

Camarillo Metrolink Station

Summary

The Ventura County 2005-2006 Grand Jury received a complaint that the process used by the Ventura County Transportation Commission (VCTC) for contracting to install public artwork at the Camarillo Metrolink Station (Station) was flawed. While investigating that complaint, additional concerns were raised regarding other aspects of the projects surrounding the Station and the governance of the VCTC.

The Grand Jury concluded that the governance structure of the VCTC is in compliance with California state codes. It was further concluded that the procurement of public art for the Station was handled legally; however, the process was confusing, which may have created an impression of impropriety. The project for a pedestrian over-crossing — the only other issue addressed by the Grand Jury during the investigation — was entirely under the control of Caltrans and thus outside the jurisdiction of the Grand Jury.

The Grand Jury urges the VCTC to establish clear policies and procedures for the procurement of public art. The Grand Jury also suggests that actions taken under state codes other than the Public Utilities Code (which governs county transportation commissions) should be done only with advice from legal counsel.

Background

At the time the complaint was received by the Grand Jury, several inter-related transportation projects were underway at the junction of the Ventura Freeway (US 101) and Lewis Road (California 34). Among those projects was an upgrade to the Camarillo Metrolink Station, which uses the US 101 overpass as a shelter against inclement weather.

During the Grand Jury's investigatory interviews, an allegation was made that the VCTC Board is too large and unwieldy. Further, the Grand Jury heard criticism that the Executive Director of the VCTC is not accountable to the Ventura County Chief Executive Officer. Those additional concerns are addressed in this report.

Assertions of other improprieties in the operation of the VCTC were heard during those interviews. The Grand Jury declined to expand the investigation to address those additional issues because they (a) were far beyond the scope of the original complaint or (b) were being adequately addressed in other venues.

Methodology

The Grand Jury interviewed the complainants, staff members of the VCTC, and Camarillo city staff. The Grand Jury also reviewed VCTC documents and the relevant sections of the California Government and Public Utilities Codes.

Findings

VCTC Governance

- F-01.** The VCTC was created as a distinct and independent government entity by the California Legislature by enacting Public Utilities Code §130050.1.
- F-02.** Under Public Utilities Code §130054.1, the VCTC Board consists of 17 voting members: the five Ventura County Supervisors, the mayor or a city council member from each of the ten cities, a citizen chosen by the Board of Supervisors, and a citizen chosen jointly by the ten cities.
- F-03.** As an independent government entity, the VCTC employs staff who are employees only of the VCTC and are not employees of either Ventura County or the cities represented on the VCTC Board.

Procurement of Public Art for the Camarillo Metrolink Station

- F-04.** In general, contracting by a county transportation commission is governed by the Public Utilities Code and not by the Government Code.
- F-05.** The VCTC issued a sole-source contract (i.e., a contract without competitive bidding) for the creation of the artwork.
- F-06.** The VCTC awarded a separate contract to a licensed contractor for installing the public art. The legal counsel for the VCTC determined that, since this contract is for public art, the “prevailing wages” requirement for public construction projects does not apply.
- F-07.** The total cost of the artwork for the Station project is \$1,544,250, of which 50% is from the federal government, 46% is from state funds, and 4% is from the multi-county Metrolink program (Southern California Regional Rail Authority).
- F-08.** None of the funds for the public art at the Station can be conclusively attributed to Ventura County or the VCTC.
- F-09.** The overall Station project has a total cost of \$12,515,000.
- F-10.** The Station project cannot be separated from the overall set of projects at that location. Instead, the Station depends upon the new freeway overpass in lieu of a shelter, the realignments of Lewis Road and freeway on-ramps and off-ramps for access, and on a pedestrian overpass to allow train commuters to cross the tracks safely.
- F-11.** The combined projects at that location have a total cost of \$44,075,000.
- F-12.** The City of Camarillo issued a “request for proposals” (RFP) for the public art at the Station. Three proposals were selected from those submitted for further review by the City Council’s Transportation Committee. The Transportation Committee selected one proposal, which the full City Council approved and confirmed that approval in a letter to the VCTC.
- F-13.** The VCTC repeatedly cited Government Code §4525 et seq as justifying the awarding of a contract for public art without competitive bids based on price.

- F-14.** Government Code §4525 et seq clearly addresses only the procurement of engineering, architectural, and certain other technological services. These code sections do not address the procurement of artistic services.
- F-15.** The legal counsel for the VCTC performed no prior review of the VCTC action to let this no-bid contract. However, counsel was present when the VCTC Board approved the action.
- F-16.** Government Code §15813 et seq — the “Art in Public Buildings Program” — addresses the procurement of public art by California state agencies.
- F-17.** Government Code §15813.4 explicitly provides for the procurement of public art via no-bid contracts.
- F-18.** Government Code §15813 suggests an allowance of 1% of the total cost of a project for public art.
- F-19.** Federal law (49 USCS §5302(a)(15)(D)) authorizes the procurement of public art on federally-funded projects. This law also suggests an allowance of 1% of the total cost of a project for public art.
- F-20.** Federal law authorizes the use of state laws to guide the procedures for the procurement of public art.
- F-21.** Appropriate approvals were indeed received from both Caltrans and the U.S. Department of Transportation for the procurement of public art for the Station.
- F-22.** The pedestrian overpass over the Station was funded, designed, and constructed by Caltrans, not by VCTC.

Conclusions

- C-01.** Employees of the VCTC are not employees of Ventura County. The VCTC Executive Director reports only to the VCTC Board. The Ventura County Executive Officer has no jurisdiction over the VCTC Executive Director or other VCTC employees. (F-01, F-03)
- C-02.** The size of the VCTC Board is fixed by state law. This is an issue outside the jurisdiction of the Grand Jury. (F-02)
- C-03.** The procurement of public art for the Station was a valid use of public funds. (F-16, F-19)
- C-04.** The process used by the City of Camarillo for selecting the artist and approving the public art for the Station was equivalent to the process specified in Government Code §15813.3(a)(2). (F-12, F-16)
- C-05.** The total cost of the public art for the Station is 3.5% of the total cost of the multiple transportation projects at that location, more than three times the guidelines in state and federal laws. Since the funds were provided by the state of California and the federal government — both of which approved the use of the funds for public art — this expenditure for public art does not represent an improper action by the VCTC. (F-07, F-10, F-18, F-19, F-21)

- C-06.** Since none of the funds for the public art at the Station came from VCTC revenue sources, the VCTC acted as an agent for Caltrans in procuring the art, thus justifying reliance on the Government Code instead of the Public Utilities Code. (F-04, F-07).
- C-07.** The use of no-bid contracts to procure and install public art is supported by state and federal laws. VCTC acted within these laws in procuring public art for the Station. (F-17, F-20; see C-06).
- C-08.** Repeated mistaken code citations by VCTC to justify the process of procuring public art for the Station may have promoted a public perception that this procurement was improper and inappropriate. (F-12, F-14)
- C-09.** There is an appearance that the administration and Board of the VCTC is not sufficiently familiar with California codes beyond the Public Utilities Code, which contains the basic laws under which county transportation commissions operate. (F-13, F-14)
- C-10.** Assertions that the VCTC wasted funds in the design and construction of the pedestrian overpass at the Station were misdirected. This aspect of the multiple projects at that location was entirely under the control, funding, and direction of Caltrans, which is a state agency. (F-22)

Recommendations

- R-01.** The VCTC needs to develop clear policies and procedures for the procurement of public art. These should distinguish procurements from (a) entirely internal VCTC funds, (b) entirely external funds, and (c) from combined internal and external funds. The policies should also address the procurement by the VCTC of public art selected by other government agencies. The policies should be formally adopted by the VCTC Board after that Board reviews the proposed procedures. (C-03, C-04, C-06, C-07, C-08)
- R-02.** The VCTC Board should obtain prior or concurrent advice of legal counsel when taking action other than under the California Public Utilities Code, especially when entering into contracts for procurements. The advice need not be in writing. However, if the advice is given orally, this should be noted in the minutes of the meeting. (C-08, C-09)

Responses

Responses Required From:

Ventura County Transportation Commission (R-01, R-02)