

California Victim Compensation and Government Claims Board

Open Meeting Minutes

May 20, 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, May 20, 2010, at 10:01 a.m. Also present were Board members Les Kleinberg, Deputy Controller, acting for and in the absence of John Chiang, Controller, and Michael Ramos, San Bernardino County District Attorney.

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

The Board meeting commenced with the Pledge of Allegiance.

Item 1. Approval of Minutes of the April 15, 2010, Board Meeting

The Board voted to approve the minutes of the April 15, 2010, Board meeting.

Item 2. Public Comment

The meeting was opened to public comment. No public comment was provided.

Item 3. Executive Officer's Statement

- The Executive Officer thanked the Board members for their participation in two events that were held last month in observance of National Crime Victims' Rights Week, CalVCP's first annual Victims' Rights Rally which was held outside CalVCP headquarters and the annual March to the State Capitol.
- CalVCP will move forward with the CaRES database and application fix project. CaRES will be modified to make it more efficient and effective. CalVCP currently has 2 RFO's out for bid and we are awaiting response from IT contractors for the CaRES modification. The selection process will occur in June.

Item 4. Contract Report

The Executive Officer presented the Contract Report, an action item, for Board approval. The Board voted to extend the Orange County Community Service Program Joint Powers Agreement for an additional year.

Item 5. Legislative Update

Jon Myers, Deputy Executive Officer, Legislation and Public Affairs Division, presented the Legislative Update, an information item, to the Board.

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

Chairperson Leonard, with the consent of 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.

Chairperson Leonard directed staff to contact the organizations and discuss decreasing their overhead costs to a reasonable level. Board member Les Kleinberg stated if the organizations determine that the higher fees are necessary, they must provide written justification to support the higher fees.

Government Claims Program

Item 7. Consent Agenda (Nos. 1- 339)

The Board voted to approve the staff recommendations for numbers 1-339, with the exception of item numbers 103 and 202, which were removed pending receipt of additional information from the claimants and numbers 68 and 284, which were removed in order to allow the claimants an opportunity to address the Board.

Consent Agenda Appearance

Item No. 68, G582704

Ginny Zeller appeared and addressed the Board on behalf of Integra Telecom. Michelle Livsey appeared on behalf of the Department of General Services (DGS). Integra Telecom requested \$53,986.87 in payment for telecommunications services provided to DGS from August 2007 to March 2008.

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

Consent Agenda Appearance

Item No. 284, G589517

Michael Fielder, claimant, failed to appear. Steven Tolle was present on behalf of the California Department of Corrections and Rehabilitation. Mr. Fielder requested \$7,500 for the alleged loss of opportunity because he stated he was not timely released from prison.

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

Item 8. ETR Associates

Claim Number G586827

ETR Associates requested payment in the amount of \$415,666.00 for services provided to the Office of Family Planning Teen Pregnancy Program and Technical Assistance Project during the period of July 1, 2008, through March 11, 2009. These services were provided in good faith and anticipation that their subcontract would be approved and executed.

The Board voted to allow the claim in the amount of \$415,666.00 under authority of Government Code section 965 (agency pay).

Item 9. Air Products and Chemicals, Inc.

Claim Number G586851

Air Products and Chemicals, Inc., requested payment in the amount of \$78,325.63 for engineering services and equipment provided to the Air Resources Board.

The Board voted to adopt the staff recommendation to partially allow the claim in the amount of \$73,493.00 under authority of Government Code section 965 (agency pay).

Item 10. Quest Diagnostics
Claim Number G587329

Item 11. Quest Diagnostics
Claim Number G588298

The above noted claims were considered together because although the dollar amounts claimed are different, the issues are identical.

Quest Diagnostics requested payment in the amount of \$209,264.34 for claim number G587329 and \$86,363.63 for claim number G588298 for laboratory services provided to Atascadero Hospital, Department of Mental Health during contract negotiations, in accordance with the terms of the previous contract.

The Board voted to adopt the staff recommendations to allow the claims under authority of Government Code section 965 (agency pay) as follows: Quest Diagnostics (G587329) approved in the amount of \$209,264.34 and Quest Diagnostics (G588298) approved in the amount of \$86,363.63.

Item 12. Berkeley Unified School District
Claim Number G587992

Berkeley Unified School District requested payment in the amount of \$242,291.55 for services awarded under the 21st Century Community Learning Center Program and the After School Safety and Education Program grants from the California Department of Education.

The Board voted to adopt the staff recommendation to allow the claim in the amount of \$242,291.55 under authority of Government Code section 965 (agency pay).

Item 13. Isaiah Barrett (Pen. Code, § 4900 et seq.)
Claim Number G580801

The claimant did not appear. Michael Farrell, Senior Assistant Attorney General, appeared on behalf of the California Department of Justice, Office of the Attorney General.

The Board voted to adopt the hearing officer's proposed decision to deny the claim.

Item 14. Bid Protest of LCPTracker, Inc.
Request for Quotation No. DIR 09-001

John Dooling and Mark Douglas appeared and addressed the Board on behalf of LCPTracker (LCP). Kathleen Yates appeared and addressed the Board on behalf of the Department of General Services (DGS). Mike Burkholder appeared on behalf of TRS Consultants, Inc. (TRS).

Chairperson Leonard stated there was ex parte communication between himself and Mr. Dooling. He stated Mr. Dooling called to request the Board postpone the matter to a future Board meeting date. Chairperson Leonard stated he advised Mr. Dooling to contact Board staff with his request.

Mr. Dooling requested the Board continue the protest and allow the hearing record to be reopened to provide LCP the opportunity to address points brought out by the hearing officer. Mr. Dooling stated he believed the hearing officer improperly closed the hearing record before the Board meeting.

Wayne Strumpfer, CalVCP Chief Counsel, stated the bid protest regulations prevail over the general hearing regulations. Mr. Strumpfer cited California Code of Regulations, title 2, section 873.10, in part, as follows:

“(a) In a hearing in which post-hearing briefs were not allowed or permitted, the hearing record shall be closed upon the conclusion of testimony and presentation of any oral argument by the parties, unless otherwise ordered.

* * *

“(c) No evidence or argument shall be submitted to the board after the close of the hearing record.”

Mr. Strumpfer stated Ms. Chmura, the hearing officer assigned to the protest, correctly closed the hearing after taking all submissions of written records. He stated Ms. Chmura determined that an oral hearing was not necessary. He further stated that under the bid protest regulations, Ms. Chmura was able to close the record prior to today's Board meeting.

Chairperson Leonard asked Mr. Strumpfer to advise the Board regarding whether the protestant could make an argument before the Board today. Mr. Strumpfer stated yes, LCP could argue the matter. However, the issue is that LCP's bid of \$17,695,000 was materially defective because it exceeded the RFQ's specifications yearly budget allocation of \$80,000. He further stated the decision of the hearing officer is that LCP failed to show by a preponderance of the evidence that its bid should have been selected in accordance with the selection criteria in the RFQ instead of the bid submitted by TRS.

After discussion and upon the advice of the Chief Counsel, the Board denied Mr. Dooling's request for postponement and went forward with hearing testimony.

Chairperson Leonard asked Ms. Yates to explain how DGS witnessed a bid change of a sealed bid. Ms. Yates stated DGS did not witness the opening of the sealed cost envelopes. Rather staff at the Department of Industrial Relations (DIR) opened LCP's sealed cost envelope. Ms. Yates stated an unauthorized representative of LCP noticed the mistake and changed it, which was uninvited by DIR.

Board member Les Kleinberg stated LCP's bid amount of \$17,695,000 was clearly an error and asked Ms. Yates if, pursuant to statutory and case law, there is any justification for changing a bid at the time of a bid opening. Ms. Yates stated it could not be changed because changing a bid violates the statute and integrity of the sealed bidding process.

Mark Douglas appeared and addressed the Board on behalf of LCP. Mr. Douglas stated Civil Code section 3399 allows the changing of a bid when there is obvious error and all parties agree that it is an obvious error. Mr. Douglas stated LCP corrected a typographical error. He stated he is asking the Board for equity because LCP was the lowest bidder and the State recognized that their bid contained a typographical error.

Board member Les Kleinberg stated in bid protests, the Board has very little, if any, equitable authority. Board member Les Kleinberg asked Mr. Strumpfer to clarify how much jurisdiction the Board has.

Chief Counsel Wayne Strumpfer stated the Board does not sit under equity in deciding bid protests. Invoking equity would extend the Board's reach beyond the authority granted it in the Public Contract Code. Public Contract Code section 12102(h) imparts the Board authority to decide

whether the protestant has shown that its bid should have been selected in accordance with the selection criteria in the solicitation document.

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

Victim Compensation Program

The Board commenced the Victim Compensation Program portion of the meeting at 11:17 a.m.

Request for Reconsideration

Recommendation: Allow

(No. 1)

The Board voted to adopt staff recommendation.

Requests for Reconsideration

Recommendation: Deny

(Nos. 2-25)

The Board voted to adopt staff recommendations.

Requests for Reconsideration Following Board Action on a Proposed Decision

Recommendation: Deny

(Nos. 26-31)

The Board voted to adopt the proposed decisions.

Proposed Decisions Following Failure to Respond

(Nos. 32-34)

The Board voted to adopt the proposed decisions.

Proposed Decisions Following Failure to Appear

(Nos. 35-42B)

The Board voted to adopt the proposed decisions.

Discussion and Possible Action Regarding Rates and Limitations for Service Providers and Victim Compensation for Pecuniary Losses

Chairperson Leonard requested that the Board not vote on this item and postponed it indefinitely.

Executive Officer Julie Nauman stated the Restitution Fund (Fund) is projected to become insolvent in FY 2011-12 if steps are not taken to close a widening gap. She further stated in order to address this problem, immediate action must be taken to ensure moneys are available in the Fund to pay for victims services. To that end, Ms. Nauman stated she would go forward with other necessary reductions that can be implemented administratively in response to the declining revenues.

Board member Michael Ramos stated he has had the pleasure of serving on the Board since 2004 and over the years the Fund has been in jeopardy of becoming insolvent. Board member Michael Ramos stated he would make all District Attorneys aware of the issues facing CalVCP in June at the

2010 California District Attorneys Association Summer Conference, District Attorney Roundtable Meeting. In addition, he stated he would encourage the District Attorneys to increase restitution orders by 10 percent or more so that victims would not be negatively impacted by the declining revenues. Board member Michael Ramos suggested CalVCP hold a summit and invite key stakeholders to discuss ways in which to help keep the Fund solvent.

Chairperson Leonard welcomed and invited members of the public to provide comment regarding the Board item. The following members of the public addressed the Board: Kristine Thornberry, Director of Victim Services, Riverside County; Christine Ward, Director, Crime Victims Action Alliance; Ellen Yin Wycoff, Interim Director, CalCASA; and Jason Roper, Victim Witness Program Manager, Yuba County Probation Department.

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 at 11:36 a.m. to deliberate on proposed decisions numbers 43 through 53.

The Board reconvened into open session at 11:43 a.m.

Open Session

The Board voted to adopt the proposed decisions for numbers 43 through 53.

Adjournment

The Board meeting adjourned at 11:43 a.m.

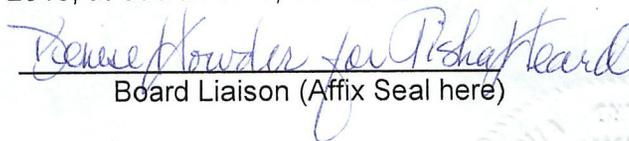
Julie Nauman
Executive Officer



I certify that the California Victim Compensation and Government Claims Board adopted these minutes at its meeting of June 17, 2010, at Sacramento, California.

Date: June 17, 2010

By:


Board Liaison (Affix Seal here)



