

COMMISSION ON STATE MANDATES

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January 13, 2010

Mr. Keith Petersen
SixTen & Associates
3270 Arena Boulevard, Suite 400-363
Sacramento, CA 95834

And Affected State Agencies and Interested Parties (See Enclosed Mailing List)

RE: Final Staff Analysis, Proposed Parameters and Guidelines, and Notice of Hearing
Prevailing Wage Rate, 01-TC-28
Grossmont Union High School District
Labor Code Sections 1776
Statutes 1978, Ch. 1249
California Code of Regulations, Title 8, Sections 16400, subdivisions (c) and (d); 16408,
Subdivision 9a), and 16408, Subdivision (b)

Dear Mr. Petersen:

The final staff analysis and proposed parameters and guidelines for this matter are enclosed.

Hearing

This matter is set for hearing on **Friday, January 29, 2010**, at 9:30 a.m. in Room 447 of the State Capitol, Sacramento, California. Please let us know in advance if you or a representative of your agency will testify at the hearing, and if other witnesses will appear. If you would like to request postponement of the hearing, please refer to section 1183.01, subdivision (c)(2), of the Commission's regulations.

Special Accommodations

For any special accommodations such as a sign language interpreter, an assistive listening device, materials in an alternative format, or any other accommodations, please contact the Commission Office at least five to seven *working* days prior to the meeting.

Please contact Nancy Patton at (916) 323-8217 if you have questions.

Sincerely,

A handwritten signature in cursive script that reads "Paula Higashi".

Paula Higashi
Executive Director

Enclosures

j:mandates/2001/tc/01tc28/corres/psgsfsatrans



ITEM 14
FINAL STAFF ANALYSIS
PROPOSED PARAMETERS AND GUIDELINES
AS MODIFIED BY STAFF

Labor Code Section 1776

Statutes 1978, Chapter 1249

California Code of Regulations, Title 8,
Sections 16400, Subdivisions (c), and (d), 16403, Subdivision (a),
and 16408, Subdivision (b)

Prevailing Wage Rate
01-TC-28

Grossmont Union High School District, Claimant

Executive Summary

On January 30, 2009, the Commission on State Mandates (Commission) adopted a Statement of Decision partially approving this test claim filed by the Grossmont Union High School District. The test claim statute and regulations address changes to the California Prevailing Wage Law (CPWL), which is "a comprehensive statutory scheme designed to enforce minimum wage standards on construction projects funded in whole or in part with public funds." Contractors for public works projects that exceed \$1,000 are required to pay local prevailing wages to construction workers on those projects. The provisions of the CPWL are only applicable when a district contracts with a private entity to carry out a public works project. The test claim statute and regulations mandate certain activities when the CPWL provisions are triggered by projects for repair or maintenance to school facilities and property, pursuant to Education Code sections 17002, 17565, 17593 and 81601, when the project constitutes a public works project pursuant to the CPWL, and when the project must be let to contract.

On February 4, 2009, the adopted Statement of Decision and draft parameters and guidelines were issued.

Claimant Comments

On March 16, 2009, claimant filed comments on staff's draft parameters and guidelines. Claimant requested, and staff made, technical amendments to the draft parameters and guidelines.

The Statement of Decision authorizes reimbursement for providing payroll records, withholding penalties from contractor progress payments for not providing certified payroll records, and inserting stipulations regarding contractor and subcontractor requirements. These activities are only reimbursable if they are triggered by repair or maintenance projects on school districts with an average daily attendance of less than 35,000 and the total hours on the project exceeds 350

hours; or districts with an ADA of 35,000 or greater, and the total hours on the project exceeds 750.

Claimant pointed out that the threshold listed above was not listed correctly in staff's parameters and guidelines. Staff agrees. The language regarding the ADA of school districts proposed by claimant above is consistent with the Statement of Decision and the test claim statutes. Therefore, staff made the changes requested by claimant to Section I. Summary of the Mandate, and Section IV. Reimbursable Activities.

The above activities are also triggered by any K-12 school district or community college district project that is subject to the Uniform Public Contract Cost Accounting Act (UPCCAA), not an emergency, and the cost will exceed:

- \$25,000 for projects completed on or before December 31, 2006;
- \$30,000 for projects completed on or after January 1, 2007. (Pub. Contract Code, § 22032.)

However, the draft parameters and guidelines only reference the \$30,000 threshold. Claimant requested that the \$25,000 threshold also be included. Since the language proposed by claimant is correct, staff included the above language in the draft parameters and guidelines. Staff also made these changes in Section IV. Reimbursable Activities.

Objections to "boilerplate" language in sections IV, V, and VI of the parameters and guidelines

Claimant objected to the boilerplate language regarding source documentation standards, indirect cost rate language, and record retention requirements.

Within claimant's objections to the boilerplate language, claimant states, "Unless there is some interest by the Commission to revisit these issues, the parameters and guidelines can proceed since the boilerplate is consistent with past decisions."

Staff does not suggest any changes to the boilerplate language at this time. In addition, there is a pending request from the State Controller's Office to amend the boilerplate language in pre-existing parameters and guidelines. Staff recommends that all discussions about parameters and guidelines boilerplate occur when the State Controller's Office request is considered for community college district programs. This is scheduled for the January 2010 meeting.

Department of Industrial Relations Comments

On March 4, 2009, the Department of Industrial Relations (DIR) filed comments on staff's draft parameters and guidelines. DIR requested that language be inserted in the parameters and guidelines clarifying that activities that are performed as a result of a school district's implementation of a Labor Compliance Program are not reimbursable. The Statement of Decision contained a finding that a school district's decision to participate in a Labor Compliance Program is voluntary, and thus, any downstream activities that flow from that decision are also voluntary. Therefore, staff included the language DIR requested in the parameters and guidelines.

DIR also requested that a description of the minimum activities actually required of awarding bodies be included in the parameters and guidelines. Staff agrees that the minimum method of implementing the program proposed by DIR is a reasonable method of complying with the mandate. However, the plain language of the statute and regulation at issue does not impose any

limitations on how a school district or community college district must comply with these requirements. Nor is there any evidence in the record that another method of compliance would be unreasonable. Moreover, DIR's concern that a school district might claim excessive or unreasonable costs is protected by the State Controller's authority pursuant to Government Code section 17561 to audit and reduce any reimbursement claim that is excessive or unreasonable. Accordingly, staff recommends that the Commission deny DIR's request to including limiting language in the parameters and guidelines.

Draft Staff Analysis and Comments

Commission staff issued the draft staff analysis and proposed parameters and guidelines, as modified by staff on October 13, 2009. No comments were filed.

Staff Recommendation

Staff recommends that the Commission:

- Adopt the proposed parameters and guidelines as modified by staff, beginning on page 11.
- Authorize staff to make non-substantive, technical corrections to the parameters and guidelines following the hearing.

STAFF ANALYSIS

Claimant

Grossmont Union High School District

Chronology

- 06/28/2002 Claimant files test claim
- 01/30/2009 Commission partially approves test claim and adopts Statement of Decision
- 02/04/2009 Commission issues Statement of Decision and staff's draft proposed parameters and guidelines
- 03/04/2009 Department of Industrial Relations (DIR) files comments on staff's draft parameters and guidelines
- 03/16/2009 Claimant files comments on staff's draft parameters and guidelines
- 10/13/2009 Commission issues draft staff analysis and proposed parameters and guidelines, as modified by staff.

Background

Summary of the Mandate

The Commission determined that Labor Code section 1776, subdivisions (g) and (h), and sections 16403, subdivision (a), and 16408, subdivision (b), of the Department of Industrial Relations' regulations constitute a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution, but only when those activities are triggered by projects for repair or maintenance to school facilities and property, pursuant to Education Code sections 17002, 17565, 17593 and 81601, when the project constitutes a public works project pursuant to the CPWL, and when the project must be let to contract under the following circumstances:

1. For *K-12 school districts*, when the project is not an emergency as set forth in Public Contract Code section 20113, and
 - a. for districts with full-time equivalent students of fewer than 15,000, when the total number of hours on the job exceeds 350; or
 - b. for districts with full-time equivalent students of 15,000 or more, the total number of hours on the job exceeds 750 hours or the material cost exceeds \$21,000. (Pub. Contract Code, § 20114.)
2. For *community college districts*, when the project is not an emergency as set forth in Public Contract Code section 20654; and
 - a. for districts with full-time equivalent students of fewer than 15,000, when the total number of hours on the job exceeds 350; or
 - b. for districts with full-time equivalent students of 15,000 or more, the total number of hours on the job exceeds 750 hours or the material cost exceeds \$21,000. (Pub. Contract Code, § 20655.)

3. For any K-12 school district or community college district that is subject to the UPCCAA, when a project is not an emergency as set forth in Public Contract Code section 22035, and the project cost will exceed \$30,000. (Pub. Contract Code, § 22032.)

Only the following activities for the foregoing projects are reimbursable:

- Upon a request made to the awarding body by the public for certified payroll records:
 - Obtain certified payroll records from the contractor, including specified information in the request. (Cal. Code Regs., tit. 8, § 16400, subd. (c).)
 - Send an acknowledgment to the requestor including notification of the costs to be paid for preparing the records. (Cal. Code Regs., tit. 8, § 16400, subd. (d).)
 - Provide copies of the records to the requestor. (Lab. Code, § 1776, subd. (b)(3).)
 - Retain copies of payroll records requested by the public and provided by the awarding body for at least 6 months. (Cal. Code Regs., tit. 8, § 16403, subd. (a).)
- Withhold penalties from contractor progress payments for noncompliance with the requirement to provide certified payroll records under Labor Code section 1776, upon request of the Department of Industrial Relations' Division of Apprenticeship Standards or the Division of Labor Standards Enforcement. (Lab. Code, § 1776, subd. (g) (as amended by Stats. 1978, ch. 1249).)
- Insert stipulations regarding the contractor's and subcontractor's requirements pursuant to Labor Code section 1776 in the contract. (Lab. Code, § 1776, subd. (h) (as amended by Stats. 1978, ch. 1249); Cal. Code Regs., tit. 8, § 16408, subd. (b).)

Any fees received by school districts pursuant to Labor Code section 1776, subdivision (e), and title 8, California Code of Regulations, section 16402 for obtaining certified payroll records from the contractor, sending an acknowledgment to the requestor, and providing copies of the records to the requestor shall be identified as offsetting revenue in the parameters and guidelines. Furthermore, any grant funds available to awarding bodies under the deferred maintenance program, or any other eligible grant program, when used for the newly mandated activities in this test claim, shall be identified in the parameters and guidelines as possible offsetting revenues.

None of the other test claim statutes, regulations or alleged executive orders that were pled mandate a new program or higher level of service subject to article XIII B, section 6.

Procedural Background

On February 4, 2009, the adopted Statement of Decision and draft parameters and guidelines¹ were issued. On March 4, 2009, DIR filed comments on staff's draft parameters and guidelines.² On March 16, 2009, claimant filed comments on staff's proposed parameters and guidelines.³

¹ Exhibit A.

² Exhibit B.

³ Exhibit C.

DIR and claimant comments will be discussed below. On October 13, 2009, Commission staff issued a draft staff analysis and proposed parameters and guidelines, as modified by staff.⁴

Discussion

Staff reviewed the draft parameters and guidelines and the comments received. Non-substantive changes were made for purposes of clarification, consistency with language in recently adopted parameters and guidelines, and conformity to the Statement of Decision and statutory language.

Claimant Comments

The Statement of Decision authorizes reimbursement for providing payroll records, withholding penalties from contractor progress payments for not providing certified payroll records, and inserting stipulations regarding contractor and subcontractor requirements. These activities are only reimbursable if they are triggered by repair or maintenance projects on school districts with an average daily attendance (ADA) of less than 35,000 and the total hours on the project exceed 350 hours; or districts with an ADA of 35,000 or greater, and the total hours on the project exceed 750 hours.⁵

Claimant pointed out that the threshold for ADA (35,000) was not listed correctly in staff's parameters and guidelines. Staff agrees. The language regarding the ADA of school districts proposed by claimant above is consistent with the Statement of Decision and the test claim statutes. Therefore, staff made the changes requested by claimant to Section I. Summary of the Mandate, and Section IV. Reimbursable Activities.

The above activities are also triggered by any K-12 school district or community college district project that is subject to the UPCCAA, not an emergency, and the cost will exceed:

- \$25,000 for projects completed on or before December 31, 2006;
- \$30,000 for projects completed on or after January 1, 2007. (Pub. Contract Code, § 22032.)

However, the draft parameters and guidelines only reference the \$30,000 threshold. Claimant requested that the \$25,000 threshold also be included. Since the language proposed by claimant is correct, staff included the above language in the draft parameters and guidelines.

Objections to "boilerplate" language in sections IV, V, and VI of the parameters and guidelines

Claimant objects to the boilerplate language regarding source documentation standards, indirect cost rate language, and record retention requirements.

Regarding source documentation language, claimant states the following:

For the record and preservation of appeal rights, the test claimant objects to the boilerplate language regarding source documents, contemporaneous documents and corroborating evidence. It is a standard of general application without independent statutory or regulatory basis. It is a standard which generally exceeds the documentation methods utilized in the usual course of business for local agencies and the standard required for substantiation of the use of, or

⁴ Exhibit D.

⁵ Community college districts have different thresholds that were not modified by staff.

application for, other state funds by local agencies. It is a standard imposed retroactively upon claimants without prior notice. These and other objections were made before by local agency representatives in previous Commission proceedings. Notwithstanding, the standard has been adopted by the Commission as boilerplate for parameters and guidelines.⁶

Similar arguments are raised about the indirect cost rate language and record retention requirements.⁷

With respect to these objections, claimant further stated the following: *Unless there is some interest by the Commission to revisit these issues, the parameters and guidelines can proceed since the boilerplate is consistent with past decisions.*⁸ (Emphasis added.)

Staff does not suggest any changes to the boilerplate language at this time. There is also a pending request from the State Controller's Office to amend the boilerplate language in pre-existing parameters and guidelines. Staff recommends that all discussions about parameters and guidelines boilerplate occur when the State Controller's Office request is considered for school district and community college district programs.⁹

Therefore, staff finds that the Commission should adopt the proposed parameters and guidelines with the *boilerplate language regarding source documentation standards, indirect cost rate language, and record retention requirement, which are consistent with past decisions.*

DIR Comments

The DIR filed comments addressing two issues in the proposed parameters and guidelines. DIR first requests a clarification of the reimbursable activities for school districts and community college districts that operate their own Labor Compliance Program (LCP), and contends that any activity flowing from a district's participation in the Labor Compliance Program is not reimbursable. DIR states the following:

A school district or community college district or community college administering its own LCP could conceivably claim a right to receive subvention for reimbursable activities [footnote omitted] when carrying them out as part of its LCP. [Footnote omitted.] The Ps & Gs should make clear that activities arising from a district's compliance and enforcement function as an LCP are not considered reimbursable under any circumstance. For example, an LCP that requires the production of certified payroll records ("CPRs") as part of its monitoring and enforcement activities cannot seek reimbursement for any copying, retention, or other activities. [Footnote omitted.] Similarly, a district's compliance with section 1771(b)(1) [footnote omitted] is not a reimbursable expense even if it includes the requirement for contract language in section 1776(h). [Footnote omitted]. Because the costs claimed by an LCP may well be

⁶ See Exhibit D, p. 2.

⁷ See Exhibit D.

⁸ *Ibid*

⁹ On January 29, 2010, the Commission will consider proposed amendments to 7 school district and community college district programs.

higher, given the more affirmative role LCPs play, it would be impossible to delineate the cost of mandatory activity from discretionary. Since the Commission has already determined that no LCP activity is reimbursable, the Ps&Gs should reaffirm this as to arguably cross-over activities.

The Statement of Decision, on pages 61 through 65, discusses the Labor Compliance Program. The Labor Compliance Program is addressed in Labor Code section 1771.5, which states the following:

- (a) Notwithstanding Section 1771 [the requirement to pay the general prevailing rate], an awarding body shall not require the payment of the general prevailing rate of per diem wages or the general prevailing rate of per diem wages for holiday and overtime work for any public works project of twenty-five thousand dollars (\$25,000) or less when the project is for construction work, or for any public works project of fifteen thousand dollars (\$15,000) or less when the project is for alteration, demolition, repair, or maintenance work, *if the awarding body elects to initiate and enforce a labor compliance program pursuant to subdivision (b)* for every public works project under the authority of the awarding body.
- (b) For the purposes of this section, a labor compliance program shall include, but not be limited to, the following requirements:
 - (1) All bid invitations and public works contracts shall contain appropriate language concerning the requirements of this chapter.
 - (2) A prejob conference shall be conducted with the contractor and subcontractors to discuss federal and state labor law requirements applicable to the contract.
 - (3) Project contractors and subcontractors shall maintain and furnish, at a designated time, a certified copy of each weekly payroll containing a statement of compliance signed under penalty of perjury.
 - (4) The awarding body shall review, and, if appropriate, audit payroll records to verify compliance with this chapter.
 - (5) The awarding body shall withhold contract payments when payroll records are delinquent or inadequate.
 - (6) The awarding body shall withhold contract payments equal to the amount of underpayment and applicable penalties when, after investigation, it is established that underpayment has occurred. (Emphasis added.)

Some of the requirements of the Labor Compliance Program may be the same as the activities found by the Commission to be reimbursable; i.e, obtain and retain payroll records, withhold penalties from progress payments for noncompliance. However, those activities are not reimbursable when they flow from a district's discretionary decision to participate in the Labor Compliance Program. On page 61 of the Statement of Decision, the Commission found that "[n]othing in the plain language of section 1771.5 *requires* the awarding body to elect to initiate or enforce, and therefore undertake any activities related to, a Labor Compliance Program" (Emphasis in original.) The Commission further found on page 65 of the Statement of Decision, that none of the activities that flow from implementation of the Labor Compliance Program (in Lab. Code, §§ 1771.5, 1771.6 and 1771.7; Cal. Code Regs., tit. 8, §§ 16425-16439, 17220-

17221; and “AB 1506 Labor Compliance Program Guidebook,” “School Facility Program Substantial Progress and Expenditure Audit Guide,” and “Antioch Unified School District Labor Compliance Program”) are reimbursable.

Accordingly, staff has included the following language in Section IV. Reimbursable Activities of the proposed parameters and guidelines:

Activities that are performed as a result of a district’s implementation of the Labor Compliance Program pursuant to Labor Code section 1771.5 are not reimbursable.

DIR further requests a description of the “minimum activities actually required of awarding bodies under section 1776, subdivision (b)(3), and California Code of Regulations, title 8, section 16400. DIR states the following:

The requirements to obtain CPRs [certified payroll records], send acknowledgment to the requestor, and provide copies to the requestor should be clarified so as [to] provide guidance as to what is actually subject to reimbursement. The process of obtaining CPRs can simply be achieved by forwarding initial request from a member of the public for CPRs to the contractor; essentially the cost of a photocopy, stamp, and addressing an envelope. After the awarding body receives acknowledgment from the contractor, the awarding body can meet its obligation by forwarding the acknowledgment on to the requestor; essentially, the cost of a stamp and addressing an envelope. Once the awarding body receives the CPRs from the contractor, its obligation is to send those CPRs to the requestor; the cost a [sic] mailing and addressing an envelope. By including a description of the minimum for compliance, the Commission can better frame the mandate in terms of what minimum activities are actually required of awarding bodies under section 1776(b)(3) and California Code of Regulations, title 8, section 16400.

The Commission found that the following activities mandate a new program or higher level of service and, thus, are reimbursable:

- Perform the following activities upon a request by the public for payroll records:
 - send an acknowledgment to the requestor including the costs to be paid for preparing the records (Cal. Code Regs., tit. 8, § 16400, subd. (c));
 - obtain certified payroll records from the contractor, including specified information in the request (Cal. Code Regs., tit. 8, § 16400, subd. (d));
 - provide copies of the records to the requestor (Lab. Code, § 1776, subd. (b)(3) (as amended by Stats. 1978, ch. 1249)).

Staff agrees that the method of sending the acknowledgment to the requestor, obtaining payroll records, and providing copies to the requestor by mail is a reasonable method of complying with the mandate – and those costs are provided for in Section V of the parameters and guidelines for salary and benefits, and materials and supplies. However, the plain language of the statute and regulation at issue does not impose any required limitations on how a school district or community college district is to comply with these requirements. Nor is there any evidence in the record that another method of compliance would be unreasonable. For example, the activity

of obtaining payroll records from a contractor can be performed if the contractor delivers the payroll records to the office of the school district or community college district. Under those circumstances, the school district employee's time to receive the payroll records would be reimbursable, and the school district would not incur any costs for postage.

Moreover, DIR's concern that a school district might claim excessive or unreasonable costs for these mandated activities is protected by the State Controller's authority pursuant to Government Code section 17561 to audit and reduce any reimbursement claim that is excessive or unreasonable. Accordingly, staff recommends that the Commission deny DIR's request to include the limitation language in the parameters and guidelines.

Draft Staff Analysis and Comments

Commission staff issued the draft staff analysis and proposed parameters and guidelines, as modified by staff on October 13, 2009. No comments were filed.

Staff Recommendation

Staff recommends that the Commission:

- Adopt the proposed parameters and guidelines as modified by staff, beginning on page 11.
- Authorize staff to make non-substantive, technical corrections to the parameters and guidelines following the hearing.

**PROPOSED PARAMETERS AND GUIDELINES
AS MODIFIED BY STAFF**

Labor Code Section 1776
Statutes 1978, Chapter 1249
California Code of Regulations, Title 8,
Sections 16400, Subdivisions (c), and (d), 16403, Subdivision (a),
and 16408, Subdivision (b)

Prevailing Wage Rate
01-TC-28

Grossmont Union High School District, Claimant

I. SUMMARY OF THE MANDATE

On January 30, 2009, the Commission on State Mandates (Commission) adopted a Statement of Decision finding that the test claim legislation imposes a partially reimbursable state-mandated program upon school districts within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514. The Commission approved this test claim for the following reimbursable activities:

- Upon a request made to the awarding body by the public for certified payroll records:
 - Obtain certified payroll records from the contractor, including specified information in the request. (Cal. Code Regs., tit. 8, § 16400, subd. (c).)
 - Send an acknowledgment to the requestor including notification of the costs to be paid for preparing the records. (Cal. Code Regs., tit. 8, § 16400, subd. (d).)
 - Provide copies of the records to the requestor. (Lab. Code, § 1776, subd. (b)(3).)
 - Retain copies of payroll records requested by the public and provided by the awarding body for at least 6 months. (Cal. Code Regs., tit. 8, § 16403, subd. (a).)
- Withhold penalties from contractor progress payments for noncompliance with the requirement to provide certified payroll records under Labor Code section 1776, upon request of the Department of Industrial Relations' Division of Apprenticeship Standards or the Division of Labor Standards Enforcement. (Lab. Code, § 1776, subd. (g) (as amended by Stats. 1978, ch. 1249).)
- Insert stipulations regarding the contractor's and subcontractor's requirements pursuant to Labor Code section 1776 in the contract. (Lab. Code, § 1776, subd. (h) (as amended by Stats. 1978, ch. 1249); Cal. Code Regs., tit. 8, § 16408, subd. (b).)

The above-named activities are only reimbursable when those activities are triggered by projects for repair or maintenance to school facilities and property, pursuant to Education Code sections 17002, 17565, 17593 and 81601, when the project constitutes a public works project pursuant to the CPWL, and when the project must be let to contract under the following circumstances:

1. For *K-12 school districts*, when the project is not an emergency as set forth in Public Contract Code section 20113, and
 - a. for districts with an average daily attendance of less than 35,000 full-time equivalent students of fewer than 15,000, when the total number of hours on the job exceeds 350; or
 - b. for districts with an average daily attendance of 35,000 or greater full-time equivalent students of 15,000 or more, the total number of hours on the job exceeds 750 hours or the material cost exceeds \$21,000. (Pub. Contract Code, § 20114.)
2. For *community college districts*, when the project is not an emergency as set forth in Public Contract Code section 20654; and
 - a. for districts with full-time equivalent students of fewer than 15,000, when the total number of hours on the job exceeds 350; or
 - b. for districts with full-time equivalent students of 15,000 or more, the total number of hours on the job exceeds 750 hours or the material cost exceeds \$21,000. (Pub. Contract Code, § 20655.)
3. For any K-12 school district or community college district that is subject to the UPCCAA, when a project is not an emergency as set forth in Public Contract Code section 22035, and the project cost will exceed:
 - \$25,000 for projects completed on or before December 31, 2006;
 - \$30,000 for projects completed on or after January 1, 2007. (Pub. Contract Code, § 22032.)

II. ELIGIBLE CLAIMANTS

Any "school district" as defined in Government Code section 17519, including community colleges, which incurs increased costs as a result of this mandate, is eligible to claim reimbursement. Charter schools are not eligible claimants.

III. PERIOD OF REIMBURSEMENT

Government Code section 17557, subdivision (e), states that a test claim shall be submitted on or before June 30 following a given fiscal year to establish eligibility for that fiscal year. The claimant filed the test claim on June 28, 2002, establishing eligibility for the 2001-2002 fiscal year. Therefore, costs incurred are reimbursable on or after July 1, 2001.

Actual costs for one fiscal year shall be included in each claim. Pursuant to Government Code section 17561, subdivision (d)(1)(A), all claims for reimbursement of initial fiscal year costs shall be submitted to the State Controller within 120 days of the issuance date for the claiming instructions.

If the total costs for a given fiscal year do not exceed \$1,000, no reimbursement shall be allowed except as otherwise allowed by Government Code section 17564.

There shall be no reimbursement for any period in which the Legislature has suspended the operation of a mandate pursuant to state law.

IV. REIMBURSABLE ACTIVITIES

To be eligible for mandated cost reimbursement for any fiscal year, only actual costs may be claimed. Actual costs are those costs actually incurred to implement the mandated activities. Actual costs must be traceable and supported by source documents that show the validity of such costs, when they were incurred, and their relationship to the reimbursable activities. A source document is a document created at or near the same time the actual cost was incurred for the event or activity in question. Source documents may include, but are not limited to, employee time records or time logs, sign-in sheets, invoices, and receipts.

Evidence corroborating the source documents may include, but is not limited to, worksheets, cost allocation reports (system generated), purchase orders, contracts, agendas, and declarations. Declarations must include a certification or declaration stating, "I certify (or declare) under penalty of perjury under the laws of the State of California that the foregoing is true and correct," and must further comply with the requirements of Code of Civil Procedure section 2015.5. Evidence corroborating the source documents may include data relevant to the reimbursable activities otherwise in compliance with local, state, and federal government requirements. However, corroborating documents cannot be substituted for source documents.

The claimant is only allowed to claim and be reimbursed for increased costs for reimbursable activities identified below. Increased cost is limited to the cost of an activity that the claimant is required to incur as a result of the mandate.

For each eligible claimant, the following activities are reimbursable:

- A. Upon a request made to the awarding body by the public for certified payroll records:
 - o Obtain certified payroll records from the contractor, including specified information in the request. (Cal. Code Regs., tit. 8, § 16400, subd. (c).)
 - o Send an acknowledgment to the requestor including notification of the costs to be paid for preparing the records. (Cal. Code Regs., tit. 8, § 16400, subd. (d).)
 - o Provide copies of the records to the requestor. (Lab. Code, § 1776, subd. (b)(3).)
 - o Retain copies of payroll records requested by the public and provided by the awarding body for at least 6 months. (Cal. Code Regs., tit. 8, § 16403, subd. (a).)
- B. Withhold penalties from contractor progress payments for noncompliance with the requirement to provide certified payroll records under Labor Code section 1776, upon request of the Department of Industrial Relations' Division of

Apprenticeship Standards or the Division of Labor Standards Enforcement. (Lab. Code, § 1776, subd. (g) (as amended by Stats. 1978, ch. 1249).)

- C. Insert stipulations regarding the contractor's and subcontractor's requirements pursuant to Labor Code section 1776 in the contract. (Lab. Code, § 1776, subd. (h) (as amended by Stats. 1978, ch. 1249); Cal. Code Regs., tit. 8, § 16408, subd. (b).)

The above-named activities are only reimbursable when those activities are triggered by projects for repair or maintenance to school facilities and property, pursuant to Education Code sections 17002, 17565, 17593 and 81601, when the project constitutes a public works project pursuant to the CPWL, and when the project must be let to contract under the following circumstances:

1. For *K-12 school districts*, when the project is not an emergency as set forth in Public Contract Code section 20113, and
 - a. for districts with an average daily attendance of less than 35,000 full-time equivalent students of fewer than 15,000, when the total number of hours on the job exceeds 350; or
 - b. for districts with an average daily attendance of 35,000 or greater full-time equivalent students of 15,000 or more, the total number of hours on the job exceeds 750 hours or the material cost exceeds \$21,000. (Pub. Contract Code, § 20114.)
2. For *community college districts*, when the project is not an emergency as set forth in Public Contract Code section 20654; and
 - a. for districts with full-time equivalent students of fewer than 15,000, when the total number of hours on the job exceeds 350; or
 - b. for districts with full-time equivalent students of 15,000 or more, the total number of hours on the job exceeds 750 hours or the material cost exceeds \$21,000. (Pub. Contract Code, § 20655.)
3. For any K-12 school district or community college district that is subject to the UPCCAA, when a project is not an emergency as set forth in Public Contract Code section 22035, and the project cost will exceed:
 - \$25,000 for projects completed by December 31, 2006;
 - -\$30,000 for projects completed on or after January 1, 2007. (Pub. Contract Code, § 22032.)

Activities that are performed as a result of a district's implementation of the Labor Compliance Program pursuant to labor Code section 1771.5 are not reimbursable.

V. CLAIM PREPARATION AND SUBMISSION

Each of the following cost elements must be identified for each reimbursable activity identified in Section IV, Reimbursable Activities, of this document. Each claimed reimbursable cost must be supported by source documentation as described in Section IV. Additionally, each reimbursement claim must be filed in a timely manner.

A. Direct Cost Reporting

Direct costs are those costs incurred specifically for the reimbursable activities. The following direct costs are eligible for reimbursement.

1. Salaries and Benefits

Report each employee implementing the reimbursable activities by name, job classification, and productive hourly rate (total wages and related benefits divided by productive hours). Describe the specific reimbursable activities performed and the hours devoted to each reimbursable activity performed.

2. Materials and Supplies

Report the cost of materials and supplies that have been consumed or expended for the purpose of the reimbursable activities. Purchases shall be claimed at the actual price after deducting discounts, rebates, and allowances received by the claimant. Supplies that are withdrawn from inventory shall be charged on an appropriate and recognized method of costing, consistently applied.

3. Contracted Services

Report the name of the contractor and services performed to implement the reimbursable activities. Attach a copy of the contract to the claim. If the contractor bills for time and materials, report the number of hours spent on the activities and all costs charged. If the contract is a fixed price, report the dates when services were performed and itemize all costs for those services.

4. Fixed Assets and Equipment

Report the purchase price paid for fixed assets and equipment (including computers) necessary to implement the reimbursable activities. The purchase price includes taxes, delivery costs, and installation costs. If the fixed asset or equipment is also used for purposes other than the reimbursable activities, only the pro-rata portion of the purchase price used to implement the reimbursable activities can be claimed.

5. Travel

Report the name of the employee traveling for the purpose of the reimbursable activities. Include the date of travel, destination point, the specific reimbursable activity requiring travel, and related travel expenses reimbursed to the employee in compliance with the rules of the local jurisdiction. Report employee travel time according to the rules of cost element A.1., Salaries and Benefits, for each applicable reimbursable activity.

B. Indirect Cost Rates

Indirect costs are costs that have been incurred for common or joint purposes. These costs benefit more than one cost objective and cannot be readily identified with a particular final cost objective without effort disproportionate to the results achieved.

After direct costs have been determined and assigned to other activities, as appropriate, indirect costs are those remaining to be allocated to benefited cost objectives. A cost may not be allocated as an indirect cost if any other cost incurred for the same purpose, in like circumstances, has been claimed as a direct cost.

Indirect costs include: (a) the indirect costs originating in each department or agency of the governmental unit carrying out state mandated programs, and (b) the costs of central governmental services distributed through the central service cost allocation plan and not otherwise treated as direct costs.

School districts must use the J-380 (or subsequent replacement) non-restrictive indirect cost rate provisionally approved by the California Department of Education.

County offices of education must use the J-580 (or subsequent replacement) non-restrictive indirect cost rate provisionally approved by the California Department of Education.

Community colleges have the option of using: (1) a federally approved rate, utilizing the cost accounting principles from the Office of Management and Budget Circular A-21, "Cost Principles of Educational Institutions"; (2) the rate calculated on State Controller's Form FAM-29C; or (3) a 7% indirect cost rate.

VI. RECORD RETENTION

Pursuant to Government Code section 17558.5, subdivision (a), a reimbursement claim for actual costs filed by a local agency or school district pursuant to this chapter¹ is subject to the initiation of an audit by the Controller no later than three years after the date that the actual reimbursement claim is filed or last amended, whichever is later. However, if no funds are appropriated or no payment is made to a claimant for the program for the fiscal year for which the claim is filed, the time for the Controller to initiate an audit shall commence to run from the date of initial payment of the claim. In any case, an audit shall be completed not later than two years after the date that the audit is commenced. All documents used to support the reimbursable activities, as described in Section IV, must be retained during the period subject to audit. If an audit has been initiated by the Controller during the period subject to audit, the retention period is extended until the ultimate resolution of any audit findings.

VII. OFFSETTING REVENUES AND REIMBURSEMENTS

Any offsets the claimant experiences in the same program as a result of the same statutes or executive orders found to contain the mandate shall be deducted from the costs claimed. In addition, reimbursement for this mandate from any source, including but not limited to, service fees collected, federal funds, and other state funds, shall be identified and deducted from this claim.

Any fees received by school districts pursuant to Labor Code section 1776, subdivision (e), and title 8, California Code of Regulations, section 16402 for obtaining certified payroll records from the contractor, sending an acknowledgment to the requestor, and providing copies of the records to the requestor shall be identified as offsetting revenue in the parameters and guidelines. Furthermore, any grant funds available to awarding

¹ This refers to Title 2, division 4, part 7, chapter 4 of the Government Code.

bodies under the deferred maintenance program, or any other eligible grant program, when used for the newly mandated activities in this test claim, shall be identified in the parameters and guidelines as possible offsetting revenues.

VIII. STATE CONTROLLER'S CLAIMING INSTRUCTIONS

Pursuant to Government Code section 17558, subdivision (b), the Controller shall issue claiming instructions for each mandate that requires state reimbursement not later than 60 days after receiving the adopted parameters and guidelines from the Commission, to assist local agencies and school districts in claiming costs to be reimbursed. The claiming instructions shall be derived from the test claim decision and the parameters and guidelines adopted by the Commission.

Pursuant to Government Code section 17561, subdivision (d)(1), issuance of the claiming instructions shall constitute a notice of the right of the local agencies and school districts to file reimbursement claims, based upon parameters and guidelines adopted by the Commission.

IX. REMEDIES BEFORE THE COMMISSION

Upon request of a local agency or school district, the Commission shall review the claiming instructions issued by the State Controller or any other authorized state agency for reimbursement of mandated costs pursuant to Government Code section 17571. If the Commission determines that the claiming instructions do not conform to the parameters and guidelines, the Commission shall direct the Controller to modify the claiming instructions and the Controller shall modify the claiming instructions to conform to the parameters and guidelines as directed by the Commission.

In addition, requests may be made to amend parameters and guidelines pursuant to Government Code section 17557, subdivision (d), and California Code of Regulations, title 2, section 1183.2.

X. LEGAL AND FACTUAL BASIS FOR THE PARAMETERS AND GUIDELINES

The Statement of Decision is legally binding on all parties and provides the legal and factual basis for the parameters and guidelines. The support for the legal and factual findings is found in the administrative record for the test claim. The administrative record, including the Statement of Decision, is on file with the Commission.

Commission on State Mandates

Original List Date: 7/8/2002
Last Updated: 9/9/2009
List Print Date: 01/06/2010
Claim Number: 01-TC-28
Issue: Prevailing Wage Rate

Agenda Mailing List

TO ALL PARTIES AND INTERESTED PARTIES:

Each commission mailing list is continuously updated as requests are received to include or remove any party or person on the mailing list. A current mailing list is provided with commission correspondence, and a copy of the current mailing list is available upon request at any time. Except as provided otherwise by commission rule, when a party or interested party files any written material with the commission concerning a claim, it shall simultaneously serve a copy of the written material on the parties and interested parties to the claim identified on the mailing list provided by the commission. (Cal. Code Regs., tit. 2, § 1181.2.)

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