

California Victim Compensation and Government Claims Board

Open Meeting Minutes

June 17, 2010, Board Meeting

The California Victim Compensation and Government Claims Board (Board) convened its meeting in open session at the call of Bill Leonard, Secretary, State and Consumer Services Agency, at 400 R Street, Sacramento, California, on Thursday, June 17, 2010. Also present was Board member Les Kleinberg, Deputy Controller, acting for and in the absence of John Chiang, Controller. Board member Michael Ramos, San Bernardino County District Attorney, was absent. Chairperson Leonard stated Mr. Ramos asked him to extend his apologies for his absence. Board member Ramos attended the funeral service for CHP Officer Tom Coleman who was killed on Friday, June 11, 2010.

Board staff present included Julie Nauman, Executive Officer; Patty Harris, Chief Deputy Executive Officer; and Wayne Strumpfer, Chief Counsel. Denise Howder, Acting Board Liaison, recorded the meeting.

The Board meeting commenced with the Pledge of Allegiance.

Item 1. Approval of Minutes of the May 20, 2010, Board Meeting

The Board voted to approve the minutes of the May 20, 2010, Board meeting.

Item 2. Public Comment

The meeting was opened to public comment. The Board received comments from the public by Stephan Passalacqua, Sonoma County District Attorney; Joyce Moser, Program Coordinator, Humboldt County Victim Witness Center; and Ed Perez, SEIU Local 1000 officer.

Item 3. Executive Officer's Statement

- The California District Attorneys Association (CDA) will hold its annual 2010 Summer Conference in Monterey the week of June 28th. San Bernardino County District Attorney and incoming CDA President Michael Ramos invited Executive Officer Julie Nauman to attend the roundtable session. Topics of discussion will focus on revenue recovery; the importance of ensuring that restitution orders, fines, and penalties are imposed and most importantly collected; and the role and partnership CalVCP has with the district attorneys. Ms. Nauman stated the goal of the roundtable meeting is to develop next steps and ultimately form a working group to find solutions for a better way of delivering services to victims and discuss ways to improve CalVCP's effectiveness in its relationships with its local partners.
- CalVCP will realign resources and restructure staff's work to improve internal operations. In an effort to increase the efficiency and effectiveness in the delivery of services to victims in this time of limited resources, CalVCP is in the process of implementing significant internal changes. The following three major internal changes will be made to manage workload: (1) ensure applications are complete and all information is validated before applications and bills are entered into CaRES. This change will expedite the process of application review and bill review and payment; (2) create a verification team to ensure that all documentation is in place. All bills will go through CalVCP's "rules engine," the software system that executes the business rules. This new process will increase productivity and expedite payments to victims and providers; and (3) restructure the QA process to better ensure quality and to expedite the approval process for bills and applications.

Chairperson Leonard stated he appreciates Executive Officer Julie Nauman's participation in the 2010 California District Attorneys Association Summer Conference and ensuring that our partners and CalVCP are serving victims in the best way possible.

Item 4. Contract Report

Executive Officer Julie Nauman reported that CalVCP, with the assistance of the State and Consumer Services Agency and the Office of the State Chief Information Officer, completed a thorough analysis of the modification to CaRES. Ms. Nauman reported CalVCP released two separate RFO's in May to engage contractors to work with CalVCP on the final modification to the CaRES database and application design; however, no bids were received from that solicitation. CalVCP learned that bidders were not interested due to the low dollar value of the contracts so CalVCP then secured the approval from the Office of Information Technology to increase the solicitation. The modified RFO's were released June 7th with a due date of June 15th. The proposals from the responsible bidders will be evaluated over the subsequent week with a proposed decision on a final bidder expected approximately June 24th.

Ms. Nauman stated because CalVCP is seeking to utilize current year funding, it is critical that the contracts be executed and work begin on the projects no later than June 30, 2010. Ms. Nauman also stated given the timelines for internal approvals as well as the review of the submittals, the Board will not have another Board meeting after today or prior to June 30th to approve the selected bidders. Ms. Nauman stated due to time constraints, the Board may consider the following two options: (1) hold a special Board meeting that would have to be noticed today and held sometime between June 28th and June 30th or (2) delegate the final approval of the two contracts to the Executive Officer.

Board member Kleinberg stated normally he would be apprehensive, but given the time constraints, he would agree to delegate the final approval of the two contracts to the Executive Officer.

Chairperson Leonard stated he concurred with Board member Kleinberg's apprehension; however, he would like to give CalVCP staff sufficient time to evaluate the bidders, select the best offer, and not be concerned about the logistics of holding another Board meeting.

Ms. Nauman stated as soon as a bidder is selected, it would be made public. In addition, she stated she would keep the Board informed of the selected bidder and report back at the next scheduled Board meeting.

The Board voted to delegate the final approval of the two contracts to the Executive Officer.

Item 5. Legislative Update

Jon Myers, Deputy Executive Officer, Legislation and Public Affairs Division, presented the Legislative Update, an information item, to the Board. The Board recommended sending letters of opposition regarding both of the following bills: proposed SB 733 (Leno), the bill that would require the VCP to administer a program to award up to \$3 million in grants annually from the Restitution Fund to fund trauma centers that follow a model similar to the San Francisco Trauma Recovery Center; and proposed SB 1046 (Cogdill), the bill that would require that claims against California State University be presented to the Trustees of the California State University, rather than the VCGCB's Government Claims Program, and would authorize the Trustees to adjust and pay those claims.

Item 6. Consideration of Organizational Applications for the 2010 California State Employees' Charitable Campaign

Jon Myers, Deputy Executive Officer, Legislation and Public Affairs Division, presented the item. At the May 20, 2010, Board meeting, the Board voted to continue the item because the administrative fees charged by a number of the charitable organizations increased considerably

compared to last year. The Board directed staff to contact the organizations to discuss decreasing their overhead costs. The Board further directed staff to require organizations that request higher fees to provide written justification to support the higher fees.

Mr. Meyers stated staff met with United Way of the California Capital Region (UWCCR), a leader among the other PCFD's. In addition, staff sent formal letters and emails to each PCFD CEO and President reminding them of the recent memorandum of understanding that many agreed to in previous years relative to the 11.57 percent combined reimbursement fee and asking them to reduce their fee again. Staff also asked the PCFD's to reduce their fee again to an amount acceptable by the Board in an effort to keep the costs low. Mr. Myers stated after deliberation, UWCCR lowered their combined reimbursement fee to 13.57 percent for affiliated and non affiliated organizations; however, a number of the other organizations' fees were above the 13.57 percent maximum. Specifically, out of the 38 PCFD's, 27 reduced lowered their administrative and fundraising fee to 13.57 percent, 10 lowered their fee to 15 percent, and one PCFD in a rural community in Northern California remained at 18 percent.

Board member Kleinberg stated he was concerned that the percentage rates have increased from 11.57 percent to 13.57 and above over the years. Board member Kleinberg also stated he understood that the increased amount was supposed to include some help that the organizations have not received which is the reason for the new request of 13.57 percent. He stated the organizations receive a significant amount of assistance from the state, which is free administration help for them, so their fees should be able to be kept to a minimal. Mr. Kleinberg further stated when fees reach 15 percent and above, such as some organizations are requesting, that is a substantial amount of the money that should be going to those they should be helping. Mr. Kleinberg asked Mr. Myers to explain why certain organizations are unable to keep their fees to the 13.57 percent maximum.

Mr. Myers deferred to CalVCP staff Anne Gordon who stated the justifications provided by the 10 organizations that requested 15 percent and the single organization that requested 18 percent are necessary, according to their justification, because they are located in rural areas in Northern California and cover much broader areas as compared to the other organizations.

Chairperson Leonard stated he shared Board member Kleinberg's comments regarding the rise in overhead. Chairperson Leonard stated that while in some ways it is understandable, the increase in fees comes at the wrong time, given the needs of the community and given the access that the state gives to those charities to State employees who are interested in being charitable. Chairperson Leonard further stated he realized the Board's statutory duties are somewhat limited to verifying that the organizations are tax exempt, but the Board needs to ensure quality control for state employees. Chairperson Leonard asked Ms. Gordon if those organizations seeking higher rates have total budgets that are that much disproportionately smaller than other rural areas of the State because there are other areas of the State of California that are just as rural as those organizations.

Ms. Gordon read aloud a letter of justification from United Way of Northern California in support of their request for higher fees.

Chief Counsel Wayne Strumpfer stated he learned that in 2004 the Board had a similar situation wherein the Board approved a fee up to 18 percent. Mr. Strumpfer further advised that the Board could also consider the following options: decide on an acceptable percentage and allow the PCFD's to come back to that level; give the organizations until the August meeting to decrease their rates further; or require more detailed written information to justify a higher rate. Mr. Strumpfer stated staff could also put together a regulation package for next year that would give notice to the organizations involved.

Board member Kleinberg stated if the Board approves the fees at the higher rate, the Board will see increases from the other organizations as well. Board member Kleinberg stated if there really is a need for the 15 percent fee, as suggested by the organizations, then he would not want them to be unable to perform their functions. He stated he would consider approving the list as currently recommended but, at the same time, put those organizations on notice that if they cannot keep their costs low, they must submit full written documentation explaining why they cannot reduce their cost to 13.57 percent.

Steve Heath, President and CEO, United Way California Capitol Region, addressed the Board. Mr. Heath stated the real issue surrounding the 13.57 percent fee is whether it is fair to the organizations contracting with the state to deliver the campaign in a particular area at that rate and whether or not the request to differ from that rate is appropriate.

The Board voted to approve the list at no more than 14 percent overhead and instructed staff to begin drafting regulations for the 2011 campaign to be adopted in time that would authorize staff to require the combined campaigns justify their overhead rates.

Government Claims Program

Item 7. Consent Agenda (Nos. 1- 391)

The Board voted to approve the staff recommendations for numbers 1-391, with the exception of item number 5 which was removed because the claimant withdrew the claim; item numbers 43 and 318 were removed pending review of additional information received; and item number 333 was removed in order to allow the claimant an opportunity to address the Board.

Consent Agenda Appearance **Item No. 333, G587277**

Larry Tract appeared on behalf of claimant Helen Moore. Ms. Moore appeared and addressed the Board. Ms. Moore requested approval of an application to present a late claim alleging personal injuries that occurred on January 13, 2009, at the State Capitol.

Chairperson Leonard asked Jackie Tinetti, Manager of the Government Claims Program (GCP), if staff received any documentation from Ms. Moore in March of 2009. He further asked Ms. Tinetti to explain the steps taken by staff regarding notifying a claimant if an incomplete claim is presented. Ms. Tinetti stated GCP did not receive a claim from Ms. Moore in the proper format. She stated if a claim form is incomplete, staff contacts claimants and advises them of what is missing in order to meet the claim presentation. She further stated even if there was contact in March 2009, the first filing would not meet claim presentation requirements and would not toll the statute in terms of meeting the six-month deadline. Ms. Tinetti stated claims must be presented timely and in the format prescribed by law, which did not occur in this case, which is the basis for GCP's and AG's recommendation to deny the late claim application.

Chairperson Leonard asked Mr. Tract if GCP staff contacted him or Ms. Moore in March or April of 2009 advising them that the claim form submitted was incomplete. Mr. Tract stated he received notification from GCP staff dated February 3, 2010; however, he did not receive the letter until February 28, 2010, because it was sent to the wrong address.

Board member Kleinberg asked Ms. Tinetti when GCP first received either a claim or an initial contact from Mr. Tract. He stated if GCP staff received a claim as early as Mr. Tract indicates, then GCP staff would have been working with them to ensure there was a timely final claim. Ms. Tinetti

stated the earliest date stamp in the claim file is December 21, 2009, which is the date stamp of the submitted claim form.

Board member Kleinberg asked Chief Counsel Wayne Strumpfer to clarify whether six months is the absolute timeframe that a claim must be complete and received by the GCP. Mr. Strumpfer stated six months is the deadline for filing the claim. He further added even if the Board waived the six-month time limit, the claim would be recommended for rejection because it is a slip and fall civil case that involves issues too complex for the Board's consideration.

The Board voted to adopt the staff recommendation to deny the claim.

Item 8. St. John's Regional Medical Center
Claim Number G587101

St. John's Regional Medical Center requested payment in the amount of \$189,870.28 for acute hospitalization, emergency room services, and surgeries provided for Ventura Youth Correctional Facility, Department of Corrections and Rehabilitation, from the period of July 1, 2007, through March 26, 2010.

The Board voted to allow the claim in the amount of \$189,870.28 under authority of Government Code section 965 (agency pay).

Item 9. Cole Schaefer Ambulance Service
Claim Number G5899131

Cole Schaefer Ambulance Service requested payment in the amount of \$61,340.21 for wheelchair, gurney, and ambulance services provided to the Department of Developmental Services from the period of July 1, 2006 through June 30, 2009.

The Board voted to adopt the staff recommendation to allow the claim in the amount of \$61,340.21 under authority of Government Code section 965 (agency pay).

Item 10. Waste Connections of California, Inc.
Claim Number G589219

Waste Connections of California, Inc., requested payment in the amount of \$288,864.85 for unreimbursed services provided to the Beverage Recycling Program, Department of Resources Recycling and Recovery. Payment for these services was due in December 2009.

The Board voted to adopt the staff recommendation to allow the claim in the amount of \$288,864.85 under authority of Government Code section 965 (agency pay).

Item 11. Request for Delegation of Authority Under Government Code Section 935.6 by the Department of General Services

The Board voted to adopt the staff recommendation to approve the request.

Item 12. Bid Protests of Universal Radiographics, Inc.
Request For Quotation Nos. 10-019-ITS and 10-018-ITS

President and CEO Jerry Gollehon and Vice President Dave Stewart appeared and addressed the Board on behalf of Universal Radiographics, Inc. Kathleen Yates appeared on behalf of the

Department of General Services. Robert J. Gomez appeared on behalf of California Prison Health Care Services, California Department of Corrections and Rehabilitation.

Chairperson Leonard asked Mr. Gollehon to explain why he believes their bid should not have been rejected. Mr. Gollehon read the following excerpt contained in the hearing officer's recommendation: "Universal's bid was incomplete and did not comply with the RFQ specifications." Mr. Gollehon stated Universal bid on the same equipment as FujiFilm Medical Systems, U.S.A., Inc. He further stated Universal's bid was 100 percent compliant with the specification and is also a direct dealer for FujiFilm.

Kathleen Yates stated the bid sought by the California Department of Corrections and Rehabilitation (CDCR) was on behalf of the Receiver. Ms. Yates qualified that it is within the authority of the Department of General Services (DGS) to do this type of purchasing which is the reason DGS is defending the protest. She stated one of the evaluators stated the specific reason Universal's bid was rejected was because Universal did not provide the certification of the service engineers and the maintenance agreement for the equipment that they would provide, which was a requirement of the bid.

Ms. Yates stated Universal submitted a timely bid to CDCR, their bid was evaluated, and it was rejected. She stated Universal filed a timely Notice of Intent to Protest then filed a timely Detailed Statement of Protest. Ms. Yates stated in order to meet the statutory and regulatory requirements to perfect their protest, Universal needed to state in their Detailed Statement of Protest that they should have been selected in accordance with the RFQ selection criteria. Ms. Yates stated there are two issues regarding the protest. First, Universal did not state in its Detailed Statements of Protest sufficient allegations of fact and law to show that they should have been awarded the contracts according to the RFQ specifications. On the contrary, she stated Universal asserted, in their opinion, the bid document should have required a California contractor's license to do the work and therefore the bid should have been changed. Ms. Yates stated the bid did not require a contractor's license to do the work. She stated one of the issues that cannot be raised in a bid protest proceeding is an attack on the requirements. Ms. Yates stated if Universal believed the requirements were in error, they were required to address that fact during the pendency of the bid document to give the State an opportunity to make a determination. She stated challenges cannot be made to the specifications after a vendor has lost the bid; it is inappropriate and too late. Ms. Yates stated the hearing officer correctly analyzed the protest in her recommendation to the Board citing Universal's Detailed Statements of Protest do not mention or address CDCR's determination that Universal's bid was incomplete and did not comply with the RFQ specifications. Second, Ms. Yates stated if a decision is not made which allows DGS to make the award, no award will be made because funding for the procurements will revert on June 30, 2010, the end of this fiscal year.

Chairperson Leonard stated there are several hurdles that must be overcome. Chairperson Leonard asked Mr. Gollehon if part of the bid package included the certification for maintenance, which CDCR stated was not included. Mr. Gollehon stated Universal submitted that they were certified to install and service their equipment. He further stated Universal pointed out that DGS was not following California contracting law by not requiring a contractor's license.

Chairperson Leonard stated the second hurdle is the assertion that the bid specifications should have included a requirement for a California contractor's license, which may or not be true, but it is not properly before the Board. Chairperson Leonard stated the Board is not permitted to determine whether the department promulgated the right specifications in a bid request. The Board can only adjudicate protests that are unfairly denied where the bid should have been awarded on the grounds that a bid was accurate, within the specifications, and was a better, more responsible bid than the eventual winner.

Board member Kleinberg stated there was a correct period of time that Universal could have questioned whether a contractor's license was needed and that time period has passed and cannot be relitigated.

Robert J. Gomez stated the vendor did not specify an itemized budget, in detail. He stated further because Universal failed to do so, they were deemed nonresponsive because they did not follow the specifications of what was required in the bid.

The Board voted to adopt the hearing officer's recommendation to deny the protests.

Victim Compensation Program

Request for Authority to Begin the Rulemaking Process for Victim Compensation Program Regulations

Chief Counsel Wayne Strumpfer presented the item. Mr. Strumpfer stated the item is to begin the formal rulemaking process for the proposed changes to the CalVCP regulations. Mr. Strumpfer stated the regulations implement legislation effective January 1, 2010, allowing additional relocation benefits for unusual, dire, and exceptional circumstances; clarify regulatory language which became effective on July 12, 2009, to improve consistency with the Government Code; and to correct grammar. Mr. Strumpfer stated CalVCP held informal meetings and incorporated some of the comments received by the public.

The Board voted to adopt the staff recommendation to authorize the Executive Officer to begin the formal rulemaking process for the proposed changes to the CalVCP regulations but recommended staff make a minor change to the wording of Section 649.48, Human Trafficking. The Board recommended staff change the word "may" to "shall."

Request for Reconsideration

Recommendation: Allow and Refer to Program Staff for Verification **(Nos. 1-8)**

The Board voted to adopt staff recommendations.

Requests for Reconsideration

Recommendation: Deny **(Nos. 9-22)**

The Board voted to adopt staff recommendations.

Requests for Reconsideration Following Board Action on a Proposed Decision

Recommendation: Deny **(Nos. 23 and 24)**

The Board voted to adopt the proposed decisions.

Proposed Decisions Following Failure to Appear **(Nos. 25-32)**

The Board voted to adopt the proposed decisions.

Closed Session

Pursuant to Government Code section 11126(c)(3), the Board adjourned into Closed Session with the Board's Executive Officer, Chief Deputy Executive Officer, and Chief Counsel to deliberate on proposed decisions numbers 33 through 42.

The Board reconvened into open session.

Open Session

The Board voted to adopt the proposed decisions for numbers 33 through 42.

Adjournment

The Board meeting adjourned.

Julie Nauman
Executive Officer

Julie Nauman

I certify that the California Victim Compensation and Government Claims Board adopted these minutes at its meeting of August 19, 2010, at Sacramento, California.

Date: August 19, 2010

By:

Jisha Kean

Board Liaison (Affix Seal here)