedures in rejecting the bids. She then added that during the initial review of the estimates, CIFAC noticed some discrepancies, and introduced examples such as a storm water protection plan. There was also no signage cost listed in the force account estimate. CIFAC compared some of the material quantities in the bids and force account estimate, and noticed discrepancies as well. Ms. Pickens concluded by saying that CIFAC did note that the 30% overhead calculation was omitted from the force account estimate. These were some of the reasons that CIFAC requested the Commission to perform an accounting review of the project, as CIFAC believes that there were associated costs that were not included in the force account estimate. Ms. Pickens then requested the Commission to ensure that all costs are captured in the estimates so that the county can decide if they to perform this project with their own forces based on an accurate cost assessment. She thanked the Commissioners for the review and for their assistance.

Blossom Scott-Heim, supervising engineer of this project for the County of Tuolumne, thanked the Commissioners. She stated that in March 2018, the County of Tuolumne experienced heavy rains throughout the county resulting in flash flooding that caused extensive damage to public infrastructure. On April 19<sup>th</sup>, 2018 the weather event was declared a state emergency and the project became eligible for funding through the California Office of Emergency Services (OES) public assistance program. She described Five Mile Creek Road as a narrow, gravel surface county maintained road in a remote area and is primarily used by local traffic to access Five Mile Creek. The average daily traffic on this road is less than 10 vehicles. During the storm, the road was overrun with storm water. The public works department made temporary repairs and continued to monitor the road. The road also required some consultation and design services, with the design completed and permits were received by November of 2020. On May 11<sup>th</sup>, 2021 the project was advertised, requesting informal bids, with bidding open on May 27<sup>th</sup>. The county received two bids for the project. The first bid was for \$191,604 and the second bid was for \$228,770.60. The county budget for this project was \$200,000, including construction, construction inspection, and construction engineering. Both of the received bids would be over the county's budget once the inspection and construction engineering costs were included. Public works staff reevaluated the costs estimates and estimated that the project could be completed for \$93,770 via force account. This amount was then presented to the county's board. The

force account analysis included labor using loaded rates, and equipment using FEMA rates which included overhead and materials. On June 9<sup>th</sup>, notice of intent to reject all bids was sent to all bidders via certified mail and email. On June 13<sup>th</sup>, county's board voted to reject all the bids and decided to get the project done by the employees of the county. She then added that FEMA and California OES policy does not allow the inclusion of overhead and cost estimates or reimbursement requests for public assistance projects, which is why the county did not include the overhead costs in their original force account analysis as the project was funded by OES. When the county received CIFAC's complaint and after reviewing the Cost Accounting Policies and Procedures Manual, the county recalculated their estimate by adding 30% of their overhead costs. Ms. Scott-Heim added that the county did detailed analysis of the force account and the county was torn between the requirements of OES and the requirements of the Act. She concluded by saying this has been a learning experience and they will put standards in place for future estimates which will fulfill the requirements of both the funding source and the Act.

The working group of Commissioners Hartwig and Nunan then presented their findings. Commissioner Hartwig mentioned that the working group requested additional information from the county, and received spreadsheets with calculations that were very detailed. He added that the Commissioners asked questions regarding the overhead costs and about material items, with the County's answers being satisfactory. The Commissioners felt that the provided numbers reflected reasonable estimates which included labor and equipment for a road that has been impacted by a flood. As far as complying with the Act, once the county re-evaluated their cost estimate, then by adoption of a resolution with four-fifths vote by the governing board, the county can declare they can do it more economically using their own forces without complying with the Act. The Commissioners felt that the estimate was done in a good faith and the county was not trying to avoid anything in the Act. Commissioner Nunan then agreed with Commissioner Hartwig's comments that the information that they received was very detailed and adequate. Chair Clemens opened discussion to the public for comments and there were no comments.

There was a brief discussion among the Commissioners regarding the estimates of the overhead costs. Chair Clemens motioned that the Commission finds that Tuolumne County has demonstrated that they can perform the Five Mile Creek Road Storm Damage Repair Project less expensively than the lowest bid, and can proceed with the project. Commissioner Hartwig seconded the motion. The Commission voted in favor of Tuolumne County 11-0 via roll call vote.

**11. Next Meeting**

The Commission agreed to schedule the next meeting for:

Friday, January 7, 2022

10:00 AM – 2:00 PM

Location TBD

**12. Adjournment**

Chair Clemens moved to adjourn the meeting at 1:55 PM; all in favor with zero opposing to adjourn.

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)