

California Victim Compensation and Government Claims Board
Open Meeting Minutes
September 20, 2012, Board Meeting

The California Victim Compensation and Government Claims Board (Board) convened its meeting in open session at the call of Leslie Lopez, Deputy Secretary and General Counsel, State and Consumer Services Agency, at 400 R Street, Sacramento, California, on Thursday, September 20, 2012, at 10:00 a.m. Also present was Board member Richard Chivaro, Chief Counsel, acting for and in the absence of John Chiang, Controller. Board member Michael Ramos was absent.

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 August 16, 2012, Board Meeting

The Board approved the minutes of the August 16, 2012, Board meeting.

Item 2. Public Comment

The Board opened the meeting for public comment. No public comment was provided.

Item 3. Executive Officer's Statement

2012 VOCA National Training Conference

The Executive Officer will attend the National Association of Crime Victim Compensation Boards National Training Conference that will be held in Atlanta on October 1-4. The Conference will bring together more than 250 people from all 50 states to discuss the most current and pressing issues facing state administrators of compensation programs. The four days of workshops, presentations, and informal discussions will focus on a wide variety of topics and provide an opportunity for colleagues to network and strategize to improve their programs as well as understand and influence national trends and developments.

Convoy of Hope

On Saturday, September 15, the VCGCB gave a presentation at the Sacramento Convoy of Hope at Cal Expo. The Sacramento Convoy of Hope, a collaborative effort among dozens of local churches, non-profit humanitarian organization, serves in the United States and around the world to provide food for the hungry and relief for people in crisis. The Sacramento outreach provided an estimated 20,000 people with a tangible message of hope, free groceries, clothing, health screenings, job fairs, social services, activities for children, and much more.

California State Employees Charitable Campaign (CSECC) Upcoming Events

- The VCGCB will kick off the CSECC with its annual cake auction on September 26. Staff will donate cakes and have an opportunity to bid on them while contributing to local charities. Last year VCGCB staff raised over \$800. All proceeds will benefit the California State Employees Charitable Campaign.
- The Second Annual Chili Cook Off benefitting CSECC will be held in late October. Last year it was a huge success and the VCGCB raised over \$300.
- CSECC pledge forms were recently distributed to all VCGCB employees. Last year's level of contribution from employees was \$11,400 and the VCGCB hopes to exceed that amount this year.

October is Domestic Awareness Month

Each year, across the country, the month of October is recognized as Domestic Violence Awareness Month. Domestic violence poses a clear and present danger for countless persons. One in four women and one in nine men in the United States will become victims of domestic violence at some point in their lives. Nearly 30% of CalVCP applications received for assistance are from victims of domestic violence. The CalVCP will participate in a strong media push to bring awareness to the senseless act of violence. The CalVCP will work with the California Partnership to End

Domestic Violence, WEAVE, and other local organizations to collect gently used men and women's professional attire to help men and women seeking to get back into the workforce.

Item 4. Contract Report

Shandam Consulting Services, Inc. was awarded a contract in the amount of \$120,000 to provide IT infrastructure implementation consulting services for the CaRES Modification Project.

Item 5. Legislative Update

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

- AB 1531 (Fuentes), the VCGCB's first Government Claims Bill of 2012 that appropriated \$859,738.51 to pay 273 claims approved by the Board from June 2011 through December 2011, was chaptered.
- SB 1065 (Kehoe), the VCGCB's second Government Claims Bill of 2012 that appropriated \$624,671.86 to pay 117 claims approved by the Board from January 2012 through April 2012, was chaptered.
- SB 1299 (Wright), relating to compensation for victims of crime, extends the filing period for CalVCP applications from one year to three years and limits the conditions for acceptance beyond that filing period. It also prohibits reductions to CalVCP maximum rates and service limitations from applying to reimbursement of medical or mental health expenses incurred within three months after adoption of the change. It also includes several technical changes to CalVCP statutes. The bill passed through the Legislature and is with the Governor for signature.
- SB 1210 (Lieu), relating to the collection of restitution fine, enhances restitution collection authority for local jurisdictions to address the implementation of public safety realignment, as follows: (1) authorizes counties to collect up to 50 percent of the wages and trust account deposits of prisoners in county jails and to assess an administrative fee for costs of collection; (2) authorizes counties to impose revocation fines on offenders which are payable upon violation of post-release community supervision or mandatory supervision; (3) allows any portion of a restitution order that remains unsatisfied after a defendant is no longer on post-release community supervision or mandatory supervision to be enforced by the county collection agency or by the victim as a civil judgment; and (4) allows court-ordered debt over \$100 imposed by a juvenile court to be referred to the Franchise Tax Board for collection. The bill passed through the Legislature and is with the Governor for signature.
- SB 1371 (Anderson), the bill that prohibits restitution fines and orders owed by offenders from being converted into prison time served, was signed by the Governor.

Item 6. Government Claims Program

Consent Agenda (Nos. 1- 301)

The Board adopted the staff recommendations for item numbers 1-301, with the following exceptions: item numbers 97 (603479), 159 (605791), 200 (605950), and 279 (602801) were continued and item numbers 81 (599562), 107 (604597), 138 (605626), 150 (605729), 236 (606115), 252 (606174), and 284 (603750) were removed to allow the claimants an opportunity to address the Board.

Consent Agenda Appearance

Item 81, G599562

Claim of Sharon L. Schick

Sharon Schick failed to appear.

Mindy Fox, Deputy Executive Officer, Government Claims Program, explained that Ms. Schick sought compensation from the Department of Fish and Game in an amount exceeding \$6,530.00 for ongoing road use, property damage, trespassing, dust, and noise. Ms. Fox stated that the

Department of Fish and Game recommended that the claim be rejected. Further, based on the Government Claims Programs review of the claim and the recommendation provided by the Department of Fish and Game, Government Claims Program staff recommended that the Board reject the claim.

The Board adopted the staff recommendation to reject the claim.

Consent Agenda Appearance

Item 107, G604597

Claim of Thomas Barnes

The claimant failed to appear when the item was presented for Board discussion and action; consequently, the Board rejected the claim. Subsequently, Mr. Barnes and his attorney, Jacqueline Mittelstad, arrived at the meeting. Ms. Mittelstad requested the Board give her an opportunity to address the Board. The Board granted her request.

Mindy Fox, Deputy Executive officer, Government Claims Program, explained that Mr. Barnes claimed ongoing damages exceeding \$25,000.00 from the Department of Fair Employment and Housing (DFEH) for lost wages and litigation costs resulting from the denial of his complaint filed with DFEH. Ms. Fox stated that the Government Claims Program (GCP) staff recommended that the Board reject the claim.

Ms. Mittelstad explained that she wanted to highlight DFEH's procedural problems, which, in turn, caused legal ramifications for Mr. Barnes. She requested the Board direct DFEH's legal counsel to discuss their new procedure with her so that she could make them aware of the problems it created.

She summarized Mr. Barnes' claim as follows: Mr. Barnes has prostate cancer. He asked his employer for an eight-week unpaid medical leave in order to undergo radiation treatment. Rather than provide him with the legally required leave under the Fair Employment and Housing Act, his employer terminated him, causing him to lose his health insurance. She stated that as a result, on approximately August 31, 2010, Mr. Barnes completed what is now referred to as a "Pre-Complaint Questionnaire."

Chairperson Lopez asked whether DFEH denied his claim and, if so, whether Mr. Barnes received a right to sue letter. Ms. Mittelstad explained that Mr. Barnes' claim was denied one year later. His claim was rejected on the grounds that he elected litigation; however, he had not elected litigation as to the DFEH issues. The right to sue letter was not issued within one year of his submission of the complaint, as required by law. She explained that historically an individual fills out a complaint and then returns it along with a signature card to DFEH. In this way, an attorney would know the date that the one-year statute of limitations would run. Pursuant to Government Code section 12965(a), DFEH had one year within which to issue a written accusation or issue a right to sue letter. She stated that Mr. Barnes submitted a Pre-complaint questionnaire on August 31, 2010, and DFEH would have had until August 31, 2011, to issue an accusation or right to sue letter. His termination occurred on August 27; however, the Board took action on September 4. She explained that her statute of limitations on a variety of other legal issues, which they also violated, was running on September 4. She further explained that Mr. Barnes filled out a Pre-complaint Questionnaire and delivered it to DFEH within three or four days of his initial action terminating him with his employer.

Chairperson Lopez stated that a representative from DFEH was in attendance at the meeting when Mr. Barnes' claim was presented; however, they left because Mr. Barnes did not appear. She explained that the Board acted on the claim and rejected it. She added that Ms. Mittelstad's presentation further reinforced the fact that the claim was too complex for the Board to consider.

Lastly, Chairperson Lopez stated that the Board would not reopen its decision regarding Mr. Barnes' claim; rather, she would follow up with DFEH and recommend that both parties engage in a discussion to try to resolve the issues surrounding the claim.

Consent Agenda Appearance

Item 138, G605626

Claim of Ismael Romo

Ismael Romo was not present; however, Brandon Williams appeared on his behalf. There was no representation provided by the California Department of Corrections and Rehabilitation.

Mindy Fox, Deputy Executive Officer, Government Claims Program, explained that Mr. Romo requested payment in excess of \$25,000 from the California Department of Corrections and Rehabilitation for negligence and false imprisonment. She explained that based on the facts of the claim, Government Claims Program staff recommended that the Board reject the claim because the issues raised were complex and outside the scope of analysis and interpretation typically undertaken by the Board.

Mr. Williams stated that the Parole Board reduced Mr. Romo's sentence by six months; however, he was not released when he should have been. Instead, he was incarcerated six months longer.

The Board adopted the staff recommendation to reject the claim.

Consent Agenda Appearance

Item 150, G605729

Claim of Ravinesh Prasad

Ravinesh Prasad appeared and addressed the Board. There was no representation provided by the California Lottery Commission.

Mindy Fox, Deputy Executive Officer, Government Claims Program, explained that Mr. Prasad claimed damages in excess of \$25,000 for harassment and false accusation against the California Lottery Commission. She stated that Government Claims Program staff recommended that the Board reject the claim because it raised issues of fact and law outside the scope of analysis typically undertaken by the Board.

Mr. Prasad asked staff to explain why his claim was scheduled for Board action this month rather than in October as Government Claims Program staff previously advised him. Mr. Strumpfer explained that his claim was on the consent calendar for discussion but asked Mr. Prasad if he would like his claim continued.

Mr. Prasad asked staff to explain why the individuals at the California Lottery Commission called him a sex offender and had issues with him when he was helping them. He stated that he passed a lie detector test and the retailer was stealing.

The Board adopted the staff recommendation to reject the claim.

Consent Agenda Appearance

Item 236, G606115

Claim of Ruben Roncancio

Ruben Roncancio appeared and addressed the Board.

Mindy Fox, Deputy Executive Officer, Government Claims Program, explained that Mr. Roncancio requested compensation exceeding \$25,000.00 from the State and Consumer Services Agency for lost income. Ms. Fox stated that Government Claims Program staff recommended that the Board

reject the claim because the issues presented were complex and outside the scope of analysis and interpretation typically undertaken by the Board.

Chairperson Lopez clarified that Mr. Roncancio's claim was not against the State and Consumer Services Agency; rather, it was against the Contractors State License Board.

Mr. Roncancio explained that his claim was complex; however, he would forgo a monetary award if the Board required the Contractors State License Board to review his information and give him back his licenses. He stated that if the Contractors State License Board mitigated his damages by giving him back his licenses, he would pay the licensing fees. Thereafter, he would pursue litigation against the private individuals who were at fault, not the Contractors State License Board.

Chairperson Lopez explained that the Board did not have the power to direct the Contractors State License Board to take any particular action.

The Board adopted the staff recommendation to reject the claim.

Consent Agenda Appearance

Item 252, G606174

Claim of Brent Lett

Brent Lett appeared and addressed the Board. Lisa Nigel appeared and addressed the Board on behalf of the Department of Rehabilitation.

Mindy Fox, Deputy Executive Officer, Government Claims Program, explained that Mr. Lett requested compensation from the Department of Rehabilitation in an amount exceeding \$25,000 for current and future damages including loss of salary, denial of medical treatment, and pain and suffering. Ms. Fox stated that the claim was only accepted to the extent that it was presented within six months of the date of the accrual of the cause of action. She further stated that to the extent that the Board had jurisdiction, Government Claims Program staff recommended that the Board reject the claim because it raised issues of fact and law that were complex and outside the scope of analysis and interpretation typically undertaken by the Board.

Mr. Lett stated that he received a letter from the Government Claims Program informing him that he did not need to attend the Board meeting. He asked the Board to explain why he would not be encouraged to attend the meeting.

Chairperson Lopez explained that filing a government claim is required before a lawsuit can be filed against any governmental entity. She stated that the Board is not a judge or jury; therefore, if a claim involves issues of fact and law, it becomes complicated and the Board does not have the power to decide the claim. She explained that when the Board rejects a claim, it is not an indication of whether a claim has any merit on the facts or law; rather, the claim is rejected in order to allow an individual the opportunity to pursue any remedies available to them.

Mr. Lett stated that he disagreed with the Board's determination that his claim was complex and requested to appeal their decision to reject his claim. He explained that the law had been broken as indicated by the Rehabilitation Appeals Board's decision that was rendered in his favor. He asked Ms. Nigel to explain why he was given two documents to sign so hastily in reference to the release of his medial information.

Chairperson Lopez explained that the Department of Rehabilitation disputed the issues raised in Mr. Lett's claim, which then raised issues of fact and law too complex for the Board. Because there was no agreement regarding the types of services that he was entitled to receive or whether the department's decision was appropriate, the Board could not consider his claim.

Mr. Lett asked Chairperson Lopez whether there was an appeals process regarding his claim. Chairperson Lopez explained that she could not give legal advice.

Ms. Nigel stated that the Department of Rehabilitation supported the staff recommendation to reject the claim due to its complexity.

The Board adopted the staff recommendation to reject the claim.

Consent Agenda Appearance

Item 284, G603750

Claim of Ken W. Ruiz

Ken Ruiz and his social worker, Theresa Parsons, appeared and addressed the Board. There was no representation provided by the Attorney General's Office.

Mindy Fox, Deputy Executive Officer, Government Claims Program, explained that Mr. Ruiz requested leave to present a late claim for compensation from the California Department of Corrections and Rehabilitation (CDCR) in the amount of \$328,575.00 for being incarcerated beyond his discharge date. She stated that the Attorney General's Office (AG) recommended that the late application be denied for failure to meet the criteria required in Government Code section 911.6. Government Claims Program staff determined that the claim was not timely pursuant to Government Code sections 910 and 911.2. Further, based on a review of the facts of the claim and the AG's recommendation to deny the claim, Government Claims Program staff recommended that the late application be denied pursuant to Government Code section 911.

Mr. Ruiz stated that he could show proof that he was hospitalized on several occasions, which prevented him from filing his claim timely. He explained that he tried to get information from the State and the California Department of Corrections and Rehabilitation since June 2011. Lastly, he stated that he was not aware of the six-month filing requirement until he received a government claim form.

Ms. Parsons stated that Mr. Ruiz had records that would substantiate his hospitalizations. She stated that shortly after he was released from prison, he was diagnosed with peripheral artery disease. He was extremely ill and had frequent hospitalizations that included three surgeries.

Chairperson Lopez asked Government Claims Program staff whether information regarding Mr. Ruiz's hospitalization was included in the information given to the AG's Office. Ms. Fox stated that the information Mr. Ruiz and his social worker presented to the Board was not in his file; as a result, it was not provided to the AG's Office.

The Board continued the claim to the October 18, 2012, Board meeting. Chairperson Lopez requested staff contact the AG's Office to provide them with the additional background information and facts presented by the claimant and his representative.

Item 7. Claim of Ryan C. Todd

Claim Number G602061

Ryan Todd appeared and addressed the Board. Helen Carriker appeared and addressed the Board on behalf of the Department of Fish and Game.

Mindy Fox, Deputy Executive Officer, Government Claims Program, explained that Mr. Todd requested payment in the amount of \$1,088.80 (the price for a round-trip airline ticket to New York City) for his personal Southwest Airlines Rapid Rewards voucher that was used in error by the Department of Fish and Game (DFG) for state travel from Sacramento to Orange County.

Ms. Fox stated that the DFG recommended that the claim be rejected because they believed no loss was incurred for a trip to New York and the employee may have earned the miles/points from prior business trips and not personal trips. The Government Claims Program (GCP) staff recommended, based on equity, that the claim be partially allowed in the amount of \$898.00, which is the "Wanna Get Away" price to fly round-trip to New York City on Southwest Airlines. She further stated that, through confirmation and verification from the Department of Fish and Game, they have the appropriation to pay the claim.

Mr. Todd explained that he had to travel to attend a meeting that was cancelled then later rescheduled. Clerical staff booked the travel, but mistakenly used his personal rapid rewards voucher for the trip. When the trip was first cancelled, then rebooked, staff thought there was a credit left over from the State credit card, but there was not. He explained that when traveling with the State using Southwest, you must use SWABIZ, the portal login, which directs you straight to a person's personal Southwest Airlines account, not a separate account. A few days after the flight was booked, he received a personal email from Southwest Airlines that indicated that travel had been booked using his travel voucher. He immediately called Southwest Airlines and asked if it could be reversed--charged to the State card so that he would receive his voucher back; however, a representative from Southwest Airlines stated that it could not be done because the travel had already occurred. Staff at DFG also contacted Southwest Airlines in an attempt to get it reversed; however, they too were unsuccessful.

Mr. Todd stated that DFG advised him to file a travel expense claim; however, the claim would only be approved for the amount of the actual trip to Orange County. He asked a customer service representative of Southwest Airlines if they could put a value on the voucher, but he was told that they do not put a dollar amount vouchers; alternatively, they recommended that he find flights within the system to determine the valuation, which is how he reached the dollar amount of his government claim.

He explained that two days prior to the August 16, 2012, Board meeting, he was informed that his travel expense claim would be approved for payment and the payment was deposited into his checking account. On morning of the August 16 Board meeting, he contacted Government Claims Program staff and requested to be taken off the agenda because his travel expense claim had been approved. Shortly thereafter on the same day, he received an email from a travel expense claim analyst who informed him that his travel expense claim should not have been approved. He also received a letter from the Chief of the Administration Services Branch informing him that he needed to pay back the difference between what he was claiming and what DFG was willing to pay. He stated that he has not paid back any of the money because he wanted to wait to find out the Board's decision. Lastly, he stated that he would be willing to accept the staff recommendation, which he conveyed to the Chief of the Administration Services Branch; however, he had not responded.

Ms. Carriker stated that Mr. Todd was entitled to receive \$417.00, the amount of the value of the points that were used for the trip that he took for the State. She further stated that awarding Mr. Todd any more money would be a gift of State funds because it would be above the amount that he actually lost.

The Board voted to allow the claim in the amount of \$898.00.

Item 8. Claim of Terri McFarland
Claim Number G604900

Terri McFarland appeared and addressed the Board. Crystal Cavallero appeared and addressed the Board on behalf of the Department of Education. Ray Asbell appeared on behalf of the Department of Personnel Administration.

Mindy Fox, Deputy Executive Officer, explained that Terri McFarland requested reimbursement from the California Department of Education (CDE) in the amount of \$209.00 for the difference between the lodging rate of \$349.00 in San Francisco and the State rate of \$140.00 for travel on December 7, 2011. The CDE recommended that the claim be allowed in the amount of \$209.00 under authority of Government Code section 965 (agency pay); however, Government Claims Program staff and the Department of Personnel of Administration (DPA) recommended that the Board reject the claim.

Ms. McFarland explained that she travelled to San Francisco for a 9:00 a.m. oral argument before the 9th Circuit Court to defend the State of California. CDE support staff made her travel arrangements and were supposed to get the documents authorized; however, they did not. The support staff was incorrectly told that they did not need to submit the form because the freeze exemption had been approved. She stated that she did nothing wrong and paid the bill in January. She further stated that the only basis for denial of her claim was because the form was not submitted prior to travel; however, it was not her responsibility to submit the form.

Ms. Cavallero stated that CDE recommended payment of the claim because it was due to an administrative oversight and an employee training issue. She explained that the excess lodging request was presented internally to the department and the division directors approved the form; however, it was not submitted to CalHR for final approval.

Mr. Asbell explained that DPAs policy does not allow for approval of after-the-fact requests. He stated that he reviewed all of the documents submitted and it appeared that there was forethought and knowledge of the process.

Ms. Cavallero stated that there were several employees who were aware; however, the clerical staff person who was instructed to submit the forms and documents was not familiar with the process. There was an absence of information on the part of support staff. Subsequently when Ms. McFarland submitted the claim, travel staff audited the claim, found that DPA approval was missing from the form, and then reduced the claim. When that information was provided to Ms. McFarland, she asked the support staff to submit the form, which was immediately prepared and submitted to CalHR for approval.

The Board overturned the staff recommendation and allowed the claim in the amount of \$209.00.

Item 9. Claim of National Green Gas, LLC Medical Waste Division
Claim Number G605039

Maureen Wood appeared on behalf of National Green Gas, LLC Medical Waste Division. Roscoe Barrow and Edmund Carolan appeared on behalf of the California Department of Corrections and Rehabilitation.

Mindy Fox, Deputy Executive Officer, explained that National Green Gas, LLC Medical Waste Division requested compensation from the California Department of Corrections and Rehabilitation (CDCR) in the amount of \$194,248.48 for cleanup and disposal of medical waste. Ms. Fox stated that Government Claims Program (GCP) staff reviewed the claim and determined that it was complete and timely pursuant to Government Code sections 910 and 911.2. Based on the facts of the claim and the recommendation provided by CDCR, GCP staff recommended that the claim be allowed in the amount of \$194,248.48 under authority of Government Code section 965 (agency pay).

The Board adopted the staff recommendation to allow the claim.

Item 10. Applications for Discharge From Accountability for Collection

The item was removed from the agenda.

Item 11. Request to Approve Real Property Sale

Wayne Strumpfer, CalVCP Chief Counsel, explained that the State Controller's Office (SCO) requested the Board approve the sale of certain real property (property) in an unincorporated area of San Benito, California (County). Mr. Strumpfer explained that pursuant to Code of Civil Procedure section 1375, any real property may be sold or leased by the SCO at private sale without published notice with the approval of the Board.

Mr. Strumpfer stated that the property was initially transferred to the State as part of a probate proceeding. The property is .422 acres (18,392 square feet) and is a narrow rectangular strip of land in a dry wash area. The property appears to be subject to flooding from local water run-off and is likely required to remain open as a floodway area. Because of its location, the property is virtually unmarketable to the general public as it cannot be used for housing, businesses, or farming; therefore, the land only has a nominal value.

He stated that the SCO and the County entered into a land sales agreement wherein the State will deliver a grant deed to the County. In turn, the County will pay the State the sum of \$2,500.00. This amount reflects the fair market value of the Property. The SCO does not maintain real property because any land that may escheat to the State from a decedent's estate is normally sold and the proceeds are remitted to the SCO (Probate Code section 11900).

The Board approved the sale of the real property.

Item 12. Bid Protest of HERCO

Invitation for Bid No. COR-1-000584-001-SO

Kris Castro and Mark Alexander appeared and addressed the Board on behalf of HERCO. Tracey Talamantes and Rick Traversi appeared on behalf of the California Department of Corrections and Rehabilitation.

Wayne Strumpfer, CalVCP Chief Counsel, explained that the item was before the Board to decide the protest by HERCO of California Department of Corrections and Rehabilitation (CDCR) Invitation for Bid Number COR –I-000584-001-SO (IFB). At issue was whether HERCO's bid complied with the IFB specifications. The purpose of the solicitation was to procure materials and fabrication for a roofing system at California State Prison, Corcoran. CDCR released the IFB on January 24, 2012, and the responses were due March 13, 2012.

Ms. Talamantes explained that HERCO's bid was rejected because HERCO submitted an alternate product that did not meet CDCR's specifications. It was reviewed by CDCR's engineers who then provided detailed reasons explaining why HERCO's bid did not meet CDCR's specifications and, accordingly, rejected the bid.

Mr. Alexander stated that on July 15 a construction bulletin was issued in which it clearly stated that sections 07210 and 07500, the roofing and insulation, had been deleted and were replaced with section 07530, a thermal plastic membrane; however, sections 01631 and 01606 were not deleted, which discussed the issues of substitutions. Section 01631 speaks to the benefits to the owner that could be taken into consideration. The Hydro-Stop Premium Coat System provided a tested roofing assembly, it met the wind uplift requirements, and all the warranty requirements. The biggest benefit to the owner was that it would save the State \$567,000. Although it was not a poly vinyl chloride roofing system, the premium system was a truly sustainable system. Once the system is installed, it is permanent. It does not require drilling into concrete or fastenings, unlike the system that was used.

Rick Traversi stated that Mr. Alexander was referring to a substitution of a system not a product. He stated that approximately one year ago, he spoke with a Hydro-Stop representative who asked how to proceed. He stated that he explained that CDCR reviewed products for a great variety of needs that they have for the buildings that have been in the systems for 50 years or longer and they needed to meet a variety of requirements. He stated that he advised them that if they wanted to propose their system, which was a different system, they would need to do so in a different manner. It could not be done while an individual job was going out to bid, because the bid was based on department standard specifications that have been designed by licensed individuals to meet department needs and the needs of the project.

Ms. Castro stated that the specification included multiple levels that included adhesion, insulation, and a top layer, which was the membrane. She stated that she spoke with a representative from CDCR although it was not a year ago; rather, it was as soon as the bid came out. She stated that she was told that it would go PVC and there was no time to look at Hydro-Stop at that point. Regarding substitutions, the only thing that was different was one product, the top layer. The insulation and adhesive met the criteria and testing required. The only specification that it did not meet was the fact that it was not a PVC.

Ms. Castro stated that the bid was for 50,000 square feet of roofing for inmates who were going to perform the labor. The system did not require fasteners, metal, or tools because it was fluid applied. The inmates could have installed it and in 10 years, they could recoat it and get another 10-year warranty. It would have saved the taxpayers over \$546,000 and it follows the California Green Code.

Ms. Talamantes clarified that CDCR is a General Fund agency. CDCR was looking for roofing systems that would last a long period of time. CDCR has hundreds of buildings in California and they are looking for roofing systems that will last longer than 10 years. She stated that HERCO's bid did not meet all of the specifications as identified in the bid document and they were rejected fairly and reasonably. The specifications for the project were developed two or three years prior to going out to bid and HERCO simply did not meet the specifications.

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

Item 13. Bid Protest of The Bright Group
Invitation for Bid No. CIM-1000423-KF

The protestant did not appear. Tracey Talamantes appeared on behalf of the California Department of Corrections and Rehabilitation.

Wayne Strumpfer, CalVCP Chief Counsel, explained that the item was before the Board to decide the protest by The Bright Group of California Department of Corrections and Rehabilitation (CDCR) Invitation for Bid Number CIM-1000423-KF (IFB). At issue was whether The Bright Group's bid complied with the IFB specifications. The purpose of the solicitation was to procure materials and fabrication for a roofing system at California State Prison, Chino. CDCR released the IFB on August 24, 2011, and the responses were due October 10, 2011. CDCR issued one addendum to the IFB.

Kris Castro, HERCO, asked the Board to explain what the protest entailed.

Ms. Talamantes explained that Mr. Bright submitted a substitute product that did not meet CDCR's specifications and the bid was rejected.

Chairperson Lopez further explained that CDCR asserted that The Bright Group's bid failed to comply with the IFB specifications. CDCR explained that The Bright Group's offered flex MF/R PVC

membrane was not the same as the FM tested tripolymer MF/R flex membrane PVC alloy. Additionally, The Bright Group did not submit an I-90 assembly test for the submitted PVC membrane. In addition, the unreinforced PVC membrane submitted by The Bright Group did not meet the specification call for reinforced PVC membrane.

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

**Item 14. Bid Protests of Ten-Four Communications and Williams USA, Inc.
Request for Quotation No. 047PRO12-A**

Neither of the protestants appeared. Kathleen Yates was in attendance on behalf of the Department of General Services.

Wayne Strumpfer, CalVCP Chief Counsel, explained that the items were before the Board to determine the protests by bidders Ten-Four Communications and Williams USA, Inc. of Request for Quotation Number 047PR012-A, for the procurement of 4,650 mobile computer antennas for California Highway Patrol vehicles.

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

**Item 15. Bid Protest of Tom's House of Hydraulics
Invitation for Bid No. 5784B**

The protestant did not appear. Kathleen Yates was in attendance on behalf of the Department of General Services.

Wayne Strumpfer, CalVCP Chief Counsel, explained that the item was before the Board to determine the protest by bidder Tom's House of Hydraulics of Invitation for Bid number 5784B, for the procurement of nine articulating boom cranes for the California Department of Transportation.

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

Victim Compensation Program

The Board commenced the Victim Compensation Program portion of the meeting at 11:00 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 11:00 a.m. to deliberate on the proposed decisions numbers 1-183B.

Open Session

The Board reconvened into open session at 11:05 a.m. The Board adopted the proposed decisions for numbers 1-183B.

The Board meeting adjourned at 11:05 a.m.