

**California Victim Compensation and Government Claims Board
Open Meeting Minutes
August 15, 2013, Board Meeting**

The California Victim Compensation and Government Claims Board (Board) convened its meeting in open session at the call of Marybel Batjer, Secretary, Government Operations Agency, at 400 R Street, Sacramento, California, on Thursday, August 15, 2013, at 10:00 a.m. Also present was Board member Richard Chivaro, Chief Counsel, acting for and in the absence of John Chiang, Controller and Board member Michael Ramos, San Bernardino County District Attorney.

Board staff present included Julie Nauman, Executive Officer; Kathy Cruz, 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 June 20, 2013, Board Meeting

Chairperson Batjer stated she was not in attendance at the June 20, 2013, Board meeting because she had not yet assumed her position as Secretary of the Government Operations Agency. She explained that Leslie Lopez, Acting Chairperson at the June 20, 2013, meeting, was provided with a copy of the minutes for her review. Ms. Lopez advised Chairperson Batjer that she approved the minutes. The Board approved the minutes of the June 20, 2013, meeting. Board member Ramos abstained.

Item 2. Public Comment

The Board opened the meeting for public comment. Public comment was provided by Jacquelynn Lira, Victim Advocate, UCD Campus Violence Prevention Program. Ms. Lira commented that she had questions and concerns regarding the CalVCP verification form and recommended that the Board consider rewording the questions listed on the form.

Executive Officer Nauman explained that shortly before the Board meeting began, Chief Counsel Strumpfer spoke with Ms. Lira regarding the matter. She stated that Mr. Strumpfer would contact Ms. Lira to discuss the issue further.

Item 3. Executive Officer's Statement

Executive Officer Nauman congratulated Chairperson Batjer on her appointment to Secretary of the Government Operations Agency.

Trauma Recovery Center (TRC) Grant

As part of the Governor's FY 2013-14 Budget, funding was made available from the Restitution Fund for the Board to administer a grant program to award up to \$2 million in grants per year to a trauma recovery center or centers that provide comprehensive services to victims of crime. VCGCB staff prepared the Notice of Funds Available, which is anticipated to be released at the end of the week. Applications will be due in mid-September 2013. Once the applications are received, the review and scoring processes begin. Staff will bring their recommendations for funding to the Board at the October 17, 2013, Board meeting for its approval and award of the grant.

Item 4. Contract Report

Julie Nauman, Executive Officer, presented the Contract Report. The Board approved the one-year contract with the Department of Justice (DOJ) in the amount of \$115,000. DOJ will continue to provide legal representation in actively pursuing monies owed to the Restitution Fund via liens on civil suits and workers' compensation cases, employment litigation against the Board and its employees, and other related legal advice.

Item 5. Legislative Update

Jon Myers, Deputy Executive Officer, Legislation and Public Affairs Division, reported the following:

AB 235 (Gatto), the VCGCB's first Government Claims Bill of 2013 that appropriates \$1,080,580.70 to pay 343 claims approved by the Board from May 2012 through December 2012, is awaiting the Governor's signature.

SB 369 (De Leon), the VCGCB's second Government Claims Bill of 2013 that appropriates \$414,054.01 to pay 155 claims approved by the Board from January 2013 through April 2013, is in the Senate Appropriations Committee and is scheduled to be heard on August 19, 2013.

SB 60 (Wright) expands eligibility for the Victim Compensation Program by adding victims of human trafficking to those eligible for compensation when only emotional injury has occurred. The bill has been enrolled and is awaiting the Governor's signature.

SB 71 (Committee on Budget and Fiscal Review), as reported by Executive Officer Nauman in her Executive Officer's Statement, was a part of the Governor's FY 2013-14 Budget and was chaptered. It requires the VCGCB to administer a program to award up to \$2 million in grants per year from the Restitution Fund to trauma recovery centers that provide victim services.

SB 618 (Leno) makes changes to the process by which VCGCB considers claims for the compensation of erroneously convicted individuals of \$100 per day of incarceration. The provisions include setting timeframes for the consideration of a claim, removing the requirement that claimants prove they did not contribute to their own arrests or convictions, requiring a recommendation to pay without a hearing when a court has made specified findings on innocence, and changes to conform to public safety realignment. The bill is currently in the Assembly Appropriations Committee.

SB 384 (Gaines) reopens eligibility for the California Memorial Scholarship Program, which provided scholarships to dependents of California resident victims of the September 11th attacks. It requires the VCGCB to identify all persons who are eligible for scholarships and to notify them of their eligibility by July 1, 2014. It requires that eligible participants execute participation agreements by July 1, 2015. The bill is currently in the Senate Appropriations Committee.

Item 6. Government Claims Program

Consent Agenda (Nos. 1-705)

Nicholas Wagner, Government Claims Program Manager, informed the Board that shortly before the Board meeting began, Xanthi Gionis, whose claim was Item Number 294 (G611458) on the Government Claims Program consent agenda, provided staff with an amendment to her claim. Mr. Wagner stated that Ms. Gionis' amendment increased the number of State defendants.

The Board adopted the staff recommendations for item numbers 1-705, with the following exceptions: item numbers 74, 182, 205, 248, and 693 were continued for further review by staff and item numbers 181 and 189 were removed to allow the claimants an opportunity to address the Board.

Item 7. Claim of Erik N. Saltmarsh

Claim Number G602144

Nicholas Wagner, Government Claims Program Manager, explained that Erik N. Saltmarsh requested re-issuance of seven payroll warrants issued by the Energy Oversight Board in the amount of \$90,688.06. Mr. Wagner stated that Government Claims Program staff recommended that the Board allow the claim in the amount of \$90,688.06 under authority of Government Code section 905.2(b)(4) (legislative pay).

The Board allowed the claim in the amount of \$90,688.06.

Item 8. Claim of John A. Hayes

Claim Number G607997

John Hayes appeared and addressed the Board. Bryan Bruno appeared and addressed the Board on behalf of the California Department of Human Resources and Dana Williams appeared and addressed the Board on behalf of the Department of Transportation.

Nicholas Wagner, Government Claims Program Manager, explained that John Hayes sought compensation from the California Department of Transportation (Caltrans) in the amount of \$5,725.44 for medical and dental benefits, as well as out-of-pocket expenses. Mr. Wagner stated that Government Claims Program staff recommended that the Board partially allow the claim in the amount of \$2,583.30 under authority of Government Code section 965 (agency pay). He explained that Caltrans staff revised their recommendation and concurred with Government Claims Program staff to partially allow the claim in the amount of \$2,583.30.

Mr. Hayes stated that partial payment in the amount of \$2,583.30 was not adequate because he paid \$5,752.44 in out-of-pocket expenses. He stated that the amount recommended should have been less the amount he would have paid, which would have been \$389.11 for the months of November and December 2012 and \$312.11 for the month of January 2013 for a total of \$1,090.33. Mr. Hayes also requested that the Board compensate him for his attendance at two Board meetings, fuel costs, and loss of overtime that he would have been able to work for a total of \$500. He explained that \$5,752.44 represented the amount of his original government claim, minus \$1,090.33, plus \$500.00 for a total of \$5,162.11 in out-of-pocket expenses.

Ms. Williams stated that based on Mr. Hayes' appointment tenure and time base, he was a temporary intermittent employee. She explained that intermittent employees are not allowed benefits until they meet the control period, which is 960 hours. She explained that Mr. Hayes began his employment in October and, based on the control period, he would not have been eligible to receive benefits until August. She stated that Caltrans acknowledged that Mr. Hayes may have been told by a Caltrans district employee, not Caltrans HR, that he was entitled to benefits. Based upon the information that Mr. Hayes replied upon, Caltrans offered to compensate Mr. Hayes the sum of \$2,583.30. She explained that Caltrans' initial recommendation to the Board to reject the claim was based on the fact that Mr. Hayes was not entitled for benefits at the time of his employment.

Mr. Bruno stated that the California Department of Human Resources (CalHR) was concerned about the representation made to Mr. Hayes by Caltrans staff at the time of his hire. He stated that CalHRs consideration for the State was to close liability. He explained that CalHRs offer of \$2,583.30 was based on a computation of what a Bargaining Unit 12 employee would receive from the State for contributions for medical, dental, and vision benefits, which he believed was an equitable sum to settle the claim. Any other out-of-pocket expenses such as copayments could have been normally incurred. Mr. Bruno stated that he could not speak to Mr. Hayes' request for mileage; however, CalHR could not, in good faith, offer Mr. Hayes anything greater than any other Bargaining Unit 12 employee would receive in a similarly situated position when eligible and considered enrolled in benefits.

Mr. Hayes stated that if the dollar amount recommended was based on the dollar amount that the State would have paid for benefits, then the State was admitting it was wrong and he should not have to pay the difference.

Chairperson Batjer stated that the representatives from CalHR and Caltrans clearly stated the policy of the State.

The Board partially allowed the claim in the amount of \$2,583.30.

Item 9. Claim of Baltazar Construction, Inc.

Claim Number G610560

Nicholas Wagner, Government Claims Program Manager, explained that Baltazar Construction, Inc. requested compensation in the amount of \$249,900 from the California Department of Transportation for unpaid invoices. Mr. Wagner stated that Government Claims Program staff recommended that the Board allow the claim in the amount of \$249,900 under authority of Government Code section 965 (agency pay).

The Board allowed the claim in the amount of \$249,900.

Item 10. Claim of Alcatel Lucent USA, Inc.

Claim Number G611648

Chad Brening and John Williams appeared on behalf of Alcatel Lucent USA, Inc. Phillip Fong appeared on behalf of the Public Safety Communications Office and William Lu appeared on behalf of the California Technology Agency.

Nicholas Wagner, Government Claims Program Manager, explained that Alcatel Lucent USA, Inc. requested compensation in the amount of \$95,000 from the California Technology Agency for unpaid invoices. Mr. Wagner stated that Government Claims Program staff recommended that the Board allow the claim in the amount of \$95,000 under authority of Government Code section 965 (agency pay).

Mr. Brening stated that the sum of \$95,000 was acceptable for the effort and services that Alcatel Lucent USA, Inc. provided to the California Technology Agency. Mr. Fong stated that he reviewed the records and was in agreement that the sum of \$95,000 was equitable.

The Board allowed the claim in the amount of \$95,000.

Item 11. Applications for Discharge From Accountability for Collection

Nicholas Wagner, Government Claims Program Manager, requested that the Board approve 23 requests by State agencies for discharge from accountability for collection of debt totaling \$119,897,867.84.

The Board approved the request.

Consent Agenda Appearance

Item 181, G608819

Claim of Brian Martin

Richard Reed and Jan Bowler were in attendance on behalf of the California Commission on Peace Officer Standards and Training.

Nicholas Wagner, Government Claims Program Manager, stated that Mr. Martin amended his claim and the California Commission on Peace Officer Standards and Training revised its recommendation. Mr. Wagner explained that Brian Martin sought compensation from the California Commission on Peace Officer Standards and Training (POST) in the amount of \$6,497.80 for unpaid invoices and personal expenses. Mr. Wagner explained that POST staff informed the Government Claims Program that their original recommendation to reject the claim was drafted in error. Mr. Martin performed services under contract and was entitled to compensation for his services as well as related expenses. Mr. Wagner stated that Government Claims Program staff recommended that the Board allow the claim in the amount of \$6,497.80.

The Board allowed the claim in the amount of \$6,497.80.

Consent Agenda Appearance

Item 186, G609609

Claim of Athalye Consulting Engineering Services, Inc.

Appearances for Athalye Consulting Engineering Services, Inc. included Omar Siddiqui, Ulwelling Siddiqui LLP, representing Athalye Consulting Engineering Services, Inc.; Ashok Athalye, President of Athalye Consulting Engineering Services, Inc.; David Tiberi, Project Manager and Vice President of construction services; and Sanjay Athalye. Christina Silveira and Sandra McNealy appeared on behalf of the Department of Transportation.

Nicholas Wagner, Government Claims Program Manager, explained that Athalye Consulting Engineering Services Inc. (Athalye Consulting) sought compensation from the California Department of Transportation (Caltrans) in an amount exceeding \$300,000 for breach of contract. Mr. Wagner stated that Government Claims Program staff recommended that the Board reject the claim because the issues raised involved complex matters of fact and law beyond the scope of analysis and interpretation typically undertaken by the Board.

Mr. Siddiqui stated that Athalye Consulting is a well-established business that has been in operation for over 22 years. Athalye Consulting has been doing business with Caltrans from some time and has been a part of numerous billion-dollar high profile projects in California such as the Bay Bridge, I-5 Corridor, and various super structures throughout the State. He explained that Athalye Consulting performed pursuant to a contract it entered into with Caltrans for construction-related services. Subsequent to the contract being signed, there was an extension to the contract. The contractual documents clearly specified the rates for performing the tasks. Athalye Consulting diligently performed pursuant to the contract and abided by all of the terms and obligations. After performance of the contract, Caltrans, unilaterally and without due process, decided that the rates specified in the contract were not valid and were adjusted downward, resulting in Athalye Consulting being shortchanged by over \$300,000. He stated that Caltrans essentially renegotiated the contract after performance.

Mr. Ashok Athalye stated that Athalye Consulting had a written contract with Caltrans, a subsequent amendment to the contract, and an audit report. He stated that none of the three documents mentioned the awarded rate, the date or the period of the awarded rate, or mandated any changes to the contract. Post the services rendered by Athalye Consulting, the Caltrans contract manager took action to deduct a sum exceeding \$300,000 without any discussion with Athalye Consulting. When the action was conveyed to Athalye Consulting, they responded with a letter and email recommending discussion to gain a better understanding for the reduction. The Caltrans contract manager directed Athalye Consulting to contact the audit department who, in turn, sent an email specifying that the matter was not a part of the audit department or the overhead rates; rather, it was an issue that should be handled by the contract manager. He explained that communications were ongoing for weeks with no resolution. Mr. Athalye stated that after carefully reading the contract, he knew that they had the option to elevate the matter because it had reached a stalemate. He stated that Caltrans' contract manager delayed responding then drafted official notice that Athalye Consulting exceeded the 30-day period required to resolve the matter.

Mr. Tiberi stated that he was the project manager for Athalye Consulting for the on call contract with Caltrans for the entire duration of the contract and participated in the original negotiations. He explained that the contract was executed in May 2009 with a sum not to exceed \$10 million. He explained that Athalye Consulting provided, among other services, staff augmentation services to Caltrans who worked as an extension of Caltrans staff. The mechanism of Athalye Consulting's compensation for the service was the employee's salary with a multiplier and a profit added to it, which was the overhead rate in question. The overhead rate used in the contract executed in 2009

was from Athalye Consulting's internal audits for the year 2007. That overhead rate was confirmed in the amendment to the contract that extended the completion date to August 31, 2012. The end of Athalye Consulting's service was July 29, 2012, approximately one month before the extension granted in the amendment. After all of the services were completed and the work accepted, Athalye Consulting received an email from Caltrans' contract manager demanding that Athalye Consulting go back to the start of the contract, revise the original cost proposal attached to the contract, revise all of the invoices, and give the State a credit. The directive from Caltrans was based on an audit that was performed in 2010, which was given after the performance of the contract and based on information that was 18 months old at the time. He explained that Athalye Consulting immediately responded to the contract manager in disagreement. He stated that the audit report made no mention of overhead rates; therefore, there was no basis to make a change. He commented that Caltrans forced Athalye Consulting to renegotiate the contract terms. Mr. Tiberi explained that to date Athalye Consulting has still not been paid under the terms of the contract that are still in effect. He stated that Athalye Consulting attempted to have a dialogue with Caltrans and attempted to utilize the dispute resolution process listed in the contract only to be refused by Caltrans. Lastly, Mr. Tiberi commented that he was disappointed with the process and the fact that there is no mechanism to resolve the issue. He stated that he has administered contracts for over 25 years and he has never seen a situation where work had been provided and accepted but the public agency refused to make payment in accordance with the terms of the contract.

A Caltrans representative explained that the matter was subject to ongoing litigation between Athalye Consulting and Caltrans; therefore, based upon advice from counsel, Caltrans had no comment other than their recommendation to reject the claim.

Mr. Siddiqui stated that the function of the Government Claims Program is to assist parties in reaching a resolution. He explained that although he was well aware that the Board may agree with the staff recommendation to reject the claim because it needed to be resolved in court, he wanted to raise the issue publicly to remind the Board that claimants are at a critical juncture when they come before the Board. He stated that the Board had an opportunity to bring parties together to resolve matters and avoid costly litigation.

The Board rejected the claim due to its complexity.

**Item 12. Bid Protest of Innovative Federal Operations Group, LLC.
Request for Quotation No. FTB 1213-783-1**

Kathleen Yates was in attendance on behalf of the Department of General Services. There was no representation provided by the protestant.

Wayne Strumpfer, VCGCB Chief Counsel, explained that the bid protest of Innovative Federal Operations Group, LLC. (IFOG), Request for Quotation Number FTB-1213-783.1, involved the procurement of custom-off-the-shelf evidence tracking software for the Franchise Tax Board (FTB).

FTB issued a Notice to Intent to Award the contract to the proposed awardee after determining that it was the lowest responsive bidder meeting the administrative and technical requirements of the RFQ. IFOG disagreed and timely protested the award. Mr. Strumpfer explained that FTB determined that IFOG's quote deviated from the specifications of the RFQ in numerous ways. IFOG offered several options, quoted two costs, and left it to FTB to attempt to determine what combination of hardware and software was offered with the costs based on prices listed on an attachment. He stated that the hearing officer recommended that the Board deny the protest. Mr. Strumpfer stated that IFOG submitted a two-page letter in response to the hearing officers proposed decision which was provided to the Board.

The Board denied the protest.

Item 13. Claim of Ricky Nelson (Pen. Code, §4900 et seq.)

Ivan Marrs, Deputy Attorney General, appeared and addressed the Board on behalf of the Attorney General's Office. Neither the claimant nor his representative were in attendance.

Wayne Strumpfer, VCGCB Chief Counsel, explained that, pursuant to Penal Code section 4900, the hearing officer recommended that the Board deny the claim of Ricky Nelson for several reasons as outlined in the proposed decision.

Mr. Marrs stated that the Attorney General's Office supported the hearing officer's recommendation.

The Board denied the claim.

Victim Compensation Program

The Board commenced the Victim Compensation Program portion of the meeting at 10:48 a.m.

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 10:48 a.m. to deliberate on proposed decision numbers 1-241.

Open Session

The Board reconvened into open session at 10:58 a.m. The Board adopted the proposed decisions for numbers 1-241, with the exception of Number 118 (A13-4092243), which was referred back to staff.

The Board meeting adjourned at 11:01 a.m.