

Public Utilities Revenue Bond Oversight Committee

MINUTES Regular Meeting

Monday, June 20, 2011

9:30 a.m.

**1155 Market Street (between 7th & 8th Streets)
4th Floor Conference Room**

Committee Members

Aimee Brown, Chair
Kevin Cheng, Vice-Chair
Brian Browne
Ian Hart
Ben Kutnick
Larry Liederman
John Ummel

1. Call to Order and Roll Call (*0.00.00)

Chair Brown called the meeting to order at 9:35 a.m. and roll call was taken:

Present: Aimee Brown, Kevin Cheng, Brian Browne, Ben Kutnick, Larry Liederman, and John Ummel.

Excused: Ian Hart.

There was a quorum.

2. Public Comment: Members of the public may address the Revenue Bond Oversight Committee (RBOC) on matters that are within the RBOC's jurisdiction that are not on today's agenda. (*0:01:30)

Public Comment. Speakers: None.

3. Chair's Report

- a. **Bay Area Water Supply and Conservation Agency (BAWSCA) Presentation: BAWSCA's oversight activity with respect to Water System Improvement Program (WSIP) and assessment of performance to-date. (*0:02:30)**

Nicole Sandkulla (BAWSCA); Mark Blake (City Attorney); presented information concerning the matter and/or answered questions raised during the hearing.

Public Comment. Speakers: Nancy Wuerfel requested information concerning the availability of BAWSCA reports to the public. Nicole Sandkulla responded by stating that all information and reports are available to the public.

b. **San Francisco Public Utilities Commission (SFPUC) Staff Report: Water System Improvement Program (WSIP) Pre-Construction. (*0:39:15)**

Jeet Bajwa (SFPUC); Mark Blake (City Attorney); presented information concerning the matter and/or answered questions raised during the hearing.

Public Comment. Speaker: Steve Lawrence asked if there were periodic reports for rate projections.

c. **San Francisco Public Utilities Commission (SFPUC) Staff Report: RBOC account with the City Controller's Office. (*1:35:00)**

Chair Brown provided a summary on status of the RBOC account with the City Controller's Office.

Public Comment. Speakers: None.

4. Discussion and Possible Action:

- a. **Approval of the Draft Memorandum of Understanding (MOU) between the RBOC and the Controller's City Services Auditor (CSA) for auditing services and approval of Task Order #1.**
- b. **Authorize the Chair or Designee of the RBOC to execute the MOU with CSA. (*1:35:30)**

Tonia Lediju (CSA); Irella Blackwood (CSA); Mark Blake (City Attorney); presented information concerning the matter and/or answered questions raised during the hearing.

Public Comment. Speaker: Nancy Wuerfel expressed concerns as to the role of the CSA and how it has changed to allow the CSA to perform the actual audit.

Member Browne's motion requesting an independent legal review of the MOU because the MOU (memorandum of understanding) between the Revenue Bond Oversight Committee and the Controller's City Services

Auditor is illegal and in violation of 2002 Proposition P failed due to the lack of a second.

Member Kutnick, seconded by Member Cheng, moved to adopt the Memorandum of Understanding between the RBOC and the Controller's City Services Auditors for auditing services and approval of Task Order #1 and to authorize the chair of the RBOC to take action to execute the MOU.

Written Comments from Member Browne and Nancy Wuerfel attached.

The motion passed by the following vote:

Ayes: Chair Brown, Cheng, Kutnick, Liederman, and Ummel.

Noes: Browne.

Excused: Hart.

c. Determine if RBOC should work jointly with the SFPUC's Independent Peer Review Panel on Future Task Orders. (*2:50:00)

Chair Brown and Member Ummel provided a summary on the possibility of working jointly with the SFPUC's Independent Peer Review Panel.

Mark Blake (City Attorney); Charles Perl (SFPUC); presented information concerning the matter and/or answered questions raised during the hearing.

Chair Brown, seconded by Member Kutnick, moved to work with the Independent Peer Review Panel on Future Task Orders.

The motion passed by the following vote:

Ayes: Chair Brown, Cheng, Kutnick, Liederman, and Ummel.

Noes: Browne.

Excused: Hart.

Public Comment. Speakers: None.

5. Discussion and Possible Action: Extension of the Sunset Date for the Revenue Bond Oversight Committee. (*3:11:30)

Chair Brown provided a summary on the progress in extending the sunset date for the Revenue Bond Oversight Committee.

Mark Blake (City Attorney); presented information concerning the matter and/or answered questions raised during the hearing.

Chair Brown, seconded by Member Lieberman, moved that the RBOC work with the Board of Supervisors concerning the extension of the sunset date of the RBOC.

Ayes: Chair Brown, Cheng, Kutnick, Liederman, and Ummel.

Noes: Browne.

Excused: Hart.

Public Comment. Speakers: None.

6. Discussion and Possible Action: Approval of the Minutes from the Revenue Bond Oversight Committee (RBOC) Meeting of May 16, 2011. (*0:00:00)

No action taken.

Public Comment. Speakers: None.

7. Discussion and Possible Action: Revenue Bond Oversight Committee (RBOC) Member Information Requests Raised at Today's Meeting. (*0:00:00)

No action taken.

Public Comment. Speakers: None.

8. Discussion and Possible Action: Future Agenda Items. (*3:18:00)

Update on MOU with the CSA
Independent Review Panel requests
Emergency Preparedness
Information concern source of funds to be used by the SFPUC for CSA services

Public Comment. Speakers: None.

9. Adjournment

At the hour of 1:00 p.m. Member Browne moved, seconded by Member Liederman, to adjourn the meeting.

The motion passed unanimously.

The minutes were approved on July 18, 2011.

Comments from Member Browne:

On item 4 - as I recall I questioned the CSA as to their not having power under 2002 Proposition C to act in the capacity that is envisioned by the MOU. They (CSA) also confirmed to me that they receive 1/5th of 1% of all city budgets (including the SFPUC) and can carry out any and all investigations, on their "dime," that the RBOC is suggesting they do. I believe they stated their costs for preparing the MOU would be covered by the SFPUC. I am sure I drew attention to the fact that we are mandated to be the SFPUC's oversight committee and it is inconsistent with the enabling legislation for the SFPUC to be funding who we choose to perform independent and outside studies. I believe that I suggested California Proposition 218 would demand, under the revenue requirements approach to ratemaking, a vote before imposing this added charge on ratepayers.

Ms Wuerfel did more than just express concerns. She produced a document (read into the minutes at my request) discounting the City Attorney's opine on this being a legal MOU.

I stated the MOU was illegal and that the committee was proceeding at its own jeopardy.

Item 4 c - I opposed this motion because I did not think it was independent and I believe this committee is in error by ignoring all the work done with the academic community, particularly UCB - who had produced a draft proposal to the RBOC. I mentioned this effort just "disappeared" in a flurry of off-camera emails and phone calls.

Item 5 - I believe I reviewed the historically flawed contracting and meeting process of the RBOC (my need to conduct sunshine inquiries); including the GM of the SFPUC signing the last RBOC contract without it been shown to the full committee. Only after I requested this be corrected by the City Attorney was this contract shown to the full committee and voted on. I believe my exact words were that continuing this group would be like "raising the RMS Titanic and putting it on iceberg patrol in the N. Atlantic." Did I say - we need a cop, but not this cop?

Audio recordings of the meeting of the Revenue Bond Oversight Committee are available at:

http://sanfrancisco.granicus.com/ViewPublisher.php?view_id=97

For information concerning agendas, minutes and meeting information please contact:

Victor Young, Committee Clerk
City Hall

*Start Time on Audio Recording. The audio recording is available at:
http://sanfrancisco.granicus.com/ViewPublisher.php?view_id=97

1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco, CA 94102
Victor.Young@sfgov.org
(415) 554-7723

For information concerning SFPUC reports and documents
please contact:

bondoversight@sfgov.org
(415) 487-5245

.....

Comments from Nancy Wuerfel

FROM: NANCY WUERFEL

RE: RESPONSE TO CITY ATTORNEY'S OPINION ON RBOC MOU WITH CSA

On June 17, 2011 Mr. Mark Blake, Deputy City Attorney, responded to RBOC's request for a legal memorandum regarding the validity of the proposed MOU between RBOC and the Controller's Office City Services Auditor Division (CCSA). "The proposed MOU would provide the RBOC with the audit and contractual and technical services as requested by RBOC." Mr. Blake stated that the City Attorney's office has repeatedly indicated that "RBOC can procure such services from CCSA without offending any provision of law."

I wish to contest the City Attorney's statements of fact and the interpretations of Proposition P that created RBOC and Proposition C that created CCSA.

ISSUE #1

RBOC BACKGROUND

The Findings in Proposition P passed by voters in 2002 declare:

"(f) The health and welfare of all of the PUC's customers would be promoted by the creation of a qualified body committed to a persistent, vigorous and independent review of the expenditure of revenue bond funds for the PUC's capital improvement program over the next decade. An on-going review of this kind would be of material assistance to both the PUC and the Board of Supervisors ("Board") in ensuring that the program is carried out in compliance with all applicable laws."

In furtherance of its Purpose, RBOC may engage in:

"(c)(6) Commissioning independent review and evaluation of the disbursement and expenditure of the proceeds of such revenue bonds by accessing any funds set aside for this purpose under Subsection (d) of this Section to retain outside auditors, inspectors and necessary experts to conduct such independent review."

To facilitate the aforementioned independent review, the ordinance provides two mechanisms to support the furtherance of the committee's purpose:

1) A fund established to cover the costs of the committee, from gross proceeds of each issuance of public utility revenue bonds and appropriated by the Board of Supervisors at the direction of the committee, and

2) The Board of Supervisors provision of appropriate clerical, technical, and administrative assistance, without expending revenue bond funds.

PAGE 2

COMMENTS:

*Start Time on Audio Recording. The audio recording is available at:
http://sanfrancisco.granicus.com/ViewPublisher.php?view_id=97

A) The city has offended the provision of the law as stated in Proposition P by failing to implement a separate fund (not just a project level allocation to a subset of SFPUC's funds) and by failing to require the Board of Supervisors to provide the level of assistance needed to ensure RBOC's independence in the pursuit of its charge by the voters. These two protective provisions have not been implemented as is written *and as was intended*, leaving RBOC's ability to function autonomously compromised.

B) Mr. Blake has incorrectly quoted Proposition P section (c) (6) as "*commission review and evaluation of the disbursement and expenditure of the proceeds of such revenue bonds by independent consultants and experts*" instead of the language cited above referring to "outside auditors, inspectors and necessary experts...".

The use of outside reviewers is the essence of independence that affords RBOC the capacity to achieve "a persistent, vigorous and independent review." Any auditor that RBOC selects will of necessity have to conduct audits in "accordance with the Government Auditing Standards published by the U.S. Government Accountability Office." The purpose of using outside reviewers is to provide the appearance of as well as the reality of engaging in independent examinations.

C) On October 13, 2010 Mr. Clifford Gerber of Sidley Austin LLP determined that RBOC would be considered a "related party" to the City by virtue of being considered a part of a "controlled group" with the City as defined in Treasury Regulations related to bond proceeds. Since the City Attorney has accepted this determination for RBOC, it must follow that RBOC does have a relationship with the city that links the two together.

Therefore in order to be compliance with Section (c) (6) that RBOC use any funds "to retain outside auditors, inspectors and necessary experts to conduct such independent review," RBOC may not engage CCSA for audit and contracting purposes since they are also a "controlled group" with the City. Mr. Blake states that RBOC has "broad latitude to conduct its activities..." but he fails to mention the qualifier that the auditors, inspectors and experts be outside entities.

D) Also, one of the members of RBOC is appointed by the Controller's Office. This situation creates a potential conflict of interest between the appointee's role on the committee and the appointer who oversees the CCSA.

ISSUE #2

CCSA BACKGROUND

The Proposition C in 2003 charges the Controller to perform the duties of a City Services Auditor, responsible for monitoring the level and effectiveness of services provided by the government of the City and County of San Francisco to the people of San Francisco.

PAGE 3

The ordinance also requires the city to budget .2% of its overall budget apportioned by fund and excluding bond related debt to implement this provision. This Controller's Audit Fund shall be used exclusively to implement the duties of Proposition C, not to displace funding for non-audit related functions of the Controller's Office. If funds are not expended or encumbered by the end of *Start Time on Audio Recording. The audio recording is available at:
http://sanfrancisco.granicus.com/ViewPublisher.php?view_id=97

the fiscal year, the balance in the fund shall revert to the General Fund or enterprise funds where it originated.

COMMENTS:

A) CCSA has prescribed duties to be accomplished as set forth in the ordinance, and is funded exclusively by the required .2% budget allocation to the Controller's Audit Fund. This fund is used to implement the duties and requirements of this appendix to the Charter. Each year, 100% of the duties to be performed are paid for 100% by this budget allocation. Any money not used for CCSA duties are returned at year's end.

There is no provision or duty for CCSA to become a vendor of services to entities outside of the charge of Proposition C to serve the city departments who budget money for those services. There is no excess staff to provide services for RBOC audits and support. To accommodate services to RBOC would require CCSA either to hire staff beyond the budgeted level or to deny services to those city departments already contributing to the City Services Audit fund. It is not clear how providing services to RBOC, a non-contributor to the fund, would not constitute offending a provision of law.

The CCSA is limited in the types of activities that it may undertake because of its requirement to perform specific duties under Proposition C within the confines of its exclusive funding for those duties and the annual budget approved for CCSA's activities. The requirement to refund unused money at year end implies that all resources of CCSA were made available to perform their duties to city departments throughout the year, not that money was unused because CCSA resources were diverted to RBOC and were thus not able to serve city departments.

B) The Citizens' General Obligation Bond Oversight Committee (CGOBOC) shall serve as a Citizens Audit Review Board and shall review all audits to ensure that they meet the requirements set forth above (in Proposition C). Therefore, CGOBOC will be required to review the audit reports CCSA produces at RBOC's request, if this MOU is approved and deemed to be legal.

Mr. Blake has not addressed the conflict created by the CGOBOC becoming involved with reviewing the audit report that CCSA produced as a result of services contracted for by RBOC. If this were to happen, there would be no independence of these committees from each other. The voters intended each committee to be independent entities. The provision of the law would then be offended by allowing CGOBOC to rule on audits commissioned by RBOC who intended the reports to be independently generated by their approved vendor.

These comments are submitted to RBOC at their full committee meeting on Jun 20, 2011.

Comments from Member Browne:

Dear Nancy,

I again applaud your efforts on behalf of the ratepayers, good government, and the dimming hope that the RBOC will implement 2002 Proposition P as intended. I am also disappointed with the City Attorney's response per Mr. Blake email of June 17, 2011. Your efforts complement and enhance my concerns regarding the proposed CSA-RBOC MOU.

*Start Time on Audio Recording. The audio recording is available at:
http://sanfrancisco.granicus.com/ViewPublisher.php?view_id=97

These concerns are heighten by the unannounced terminating of the RBOC effort with the UCB proposal and the dissolving of then RBOC-Contacts Working Group (CWG). The University of California Berkeley (after a robust RFP outreach by the CWG to all major California universities) presented an excellent proposal, basically to ask and answer: "Can the SFPUC complete the WSIP on time (12/31/2015 -as mandated by state law [AB1823] and contract [2009 MWSA]) and on budget (\$4.6B)? "

I will also write a rebuttal to Mr. Blake. I did not have the time this weekend to curtail personal plans (Father's Day) and yet again expend valuable weekend time to object to Friday-revealed agenda items that I consider inconsistent with 2002 P. I am a great believer that process does determine outcomes. The ongoing processes used by the RBOC are often contrary to what was intended in writing P et al.

I will present your input at the RBOC meeting on 6.20.11.

I am herein requesting that Mr Victor Young and/or Mr Mike Brown ensure their are sufficient copies of this exchange and the attached document for the Committee members and attendees.

Thank you.

Brian Browne