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July 16, 2012

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

Dear Ms. Halsey:

**Commission on State Mandates Draft Staff Analysis—Public Contracts (02-TC-35)**

We reviewed the Commission on State Mandates (Commission) draft staff analysis of the proposed parameters and guidelines (Ps and Gs) for *Public Contracts* test claim (02-TC-21).

As indicated in our May 1, 2012 comments on the Commission's draft staff analysis, we assert that projects for new construction proposed by school districts and community college districts are discretionary. To this point, we would object to any activities required under a district's voluntary participation in the School Facilities Program (SFP) being deemed reimbursable activities by the Commission. This rationale is consistent with the statement of decision provided by the Commission on March 24, 2011 regarding the *School Facilities Funding Requirements* test claim (02-TC-30) which states:

6. The statutes below, which generally require compliance school facility funding requirements, do not mandate school districts to perform any activities because:
  - a) School districts are not legally compelled to do any of the following activities which would trigger the requirement to comply with the school facilities funding requirements contained in the test claim statutes and regulations: acquire new school sites, build new schools, undertake modernization projects, add portable classrooms, participate in other state programs to further such projects, request and accept SFP funding, or issue local bonds.

Based on this statement of decision, it would appear that the Commission concurs that school districts are not legally compelled to build under the SFP. We respectfully request that Section IV (Reimbursable Activities) of the Ps and Gs be clarified to exclude school districts projects that are subject to Education Code Section (ECS) 17070.75 from claiming reimbursable activities under this test claim. ECS 17070.75 requires that any district electing to participate in the voluntary School Facilities Program be required to make all necessary repairs, renewals, and replacements to ensure that a project is at all times in good repair, working order, and condition. Further, this section states that all costs incurred for this purpose shall be borne by the school district. We recognize there are a number of school district projects that are not subject to this ECS; however, those projects that received funding through the School Facilities Program should be excluded from claiming reimbursement.

If you have any questions regarding this letter, please contact Chris Ferguson, Principal Program Budget Analyst at (916) 445-0328.

Sincerely,



Nick Schweizer  
Program Budget Manager