

## **November 16, 2006 PWCA Committee Meeting Minutes**

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### PUBLIC WORKS CONTRACT ARBITRATION COMMITTEE MINUTES

November 16, 2006

The meeting was called to order at 10:11 a.m. by Co-chairperson Robert Pieplow, representing the Department of Transportation (Caltrans). Other voting members present were Co-chairperson Matthew B. "Tim" McGowan, David McCosker and Cecil Mark, representing the construction industry; Bob Courtner, representing the Department of General Services (DGS); and Daniel Whisman, representing the Department of Water Resources (DWR). Others present included Steve Cohen, DWR; and Phoenix Vigil, Program Administrator with the Office of Administrative Hearings (OAH).

#### 1. MINUTES OF THE OCTOBER 16, 2006 MEETING

The draft minutes of the October 16, 2006 meeting were adopted with minor clerical changes.

#### 2. ADMINISTRATOR'S REPORT

Because of the short time between the last meeting and this meeting, there were no additional items to report.

#### 3. FILING FEES

After the last meeting the Administrator requested an updated cost estimate for the PWCA Program. At that time it was noticed that OAH had been tracking only the direct costs of the program and not tracking administrative or overhead costs. Accordingly, the deficit figures reported at the last meeting are not accurate. Instead of a loss of \$91,000 for fiscal year 04/05, OAH actually lost approximately \$160,000. For fiscal year 05/06, OAH lost approximately \$33,000. OAH is projecting a loss of about \$18,000 for the current fiscal year; however, it is impossible to predict the actual revenue from filing fees. The drastic reduction in the yearly loss totals is attributed to the lack of staffing during the beginning of the 05/06 fiscal year and the staffing changes in administration of the program.

The Committee discussed the filing fee situation and ultimately decided not to take any action at this time. The Administrator will monitor the situation and advise the Committee if action is needed in the future.

#### 4. REGULATION SECTIONS 1313 AND 1332

At the last meeting, Michael Doughton, staff counsel for the Department of Corrections and Rehabilitation, requested that suggested amendments to sections 1313 and 1332 be added to the agenda for the Committee's consideration to address an inherent conflict between the regulations.

Specifically, section 1313 requires OAH to dismiss a complaint without prejudice if less than 240 days have expired since acceptance of the work and a final written decision has not been issued. The

dismissal of the complaint pursuant to section 1313 appears to prevent a contractor or public agency from requesting the appointment of a special arbitrator pursuant to 1332.

The Committee opined that no conflict exists, that a contractor or public agency could request the appointment of a special arbitrator even though the complaint was dismissed, and therefore the suggested amendments were unnecessary.

#### 5. ARBITRATOR CONTRACTS

In a couple of arbitration cases, the arbitrators are taking too long to issue their decisions. If the public agency is the losing party, and interest is awarded to the contractor, this results in the public agency being responsible for paying interest during the time they were waiting for the decision. The Committee moved that language establishing a 30-day deadline for the arbitrator to submit the decision, unless the parties agree to a longer period, be put back into the arbitrator contracts.

#### 6. DISCLAIMER

Michael Doughton prepared sample "disclaimer" language for consideration by the Committee. The Committee reviewed the proposed language and moved to include a condensed version of the language in the initial letter to the parties as follows:

Please note that the Public Works Contract Arbitration Committee certification of arbitrators is for general qualification only and does not guarantee that all arbitrators are equally qualified to decide all types of construction disputes. It is therefore recommended that before selecting an arbitrator, each Party perform its own due diligence inquiry into the qualifications, experience and background of each potential arbitrator being considered in order to determine to that Party's satisfaction that each such arbitrator or potential arbitrator is appropriately qualified to hear and fairly decide the factual, legal and/or other issues involved in that Party's particular case.

#### 7. REVIEW OF ARBITRATOR APPLICATIONS

John Rosenberg, Robert Pearman and Randall Erickson were certified to the arbitrator panel.

#### 8. NEW BUSINESS/PUBLIC COMMENT

No new business was presented.

#### 9. SCHEDULING OF NEXT MEETING

The next meeting is tentatively scheduled for February 27, 2007, at 10:30 a.m.