



April 16, 2004

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**COMMISSION ON
STATE MANDATES**

Ms. Paula Higashi
Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814

Dear Ms. Higashi:

As requested in your letter of July 3, 2003, the Department of Finance has reviewed the test claim submitted by the Clovis Unified School District and Santa Monica Community College District (claimant) asking the Commission to determine whether specified costs incurred under various statutes and codes are reimbursable state mandated costs (Claim No. CSM-02-TC-35 "Public Contracts K-14").

As a result of our review, we have concluded that the activities and requirements cited in this test claim do not constitute a State reimbursable mandate. We base this conclusion on the findings and reasons noted below, but first and foremost, we note that participation in voluntary and discretionary state programs, which may require certain conditions of participation, does not constitute a state mandate. In *Department of Finance v. Commission On State Mandates* (2003) 30 Cal.4th 727, the California Supreme Court confirmed the merits of the argument that where a local government entity voluntarily participates in a statutory program, the State may require the entity to comply with reasonable conditions without providing additional funds to reimburse the entity for increased level of activity.

1) Projects for new construction proposed by school districts and community college districts are discretionary.

Nothing in State law or regulation requires a school district or a community college district to construct additional facilities. Instead, the law provides school districts with flexibility, discretion, and choice over the manner in which districts elect to house their student populations. For example, school districts have the discretion to operate year round multi-track schools or two kindergarten sessions per day, use portable classrooms, or transport students to under-used schools. Community colleges can offer night/weekend classes or lease offsite facilities. It is the district's voluntary decision to construct a facility rather than using an aforementioned alternative that forced the district to carry out the activities required under the Local Agency Public Construction Act. Therefore, the costs of complying with the Local Agency Public Construction Act are not reimbursable.

2) The costs incurred complying with the Local Agency Public Construction Act are allowable costs for the use of modernization and new construction grants provided by the State Allocation Board (school districts) and capital outlay appropriations in the State budget act (community college districts).

The State Allocation Board provides modernization and new construction grants through the State School Facilities Program to cover the State's share of all necessary project costs.

would include costs incurred complying with the Local Agency Public Construction Act. The State's share is typically 50 percent for new construction and 60 percent for modernization, but may be up to 100 percent if a district receives financial hardship funding.

The State budget act appropriates capital outlay funds for community college districts to construct and modernize facilities. These funds can cover up to 100 percent of the projects costs and require no matching funds. Therefore, funding received from the State would offset any necessary costs of the Local Agency Public Construction Act for modernization and new construction projects should the commission find that any activities are a reimbursable mandate.

Moreover, we note that participation in the state's new construction and modernization programs, as well as the use of capital outlay funds by community college districts, is a voluntary and discretionary action resulting from a request initiated by the school or community college district.

3) School districts and community college districts receive funding from the State for deferred maintenance projects.

The State School Deferred Maintenance Program and the Community Colleges Facility Deferred Maintenance and Special Repair Program provide State-matching funds, on a dollar-for-dollar basis, to assist school and community college districts with expenditures for major repair or replacement of existing school building components. Therefore, any projects funded through the State School Deferred Maintenance Program or the Community Colleges Facility Deferred Maintenance and Special Repair Program would have received funding to cover the State's share of any necessary costs of the Local Agency Public Construction Act.

Further, we note that participation in these programs is also voluntary and discretionary; thus, compliance with the Local Agency Public Construction Act would not constitute a state mandate.

4) School districts have the authority to charge development fees to finance construction projects.

Chapter 6 of Part 10.5 of Division 1 of Title 1 of the Education Code authorizes school districts to levy fees against any construction within its district boundaries for the purpose of funding school construction.

Section 17556(d) of the Government Code provides that the Commission on State Mandates shall not find a reimbursable mandate in a statute or executive order if the affected local agencies have authority to levy service charges, fees, or assessments sufficient to pay for the mandated program in the statute or executive order. In its April 1991 decision in *County of Fresno v. State of California* (1991) 53 Cal.3d, 482, the State Supreme Court held that this code section is facially valid under Section 6 of Article XIII B of the California Constitution. Further, in *Kathleen Connell v. Superior Court of Sacramento County* (1997) 59 Cal.App.4th 382, the court found that the fee authority can exist even if it is not economically feasible or practical to implement the fee. Therefore, although the Local Agency Public Construction Act may result in additional costs to school districts, those costs are not reimbursable because the affected districts have the authority to cover those costs through development fees.

5) Comments on Response submitted by the California Community Colleges Chancellor's Office.

We reviewed the California Community Colleges Chancellor's Office letter of March 24, 2004, in response to this test claim, and generally agree with most of the points made in the letter.

However, we make the following comments on those points where we may have a different opinion and, again, we note that the requirements cited in the test claim are only triggered when a district elects to participate in the state's school facility programs.

Claims 1A—1FF and 1II. We concur with the Chancellor's Office on these claims except we believe no mandates exist due to the four reasons listed above. We note that the Chancellor's Office comments are applicable to school districts as well as community college districts.

Claims 1GG—1HH. Public Contract Code, Section 20107. This section appears in Article 2 (Schools – State School Building Aid Law of 1949) and applies to contracts that are subject to Article 1 of Chapter 4 of Part 10 of Division 1 of Title 1 of the Education Code.

The State School Building Aid Law of 1949 established a voluntary program. Districts are not required to apply for apportionments under this article, therefore no mandate exists as per *Department of Finance v. Commission On State Mandates* cited above.

Claim 2A. Public Contract Code, Sections 20110 et seq. Claimant refers to the Local Agency Public Construction Act, Article 3 as requiring school districts "to establish, periodically update and maintain policies and procedures to implement Article 3 of the Act." Nowhere in Article 3 of the Local Agency Public Construction Act is it stated that a school district must establish and periodically update and maintain policies and procedures as stated in the test claim.

Claims 2B—2D. Public Contract Code, Section 2000(a,b), 2001 and 20111. These sections address participation by minority business enterprises and women business enterprises in contracts. The provisions are discretionary and thus do not create a mandate as per *Department of Finance v. Commission On State Mandates*. Section 2000(a) states in part, "... any local agency *may require* that a contract be awarded to the lowest responsible bidder who also does either of the following ..." (emphasis added)

The provisions of section 2000(b) are downstream from the school district's decision to establish requirements for minority and women business enterprises and therefore are not mandates. The provisions of section 2001 are also downstream of the district's choice to require minority and women business enterprises participation so no mandate is created.

Claims 2E—2H. Public Contract Code, Section 20111. This section requires letting certain contracts in excess of \$50,000 to the lowest responsible bidder, having bidders for public works contracts of \$15,000 or more be submitted under seal and accompanied by a specified form of security, and returning the security of unsuccessful bidders.

We concur with the Chancellor's Office response to claims 3E-3G and note that the response is also applicable to school districts. The requirements for competitive bidding, having bidders provide security, and returning the security of unsuccessful bidders all preexisted 1975 and therefore cannot serve as the basis for a mandate.

Also, Public Contract Code section 20118 allows school district governing boards to authorize by contract, lease, requisition, or purchase order, any public corporation or agency, including any county, city, town, or district, to lease data-processing equipment, purchase materials, supplies, equipment, automotive vehicles, tractors, and other personal property for the district in the manner in which the public corporation or agency is authorized by law to make the leases or purchases. In such a case, the school district does not need to engage in competitive bidding. Therefore, because such alternatives are available to school districts without the need to engage in any competitive bidding process, the choice to do so is voluntary and cannot be the basis of a mandated cost.

Further, Public Contract Code sections 10298 and 10299 allow for the purchase of materials, supplies, and equipment through the Department of General Services without competitive bidding. Therefore, it is discretionary for a school district to use its own competitive bidding process for materials, supplies and equipment and no mandate exists.

Claims 2I—2M. Public Contract Code, Section 20111.5. This section describes the use of standardized questionnaires and financial statements for prospective bidders for contracts under section 20111.

Section 20111.5(a) states in part, "The governing board of the district *may* require that each prospective bidder for a contract, as described under section 20111, complete and submit to the district a standardized questionnaire and financial statement in a form specified by the district ..." (emphasis added). The language is permissive and thus creates no mandates as per *Department of Finance v. Commission On State Mandates*. All the other claims cited under section 20111.5 are downstream activities resulting from the district's choice to require such activities and therefore create no mandates.

Claims 2N—2O. Public Contract Code, Section 20116. This section requires districts to retain records of funds expended on their projects. It also permits districts to secure informal bids for projects that cost up to the limits set forth in the article. We concur with the Chancellor's Office that the obligation to maintain public documents is a basic obligation of public entities that is not created by this section.

Informal bidding for contracts that cost less than the amounts set forth in section 20111 is not required. Section 20116 states, "...Informal bidding *may* be used on work, projects, services, or purchases that cost up to the limits set forth in this article. ..." (emphasis added). Therefore, it is the district's choice to carry out informal bidding and no mandate exists.

Claims 3A—3M. Laws Pertaining to Community College Districts. We concur with the Chancellor's Office response to these claims and that no mandates are created.

Claims 4A—4K. Minority, Women, and Disabled Veteran Business Enterprise Participation. We concur with the Chancellor's Office response to these claims and that no mandates are created.

As required by the Commission's regulations, we are including a "Proof of Service" indicating that the parties included on the mailing list which accompanied your July 3, 2003 letter have been provided with copies of this letter via either United States Mail or, in the case of other State agencies, Interagency Mail Service.

If you have any questions regarding this letter, please contact Walt Schaff, Principal Program Budget Analyst at (916) 445-0328 or Keith Gmeinder, State mandates claims coordinator for the Department of Finance, at (916) 445-8913.

Sincerely,



Jeannie Oropeza
Program Budget Manager

Attachment

Attachment A

DECLARATION OF WALT SCHAFF
DEPARTMENT OF FINANCE
CLAIM NO. CSM-02-TC-35

1. I am currently employed by the State of California, Department of Finance (Finance), am familiar with the duties of Finance, and am authorized to make this declaration on behalf of Finance.
2. We concur that the various statutes and code sections relevant to this claim are accurately quoted in the test claim submitted by claimants and, therefore, we do not restate them in this declaration.

I certify under penalty of perjury that the facts set forth in the foregoing are true and correct of my own knowledge except as to the matters therein stated as information or belief and, as to those matters, I believe them to be true.

April 16, 2004

at Sacramento, CA

Walt Schaff

Walt Schaff

PROOF OF SERVICE

Test Claim Name: Public Contracts K-14
Test Claim Number: CSM-02-TC-35

I, the undersigned, declare as follows:

I am employed in the County of Sacramento, State of California, I am 18 years of age or older and not a party to the within entitled cause; my business address is 915 L Street, 7th Floor, Sacramento, CA 95814.

On April 16, 2004, I served the attached recommendation of the Department of Finance in said cause, by facsimile to the Commission on State Mandates and by placing a true copy thereof: (1) to claimants and nonstate agencies enclosed in a sealed envelope with postage thereon fully prepaid in the United States Mail at Sacramento, California; and (2) to state agencies in the normal pickup location at 915 L Street, 7th Floor, for Interagency Mail Service, addressed as follows:

A-16
Ms. Paula Higashi, Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814

B-8
State Controller's Office
Division of Accounting & Reporting
Attention: Michael Havey
3301 C Street, Room 500
Sacramento, CA 95816

B-29
Legislative Analyst's Office
Attention Marianne O'Malley
925 L Street, Suite 1000
Sacramento, CA 95814

E-8
Department of Education
Fiscal and Administrative Services Division
Attention: Gerald Shelton
1430 N Street, Suite 2213
Sacramento, CA 95814

G-01
California Community Colleges
Attention: Thomas J. Nussbaum
1102 Q Street, Suite 300
Sacramento, CA 95814

Santa Monica Community College District
Attention: Cheryl Miller
1900 Pico Boulevard
Santa Monica, CA 90405-1628

Shields Consulting Group, Inc.
Attention: Steve Shields
1536 36th Street
Sacramento, CA 95816

Centration, Inc.
Attention: Beth Hunter
8316 Red Oak Street, Suite 101
Rancho Cucamonga, CA 91730

Education Mandated Cost Network
C/O School Services of California
Attention: Dr. Carol Berg, PhD
1121 L Street, Suite 1060
Sacramento, CA 95814

Spector, Middleton, Young, Minney, LLP
Attention: Paul Minney
7 Park Center Drive
Sacramento, CA 95825

Sixten & Associates
Attention: Keith Petersen
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San Diego, CA 92117

Clovis Unified School District
Attention: Bill McGuire
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Clovis, CA 93611-0599

Mandate Resource Services
Attention: Harmeet Barkschat
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Sacramento, CA 95842

Reynolds Consulting Group, Inc.
Attention: Sandy Reynolds, President
P.O. Box 987
Sun City, CA 92586

Steve Smith Enterprises, Inc.
Attention: Steve Smith
One Capitol Mall, Suite 200
Sacramento, CA 95814

San Diego Unified School District
Attention: Arthur Palkowitz
4100 Normal Street, Room 3159
San Diego, CA 92103-8363

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on April 16, 2004, at Sacramento, California.



Jennifer Nelson