

California Uniform Construction Cost Accounting Commission

Minutes of Thursday, September 28, 2017

These minutes were officially approved by the Commission at the subsequent public meeting on December 14, 2017.

1. Call to order

Chair Linda Clifford called the meeting to order at 10:00 a.m.

Present: Linda Clifford, Will Clemens, Robert Campbell, George Hicks, Steven Hartwig, Michael Hester, Nathaniel Holt, Ken A. Kayser, Paavo Ogren, Guiselle Carreon, Jeff Armstrong

Absent: Eddie Bernacchi

Unexcused Absence: None

Guest: Amanda Rish, Fairfield-Suisun Unified School District; Julie Lucido, City of Fairfield; Maghan Hunt, CIFAC

State Controller's Office: Harpreet Nakhwal, Jim Reisinger, Jenny Jones, Debbie Torres, Joshua Buchanan

2. Introduction

The commission, staff, and guests all introduced themselves.

3. Approval of the Minutes

A. Meeting held on May 12, 2017

The May 12, 2017, meeting minutes were approved without any changes. Commissioner Hicks moved to approve minutes and Commissioner Hester seconded the motion.

There was one abstention by Commissioner Carreon.

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

A. Participating Agencies

The State Controller's Office (SCO) presented an update on the participating agencies, noting forty-seven (47) new agencies opted into the Uniform Public Construction Cost Accounting Act (UPCCAA). The participating agencies, including newly opted in agencies, totaled 1,103.

B. Funding

I. Update

The SCO reported the Commission had \$13,854.90 of unrestricted funds available. Chair Clifford mentioned at the previous meeting on

May 12, 2017, that this fund can be used to perform audits and outreach for the Commission.

Chair Clifford mentioned that there were no funds received since the last meeting. The difference in amounts documented is that the additional funds were not received in time for documentation for the May 12, 2017, meeting.

Commissioner Hester asked if the "Cities" Pie Chart (Item 4A) in the agenda and meeting packet included all cities (charter and general law). It was recommended to look at the Construction Industry Force Account Council (CIFAC) website to look at non-charter cities not listed as members. Commissioner Hartwig will work with Debbie Torres and coordinate information. Chair Clifford asked for an update at the next meeting regarding a status report from subcommittees, general law cities vs. charter cities.

C. Inquiry Update

The SCO presented a report on inquiries received since the last meeting. Commissioner Carreon mentioned on page 1 of the inquiries from Debby Watson, Public Agency Law Group.

Q1. Does the 10% change order limitation set forth in PCC 20659 or 20118.4, respectively, apply to contracts awarded under the informal bidding statute at PCC 22032(a), negotiated contracts of \$45,000 or less, or subdivision (b), informally bid contracts up to \$175,000?

A1. Commissioner Holt responded:

"No, it does not apply to the CUPCCA, as it relates to change order directly. In both PCC 20118.4/20659 both it states;

"If any change or alteration of a contract governed by Article 3 (commencing with Section 17595) of Chapter 5 of Part 10.5 of the Education Code is ordered by the governing board of the district, the change or alteration shall be specified in writing and the cost agreed upon between the governing board and the contractor. The board may authorize the contractor to proceed with performance of the change or alteration, without the formality of securing bids, if the cost so agreed upon does not exceed the greater of the 10% rule of formal bidding"

This pertains to the formal bidding aspects of the Public Contract Code. With this said, you may have had some of the Districts you represent have some challenges from the Los Angeles County Office of Education (LACOE) on change orders as it relates to the CUPCCA. The reason for this is in LACOE's Commercial Warrants Department's procedures for CUPCCA they reference

that any increase in a Purchase Order, or contract that falls in-line under the CUPCCA must follow PCC 20659 or 20118.4 of which is not correct. Those who participate in CUPCCA and do not exceed the dollar amount of the CUPCCA may increase their purchase order or contract by amending these documents. The change order process does not need to be followed. As of May 2017, LACOE has recognized their mistake and has updated their auditing guide book. But under the CUPCCA, all districts must submit to their board a list of all purchase orders that were issued under the CUPCCA and reference Education Code 17605. With this said, as a practicing member of CUPCCA, I always review each and every project to determine if it will fit under the short or long term of a project, to avoid surprise.”

Commissioner Carreon stated that change orders over 10% are not allowed, with the exception of Los Angeles County (25%).

Commissioner Carreon noted that:

“School Districts are limited to 10% of the original contract amount, with only two things they can do depending what the incident is. If it’s a health and safety issue (such as discovering asbestos), they can declare an emergency. The other being a public policy exception (Pasadena Redevelopment Case). If there is no benefit, you don’t have to bid, but you have to make a finding before the board to either re-bid or re-bid the additional cost. If 10% is exceeded, a legal opinion is required and called an exception to the bid.

Chair Clifford had Debbie Torres pull up both PCC 22034(d) and 22032 (public projects of \$45,000 or less) for review.

Chair Clifford would like to have Commissioner Carreon and Commissioner Holt review answers regarding questions like this going forward.

Chair Clifford asked:

“What is the proposed change?”

Commissioner Clemens came up with the following:

“CUPPCA does not speak to change orders, change orders are governed by other codes and you should follow the one appropriate for your agency.”

Chair Clifford asked Commissioner Carreon and Commissioner Holt to research the answer and stated that before this question is answered completely, to have it go through an in-depth analysis as it could end up being in the FAQ’s.

Commissioner Hicks will rewrite the answer and send to the committee. A subcommittee consisting of Commissioner Hicks and Chair Clifford will come up with a clear answer and submit it to the Chair.

Commissioner Carreon asked if Debby Watson should be informed that her question may be changed or updated.

Chair Clifford asked Debbie Torres to send Debby Watson an email indicating her question elicited a discussion and a change of answer is pending.

5. Public Comment

No comment from the public.

6. Staff Comments/Requests

Ms. Torres stated she would be going out on Maternity Leave in November and that an email will be sent to the commission regarding who is taking her place from the SCO.

A. Ms. Torres provided folders with Ethics Training to all members of the commission. Also included was an FYI for formal and informal bidding.

The orientation guide is scheduled to be updated in 2018.

Commissioner David Cruce has resigned. Once there is a new commissioner, the SCO will update the orientation guide and send it out.

7. Reports of Officers

A. Chair

Chair Clifford confirmed Commissioner Cruce's resignation. He left the company he was working with and moved to a subcontracting company.

The Commission is currently in the process of filling the general contractor position and has a proposed candidate, John Nunan.

The LGPSD supervisor confirmed that the SCO is currently reviewing the candidate, and the selection process will be completed by the next meeting.

B. Vice Chair

Nothing to report

C. Secretary

Nothing to report, but did indicate that she is on a current road show and should be seeing a handful of districts joining.

D. Commissioner Campbell

Regarding the ethics training log, he stated he took it last year, but still has to take it this year.

The Commission stated that the training needs to be taken every year if taken on an even year, and every other year if taken on an odd year.

Debbie Torres informed Commissioner Campbell that he had previously taken the Ethics Training with his current agency and to send the info to her so she can update it.

8. Committee Reports (Refer to attachments Items 8A & 8C)

A. Frequently Asked Questions (FAQs)

The answer to the question above should be moved to the Frequently Asked Questions.

Chair Clifford would like the Commission prior to coming to every meeting to take a look at the existing Frequently Asked Questions and if any can be removed, refined, or expanded upon.

B. Legislative Update

None at this time.

C. CUCCAC Manual Update

I. Current Status of Manual

The SCO informed the Commission the manual had been posted at the previous meeting.

II. Proposed Changes – Non-legislative

None at this time.

III. Proposed Changes – Legislative

None at this time.

9. Commissioner Comments/Requests

Commissioner Campbell asked why he was not sworn in at this meeting.

Debbie Torres informed him that when a commissioner is reappointed, there is no need to have them sworn in again. The SCO just needed to know what his intent was, to stay on the Commission or not. Debbie also informed Commissioner Campbell that this will all be explained in a letter that is going out to him.

10. Old Business

There was no old business

11. New Business

A. Election of New Officers – Chairperson, Vice Chairperson, and Secretary

Chairperson: Commissioner Clemens – Nominated by Chair Clifford; seconded by Commissioner Hicks; all in favor with zero abstaining and zero opposing.

Vice Chairperson: Commissioner Hester – Nominated by Commissioner Hicks; seconded by Chair Clifford; all in favor with zero abstaining and zero opposing.

Secretary: Commissioner Holt – Nominated by Commissioner Hicks, seconded by Commissioner Ogren; all in favor with zero abstaining and zero opposing.

B. Increase in the Informal Bid Limit Pursuant to Public Contract Code Section 22032

Meeting turned over to Chair Clemens for 11B at 11:55am.

Debbie Torres provided history printout (PCC 22020) “Historical Information Bid Limit”.

Chair Clifford stated that it is required to look at the informal bid limit every five years or so to make a decision to recommend a change or not.

Commissioner Carreon stated:

“If soft costs are included in the under \$45,000.00 limit, then I recommend increasing it.”

Unanimous decision to change the \$45,000.00 limit to \$60,000.00 and the \$175,000.00 limit to \$200,000.00.

Commissioner Ogren moved to approve to increase the Bid Limit and Commissioner Hartwig seconded the motion.

Chair Clemens asked how and what is the process to increase the limits. Commissioner Campbell stated that the SCO takes the Commission’s approval and recommend it to the Legislature.

Chair asked SCO staff counsel Harpreet Nakhwal to check into the proper procedures for increasing the informal bid limit.

Chair Clemens asked the Commission to come up with reasons for requesting the increase. The following was noted:

- a) Highway Cost Construction Index (Caltrans).
- b) Recognize efficiency of small projects and time savings.
- c) Contractors to work faster.
- d) More contractors to work.
- e) Expected inflation of SB 1 and expected school boards.
- f) The increase is beneficial to the industry and owners.
- g) Facilities work projects can begin in a timely manner and force account limit does not preclude use of contractors.

12. Next Meeting

The Commission agreed to schedule the next meeting date for Thursday, December 14, 2017, from 1:00 p.m. – 5:00 p.m. at the State Controller’s Office, 300 Capitol Mall, Suite 635, Sacramento, CA 95816.

13. Adjournment

Commissioner Clemens moved and Commissioner Hicks seconded to adjourn the meeting.

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