



January 6, 2021

Ms. Annette Chinn  
Cost Recovery Systems, Inc.  
705-2 East Bidwell Street, #294  
Folsom, CA 95630

Ms. Natalie Sidarous  
State Controller's Office  
Local Government Programs and  
Services Division  
3301 C Street, Suite 740  
Sacramento, CA 95816

*And Parties, Interested Parties, and Interested Persons (See Mailing List)*

**Re: Proposed Decision**

*Crime Statistics Reports for the Department of Justice (DOJ), 17-0240-I-01*  
Penal Code Sections 12025(h)(1), (h)(3); 12031(m)(1) and (m)(3); 13014; 13023;  
13730(a); Statutes 1989, Chapter 1172 (SB 202); Statutes 1992, Chapter 1338 (SB 1184);  
Statutes 1993, Chapter 1230 (AB 2250); Statutes 1998, Chapter 933 (AB 1999); Statutes  
1999, Chapter 571 (AB 491); Statutes 2000, Chapter 626 (AB 715); and Statutes 2004,  
Chapter 700 (SB 1234)  
Fiscal Years: 2001-2002, 2002-2003, 2003-2004, 2004-2005, 2005-2006, 2006-2007,  
2007-2008, 2008-2009, 2009-2010, 2010-2011, 2011-2012  
City of San Marcos, Claimant

Dear Ms. Chinn and Ms. Sidarous:

The Proposed Decision for the above-captioned matter is enclosed for your review.

**Hearing**

This matter is set for hearing on **Friday, January 22, 2021**, at 10:00 a.m., via Zoom.

In response to COVID-19 and its impact on public meetings under the Bagley-Keene Open Meeting Act, Governor Newsom's Executive Order N-29-20 suspends, on an emergency basis pursuant to California Government Code section 8571, certain requirements for public meetings. Accordingly, requiring the physical presence of board members at meetings and providing a physical space for members of the public to observe and participate have been suspended until further notice, so long as the agency makes it possible for members of the public to observe and address the meeting remotely, for example, via web or audio conferencing such as Zoom.

The Commission on State Mandates (Commission) is committed to ensuring that its public meetings are accessible to the public and that the public has the opportunity to observe the meeting and to participate by providing written and verbal comment on Commission matters.

**If you want to speak during the hearing, you must use the "Raise Hand" feature in order for our moderators to know you need to be unmuted. If you are participating by phone, you may dial \*9 to use the "Raise Hand" feature.**

There are three options for joining the meeting via Zoom:

1. Through the link below you can listen and view through your desktop, laptop, tablet, or smart phone. This will allow you to view documents being shared as well. (**You are encouraged to use this option.**)

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3. Through your landline (or non-smart mobile) phone, any number works. You will be able to listen to the proceedings but will not be able to view the meeting or any documents being shared.

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During this extraordinary time and as we explore new ways of doing business with new technologies, we ask that you remain patient with us. Please don't hesitate to reach out to us for help with technical problems at [csminfo@csm.ca.gov](mailto:csminfo@csm.ca.gov) or 916 323-3562.

Please notify Commission staff not later than the Wednesday prior to the hearing that you or a witness plan to testify and please specify the names and email addresses of the people who will be speaking for inclusion on the witness list so that detailed instructions regarding how to participate as a party in this meeting on Zoom can be provided to them.

If you would like to request postponement of the hearing, please refer to section 1187.9(b) 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.

Sincerely,



Heather Halsey  
Executive Director

**ITEM 4**  
**INCORRECT REDUCTION CLAIM**  
**PROPOSED DECISION**

Penal Code Sections 12025(h)(1) and (h)(3); 12031(m)(1) and (m)(3); 13014; 13023; 13730(a); Statutes 1989, Chapter 1172 (SB 202); Statutes 1992, Chapter 1338 (SB 1184); Statutes 1993, Chapter 1230 (AB 2250); Statutes 1998, Chapter 933 (AB 1999); Statutes 1999, Chapter 571 (AB 491); Statutes 2000, Chapter 626 (AB 715); and Statutes 2004, Chapter 700 (SB 1234)

*Crime Statistics Reports for the Department of Justice*

Fiscal Years 2001-2002, 2002-2003, 2003-2004, 2004-2005, 2005-2006, 2006-2007, 2007-2008, 2008-2009, 2009-2010, 2010-2011, 2011-2012

17-0240-I-01

City of San Marcos, Claimant

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**EXECUTIVE SUMMARY**

**Overview**

This Incorrect Reduction Claim (IRC) challenges the State Controller's (Controller's) reduction to reimbursement claims filed by the City of San Marcos (claimant) under the *Crime Statistics Reports for the Department of Justice* program for fiscal years 2001-2002 through 2011-2012 (audit period). According to the Final Audit Report, the Controller found that of the \$1,094,487 claimed during the audit period, \$722,360 is allowable and \$372,127 is unallowable.<sup>1</sup> As relevant to this IRC, the Parameters and Guidelines authorize reimbursement for local law enforcement agencies to support all domestic-violence related calls for assistance with a written incident report, and to review and edit the report.<sup>2</sup>

The claimant contracts for law enforcement services with the San Diego Sheriff's Office (SDSO). The claimant calculated the costs to perform the reimbursable activity by multiplying the number of domestic-violence calls for assistance (i.e., the reimbursable activity) by the estimated time to write the incident report. The claimant then multiplied the hours by the SDSO hourly rates to arrive at the total claimed costs.<sup>3</sup> The Controller found that the claimant misstated the number of written incident reports, misstated the time increments per activity, and

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<sup>1</sup> Exhibit A, IRC, filed August 22, 2017, pages 517, 519 (Final Audit Report). These figures include some uncontested audit findings.

<sup>2</sup> Exhibit A, IRC, filed August 22, 2017, page 506 (Parameters and Guidelines). Penal Code section 13730.

<sup>3</sup> Exhibit A, IRC, filed August 22, 2017, page 528 (Final Audit Report).

misstated the contract productive hourly rates.<sup>4</sup> The claimant disputes only the reductions to the number of domestic violence incident reports in fiscal years 2001-2002 through 2006-2007, and the contract productive hourly rates in fiscal years 2001-2002 through 2006-2007 (Finding 1).<sup>5</sup> The claimant also disputes reductions in Finding 2 of indirect costs claimed.

For the reasons stated in the analysis, staff recommends that the Commission deny this IRC.

### **Procedural History**

The claimant filed its fiscal year 2001-2002 through 2009-2010 reimbursement claims on April 6, 2011.<sup>6</sup> The claimant signed its fiscal year 2010-2011 reimbursement claim on January 1, 2012, and filed its 2011-2012 reimbursement claim on February 5, 2013.<sup>7</sup> The Controller issued a Draft Audit Report on May 23, 2017,<sup>8</sup> upon which the claimant submitted comments on June 1, 2017.<sup>9</sup> The Controller issued the Final Audit Report on June 30, 2017.<sup>10</sup> The claimant filed the IRC on August 22, 2017.<sup>11</sup> The Controller filed comments on the IRC on January 22, 2018.<sup>12</sup> The claimant did not file rebuttal comments. Commission staff issued the Draft Proposed Decision on September 4, 2020.<sup>13</sup> The claimant filed comments on the Draft Proposed Decision on November 6, 2020.<sup>14</sup> The Controller did not file comments on the Draft Proposed Decision.

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<sup>4</sup> Exhibit A, IRC, filed August 22, 2017, page 528 (Final Audit Report).

<sup>5</sup> Exhibit A, IRC, filed August 22, 2017, pages 4-5, 6.

<sup>6</sup> Exhibit B, Controller's Comments on the IRC, filed January 22, 2018, pages 136-186. Exhibit A, IRC, filed August 22, 2017, page 620-670 (Annual Reimbursement Claims).

<sup>7</sup> Exhibit B, Controller's Comments on the IRC, filed January 22, 2018, page 195 (2010-2011 Reimbursement Claim).

<sup>8</sup> Exhibit B, Controller's Comments on the IRC, filed January 22, 2018, page 39 (Final Audit Report).

<sup>9</sup> Exhibit B, Controller's Comments on the IRC, filed January 22, 2018, pages 64-134 (Claimant's comments on the Draft Audit Report).

<sup>10</sup> Exhibit A, IRC, filed August 22, 2017, page 517 (Final Audit Report).

<sup>11</sup> Exhibit A, IRC, filed August 22, 2017. Note that Commission staff notified the claimant of missing documents in the IRC on June 5, 2019, and the claimant provided the missing documents on June 13, 2019. Exhibit A is therefore the completed IRC, as "revised June 13, 2019" to include the missing documents.

<sup>12</sup> Exhibit B, Controller's Comments on the IRC, filed January 22, 2018.

<sup>13</sup> Exhibit C, Draft Proposed Decision, issued September 4, 2020.

<sup>14</sup> Exhibit D, Claimant's Comments on the Draft Proposed Decision, filed November 6, 2020.

## **Commission Responsibilities**

Government Code section 17561(d) authorizes the Controller to audit the claims filed by local agencies and school districts and to reduce any claim for reimbursement of state-mandated costs if the Controller determines that the claim is excessive or unreasonable.

Government Code section 17551(d) requires the Commission to hear and decide a claim that the Controller has incorrectly reduced payments to the local agency or school district. If the Commission determines that a reimbursement claim has been incorrectly reduced, section 1185.9 of the Commission's regulations requires the Commission to send the decision to the Controller and request that the costs in the claim be reinstated.

The Commission must review questions of law, including interpretation of parameters and guidelines, de novo, without consideration of legal conclusions made by the Controller in the context of an audit. The Commission is vested with exclusive authority to adjudicate disputes over the existence of state-mandated programs within the meaning of article XIII B, section 6 of the California Constitution.<sup>15</sup> The Commission must also interpret the Government Code and implementing regulations in accordance with the broader constitution and statutory scheme. In making its decisions, the Commission must strictly construe article XIII B, section 6 and not apply it as an "equitable remedy to cure the perceived unfairness resulting from political decisions on funding priorities."<sup>16</sup>

With regard to the Controller's audit decisions, the Commission must determine whether they were arbitrary, capricious, or entirely lacking in evidentiary support. This standard is similar to the standard used by the courts when reviewing an alleged abuse of discretion of a state agency.<sup>17</sup>

The Commission must also review the Controller's audit in light of the fact that the initial burden of providing evidence for a claim of reimbursement lies with the claimant.<sup>18</sup> In addition, section 1185.1(f)(3) and 1185.2(d) and (e) of the Commission's regulations requires that any assertions of fact by the parties to an IRC must be supported by documentary evidence. The Commission's ultimate findings of fact must be supported by substantial evidence in the record.<sup>19</sup>

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<sup>15</sup> *Kinlaw v. State of California* (1991) 54 Cal.3d 326, 331-334; Government Code sections 17551, 17552.

<sup>16</sup> *County of Sonoma v. Commission on State Mandates* (2000), 84 Cal.App.4th 1264, 1281, citing *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1817.

<sup>17</sup> *Johnston v. Sonoma County Agricultural Preservation and Open Space District* (2002) 100 Cal.App.4th 973, 983-984; *American Bd. of Cosmetic Surgery, Inc. v. Medical Bd. of California* (2008) 162 Cal.App.4th 534, 547.

<sup>18</sup> *Gilbert v. City of Sunnyvale* (2005) 130 Cal.App.4th 1264, 1274-1275.

<sup>19</sup> Government Code section 17559(b), which provides that a claimant or the state may commence a proceeding in accordance with the provisions of section 1094.5 of the Code of Civil Procedure to set aside a decision of the Commission on the ground that the Commission's decision is not supported by substantial evidence in the record.

## Claims

The following chart provides a brief summary of the claims and issues raised and staff's recommendation.

<b>Issue</b>	<b>Description</b>	<b>Staff Recommendation</b>
Did the claimant timely file the IRC?	Section 1185.1 of the Commission's regulations requires IRCs to be filed no later than three years after the Controller's final audit report, or other notice of adjustment that complies with Government Code section 17558.5(c).	<i>Timely filed</i> – The Final Audit Report was issued June 30, 2017. <sup>20</sup> The IRC was filed on August 22, 2017, <sup>21</sup> less than two months from the date of the Final Audit Report, and is therefore timely filed.
Does the Commission have jurisdiction to make determinations on adjustments in Findings 1 and 2 that do not result in a reduction of costs claimed?	According to Government Code section 17551(d), the Commission's jurisdiction for IRCs is limited to determining whether "the Controller has incorrectly reduced payments to the local agency."  The Controller made an adjustment in Finding 1 to the number of written reports of domestic-violence related calls for assistance in fiscal year 2001-2002 which increased the number of reports <sup>22</sup> and increased the indirect cost rate for fiscal years 2001-2002 through 2006-2007 in Finding 2 from 10 percent to 47.7 percent. <sup>23</sup>	<i>No jurisdiction</i> – The Commission does not have jurisdiction over adjustments that do not result in a reduction of costs claimed under Government Code section 17551(d).
Is the Controller's reduction in Finding 1 of the number of written reports for domestic	The Parameters and Guidelines, adopted in 2010, require that claims for actual	<i>Not arbitrary, capricious, or entirely lacking in evidentiary support</i> – Although the

<sup>20</sup> Exhibit A, IRC, filed August 22, 2017, page 517 (Final Audit Report, Cover Letter).

<sup>21</sup> Exhibit A, IRC, filed August 22, 2017, page 1.

<sup>22</sup> Exhibit A, IRC, filed August 22, 2017, page 5; Exhibit B, Controller's Comments on the IRC, filed January 22, 2018, page 342.

<sup>23</sup> Exhibit A, IRC, filed August 22, 2017, page 542 (Final Audit Report).

Issue	Description	Staff Recommendation
<p>violence-related calls for assistance for fiscal years 2002-2003 to 2006-2007 arbitrary, capricious, or entirely lacking in evidentiary support?</p>	<p>costs must be traceable and supported by contemporaneous source documentation (documents created at or near the time costs were incurred).<sup>24</sup></p> <p>The San Diego Sheriff's Office (SDSO), who the claimant contracts with for law enforcement services, could not provide Automated Regional Justice Information System (ARJIS) reports for incidents claimed for fiscal years 2002-2003 through 2006-2007, or the underlying written reports created at or near the same time as the call for assistance.<sup>25</sup> The Controller therefore calculated an average annual incident count for fiscal years 2002-2003 through 2006-2007, based on the verified data for fiscal years 2007-2008 through 2011-2012. This resulted in a reduction of 412 incident reports for fiscal years 2002-2003 through 2006-2007.<sup>26</sup></p> <p>The claimant argues that it did provide supporting documentation in the form of faxed reports from the SDSO, appearing to answer a query</p>	<p>Parameters and Guidelines are regulatory in nature, due process requires that claimants have reasonable notice of any law that affects their substantive rights and liabilities.<sup>30</sup> Here, the claimant was not on notice of the contemporaneous source document requirement when the costs were incurred in fiscal years 2002-2003 through 2006-2007 because the Parameters and Guidelines were not adopted until September 2010. Thus, for due process reasons, the contemporaneous documentation requirement cannot be strictly enforced in these fiscal years. However, the Controller is <i>not</i> strictly enforcing the contemporaneous source document rule because the Controller is not requiring contemporaneous documentation and has not reduced the costs claimed to \$0. Instead, the Controller exercised its audit authority and calculated the number of written reports for domestic violence-related calls for assistance in fiscal years 2002-2003 through 2006-</p>

<sup>24</sup> Exhibit A, IRC, filed August 22, 2017, page 503 (Parameters and Guidelines).

<sup>25</sup> Exhibit A, IRC, filed August 22, 2017, page 529 (Final Audit Report).

<sup>26</sup> Exhibit A, IRC, filed August 22, 2017, page 529 (Final Audit Report).

<sup>30</sup> *In re Cindy B.* (1987) 192 Cal.App.3d 771, 783-784; *Clovis Unified School Dist. v. Chiang* (2010) 188 Cal.App.4th 794, 804-805.

Issue	Description	Staff Recommendation
	<p>from the claimant representative regarding the annual incident count for several different offenses, including “the number of domestic violence calls for services and cases,” for the cities of Encinitas and San Marcos (the claimant);<sup>27</sup> 2002, 2007, and 2008 reports prepared by the San Diego Association of Governments (SANDAG), on “Crime in the San Diego Region”<sup>28</sup>; and Department of Justice (DOJ) crime data, “CJSC Statistics: Domestic Violence-Related Calls for Assistance,” reported for the claimant’s jurisdiction, and DOJ’s March 2000 publication, “Criminal Statistics Reporting Requirements,” which states that local agencies are required to report data on the number of domestic violence calls on a monthly basis.<sup>29</sup></p>	<p>2007 “based on verified actual ARJIS data for FY 2007-08 through FY 2011-12 and applied this average to compute costs for unsupported years.”<sup>31</sup> The data presented by the claimant provides summaries of all crime, but does not verify the number of written reports for domestic violence-related calls for assistance. The Controller’s audit findings are consistent with Government Code section 17561(d)(1)(C), which authorizes the Controller to audit the records of any local agency or school district to verify the actual amount of mandated costs.<sup>32</sup></p> <p>Based on this record, the Controller adequately considered the claimant’s documentation, all relevant factors, and demonstrated a rational connection between those factors and the</p>

<sup>27</sup> Exhibit A, IRC, filed August 22, 2017, pages 27-39.

<sup>28</sup> Exhibit A, IRC, filed August 22, 2017, pages 40-290 (SANDAG reports).

<sup>29</sup> Exhibit A, IRC, filed August 22, 2017, pages 4, 292-310 (DOJ reports and “Criminal Statistics Reporting Requirements” March 2000).

<sup>31</sup> Exhibit B, Controller’s Comments on the IRC, filed January 22, 2018, page 20; Exhibit A, IRC, filed August 22, 2017, page 529 (Final Audit Report).

<sup>32</sup> See also Government Code section 12410, which states: “The Controller shall superintend the fiscal concerns of the state. The Controller shall audit all claims against the state, and may audit the disbursement of any state money, for correctness, legality, and for sufficient provisions of law for payment.” The courts have held that the Controller’s duty to audit includes the duty to ensure that expenditures are authorized by law. (*Tirapelle v. Davis* (1993) 20 Cal.App.4th 1317, 1335.)



Issue	Description	Staff Recommendation
		adjustments made. Under these circumstances, the Commission is required to defer to the Controller's audit authority and presumed expertise. <sup>33</sup> There is no evidence that the Controller's calculation is arbitrary, capricious, or entirely lacking in evidentiary support.
Is the Controller's reduction in Finding 1 of the claimant's contracted hourly rates for fiscal years 2001-2002 through 2006-2007 (including the adjustment to annual productive hours) correct as a matter of law and not arbitrary, capricious, or entirely lacking in evidentiary support?	<p>The claimant contracts for all law enforcement services with the SDSO, not for just the reimbursable activity. The Controller found that the claimant overstated the contract rates for fiscal years 2001-2002 through 2006-2007, as well as co-mingled multiple classifications into one rate and included employee classifications that did not perform the reimbursable activities.<sup>34</sup> The Controller asserts that the claimant also used an inconsistent number of annual contract hours to compute claimed hourly rates for these years.<sup>35</sup></p> <p>The Parameters and Guidelines state that for contracted services, only the pro-rata portion of the services used to implement</p>	<p><i>Correct as a matter of law, and not arbitrary, capricious, or entirely lacking in evidentiary support</i> – The claimant included the costs for various classifications and overhead that accounted for all law enforcement services, and not just for services to comply with the mandate, so the hourly contract rates used by the claimant for fiscal years 2001-2002 through 2006-2007 do not comply with the Parameters and Guidelines. Thus, the Controller's conclusion is correct as a matter of law.</p> <p>To recalculate hourly rates, the Controller obtained from the SDSO salary and benefit rates segregated for each peace officer classification that performed the reimbursable activities and</p>

<sup>33</sup> *American Bd. of Cosmetic Surgery, Inc. v. Medical Bd. of California* (2008) 162 Cal.App.4th 534, 547-548.

<sup>34</sup> Exhibit A, IRC, filed August 22, 2017, page 532 (Final Audit Report); Exhibit B, Controller's Comments on the IRC, filed January 22, 2018, pages 20-23, 377-398.

<sup>35</sup> Exhibit A, IRC, filed August 22, 2017, pages 532-533 (Final Audit Report). Exhibit B, Controller's Comments on the IRC, filed January 22, 2018, pages 20-21, 377.

Issue	Description	Staff Recommendation
	the reimbursable activities can be claimed. <sup>36</sup>	confirmed the rates were accurate. <sup>37</sup> The Controller divided the salary and benefit costs by 1,743 productive hours to calculate hourly contract rates for the disputed years. <sup>38</sup> This recalculation complies with the Parameters and Guidelines to ensure that only the pro-rata costs to comply with the mandate are reimbursable. The claimant has not provided evidence that the Controller's recalculation of the SDSO's hourly rates is arbitrary, capricious, or entirely lacking in evidentiary support.
Is the Controller's reduction and recalculation of the claimant's indirect costs in Finding 2 for fiscal years 2007-2008 through 2011-2012 correct as a matter of law and not arbitrary, capricious, or entirely lacking in evidentiary support?	Section V.B. of the Parameters and Guidelines provides claimants the option of either claiming 10 percent of direct labor costs, or if indirect costs exceed the 10 percent rate, developing an indirect cost rate proposal by dividing the total allowable indirect costs by an equitable distribution rate. <sup>39</sup>  For 2007-2008 through 2011-2012, the claimant developed indirect cost rate proposals and applied those rates to	<i>The reduction is correct as a matter of law and the recalculation is not arbitrary, capricious, or entirely lacking in evidentiary support</i> – Based on the record, staff finds that the Controller adequately considered the claimant's position throughout the audit, all relevant factors, and demonstrated a rational connection between those factors, the choices made, and calculated an indirect

<sup>36</sup> Exhibit A, IRC, filed August 22, 2017, page 506 (Parameters and Guidelines).

<sup>37</sup> Exhibit B, Controller's Comments on the IRC, filed January 22, 2018, page 21.

<sup>38</sup> Exhibit A, IRC, filed August 22, 2017, page 533 (Final Audit Report). 1,743 productive hours is in the SDSO contract for 2008-2008 through 2011-2012; Exhibit A, IRC, filed August 22, 2017, page 452 (Contract for Law Enforcement Services), Exhibit B, Controller's Comments on the IRC, filed January 22, 2018, page 406 (Contract for Law Enforcement Services).

<sup>39</sup> Exhibit A, IRC, filed August 22, 2017, pages 507-508 (Parameters and Guidelines).

Issue	Description	Staff Recommendation
	<p>costs for contracted law enforcement services that the Controller found were incorrectly claimed as direct labor costs, resulting in claimed indirect cost rates ranging from 80.8 to 91.8 percent annually.<sup>40</sup> The Controller found that the claimed methodology was incorrect because the claimant contracted for law enforcement with the SDSO, so it was inappropriate to claim the costs as indirect “labor costs.” The claimant also applied the indirect cost rates to unallowable contract services costs identified in Finding 1.<sup>41</sup></p> <p>The Controller recalculated indirect cost rates for fiscal years 2007-2008 through 2011-2012 at 45.9 to 50.4 percent, by “dividing total contract overhead costs, station support staff costs, and “Sergeant Admin” position costs, by the contracted labor costs identified in the contract supplemental schedules,” which reduced allowable rates by 35-45 percent over those claimed.<sup>42</sup> The other sergeant positions not</p>	<p>cost rate proposal consistent with the Parameters and Guidelines and the contracts with SDSO. There is no evidence in the record that the Controller failed to explain its position or consider the claimant’s documentation, as alleged in the IRC.</p>

<sup>40</sup> Exhibit A, IRC, filed August 22, 2017, page 542 (Final Audit Report).

<sup>41</sup> Exhibit A, IRC, filed August 22, 2017, page 541 (Final Audit Report).

<sup>42</sup> Exhibit A, IRC, filed August 22, 2017, pages 541-542 (Final Audit Report). Exhibit B, Controller’s Comments on the IRC, filed January 22, 2018, pages 28, 411 (Calculation of Allowable Indirect Cost Rates).

Issue	Description	Staff Recommendation
	<p>included in the indirect cost pool remained classified as direct contract costs.<sup>43</sup></p> <p>The claimant challenges the Controller’s recalculation methodology of indirect costs that included the costs of only one of seven sergeants.</p>	

**Staff Analysis**

**A. The Claimant Timely Filed This IRC Within Three Years from the Date the Claimant First Received from the Controller a Final State Audit Report, Letter, or Other Written Notice of Adjustment to a Reimbursement Claim.**

Section 1185.1 of the Commission’s regulations requires IRCs to be filed no later than three years after the Controller’s final audit report, or other notice of adjustment that complies with Government Code section 17558.5(c). The Final Audit Report, issued June 30, 2017, specifies the claim components and amounts adjusted, and the reasons for the adjustments, and thereby complies with the notice requirements in section 17558.5(c).<sup>44</sup> Because the claimant filed the IRC on August 22, 2017,<sup>45</sup> less than two months from the date of the Final Audit Report, staff finds that the IRC was timely filed.

**B. The Commission Does Not Have Jurisdiction to Determine the Controller’s Adjustments to the Number of Reports of Domestic Violence-Related Calls for Assistance in Fiscal Year 2001-2002 (Finding 1), or the Adjustment to Indirect Costs in Fiscal Years 2001-2002 Through 2006-2007 (Finding 2), Because the Controller’s Adjustments Did Not Result in a Reduction to Allowable Costs.**

The claimant challenges two of the Controller’s adjustments that resulted in *increased* allowable costs. First, the claimant alleges that the Controller’s adjustments in Finding 1, related to the allowable number of written reports of domestic violence-related calls for assistance “in fiscal years 2001-2002 through 2006-2007,” are incorrect.<sup>46</sup> The claimant and the Controller identify the number of incident reports claimed in fiscal year 2001-2002 as 208, and the number allowed in fiscal year 2001-2002 as 274,<sup>47</sup> so the Controller increased the allowable number of incident reports from 208 to 274 in fiscal year 2001-2002. The claimant also alleges that the Controller’s

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<sup>43</sup> Exhibit B, Controller’s Comments on the IRC, filed January 22, 2018, page 427 (Controller’s email of April 17, 2017).

<sup>44</sup> Exhibit A, IRC, filed August 22, 2017, page 517 (Final Audit Report, Cover Letter).

<sup>45</sup> Exhibit A, IRC, filed August 22, 2017, page 1.

<sup>46</sup> Exhibit A, IRC, filed August 22, 2017, page 5.

<sup>47</sup> Exhibit A, IRC, filed August 22, 2017, page 5; Exhibit B, Controller’s Comments on the IRC, filed January 22, 2018, page 342.

method of calculating indirect costs for the entire audit period is incorrect.<sup>48</sup> The Controller's calculation of indirect costs for fiscal years 2001-2002 through 2006-2007, however, resulted in an increase of annual indirect cost rates from 10 percent to 47.7 percent.<sup>49</sup>

Pursuant to Government Code section 17551(d), the Commission only has jurisdiction over reductions taken in the context of an audit. Therefore, the Commission does not have jurisdiction to consider these adjustments that do not reduce allowable costs.

**C. The Controller's Reduction in Finding 1 to the Number of Written Reports for Domestic Violence-Related Calls for Assistance Claimed for Fiscal Years 2002-2003 through 2006-2007 Is Not Arbitrary, Capricious, or Entirely Lacking in Evidentiary Support.**

During the audit, the Controller requested supporting documentation to verify the number of domestic violence incidents claimed during the audit period that were supported by incident reports, and the San Diego Sheriff's Office (SDSO), who contracts with the claimant for law enforcement services, provided reports from the Automated Regional Justice Information System (ARJIS) for the later fiscal years 2007-2008 through 2011-2012.<sup>50</sup> These reports identify the date and time of the domestic violence-related calls for assistance in fiscal years 2007-2008 through 2011-2012, the incident number, and the total number of incidents each year during this time period.<sup>51</sup> However, the SDSO was not able to provide ARJIS reports for incidents claimed for fiscal years 2002-2003 through 2006-2007, or the underlying written reports created at or near the same time as the call for assistance for those years.<sup>52</sup> The Controller therefore calculated an average annual incident count for fiscal years 2002-2003 through 2006-2007, based on the verified data for fiscal years 2007-2008 through 2011-2012. This resulted in a reduction of 412 incident reports for fiscal years 2002-2003 through 2006-2007.<sup>53</sup>

The claimant argues that using an average from just the five most recent audited years "does not adequately compensate the City for actual mandate related DV case costs. This SCO averaging resulted in an approximately 10% reduction to the City's costs claimed."<sup>54</sup> The claimant argues it did provide supporting documentation in the form of faxed reports from the SDSO, appearing to answer a query from the claimant representative regarding the annual incident count for several different offenses, including "the number of domestic violence calls for services and

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<sup>48</sup> Exhibit A, IRC, filed August 22, 2017, pages 7-8.

<sup>49</sup> Exhibit A, IRC, filed August 22, 2017, page 542 (Final Audit Report).

<sup>50</sup> Exhibit A, IRC, filed August 22, 2017, page 529 (Final Audit Report); Exhibit B, Controller's Comments on the IRC, filed January 22, 2018, pages 344-375 (ARJIS reports of domestic violence-related calls for assistance for fiscal years 2007-2008 through 2011-2012).

<sup>51</sup> Exhibit B, Controller's Comments on the IRC, filed January 22, 2018, pages 344-375 (ARJIS reports of domestic violence-related calls for assistance for fiscal years 2007-2008 through 2011-2012).

<sup>52</sup> Exhibit A, IRC, filed August 22, 2017, page 529 (Final Audit Report).

<sup>53</sup> Exhibit A, IRC, filed August 22, 2017, page 529 (Final Audit Report).

<sup>54</sup> Exhibit A, IRC, filed August 22, 2017, page 4.

cases,” for the cities of Encinitas and San Marcos (the claimant);<sup>55</sup> as well as 2002, 2007, and 2008 reports prepared by the San Diego Association of Governments (SANDAG), on “Crime in the San Diego Region;”<sup>56</sup> and DOJ crime data, “CJSC Statistics: Domestic Violence-Related Calls for Assistance,” reported for the claimant’s jurisdiction, and DOJ’s March 2000 publication, “Criminal Statistics Reporting Requirements,” which states that local agencies are required to report data on the number of domestic violence calls on a monthly basis.<sup>57</sup>

The Parameters and Guidelines, adopted in 2010, require that claims for actual costs must be traceable and supported by contemporaneous source documentation (documents created at or near the time costs were incurred).<sup>58</sup> The Parameters and Guidelines are regulatory in nature, and due process requires that a claimant have reasonable notice of any law that affects their substantive rights and liabilities.<sup>59</sup> Here, the claimant was not on notice of the contemporaneous source document requirement (CSDR) when the costs were incurred in fiscal years 2002-2003 through 2006-2007 because the Parameters and Guidelines were not adopted until September 2010. Thus, for due process reasons, the CSDR cannot be strictly enforced in these fiscal years. However, the Controller is *not* strictly enforcing the CSDR because the Controller is not requiring contemporaneous documentation and did not reduce the costs claimed to \$0.

Instead, the Controller exercised its audit authority and calculated the number of written reports for domestic violence-related calls for assistance in fiscal years 2002-2003 through 2006-2007 “based on verified actual ARJIS data for FY 2007-08 through FY 2011-12 and applied this average to compute costs for unsupported years.”<sup>60</sup> Although the claimant has provided faxed documents from SDSO to the claimant’s representative and third party reports purportedly identifying a larger number of domestic violence related calls for assistance in the claim years, the claimant has not provided any source documentation (such as a list of incidents and the date they occurred, or the written incident reports themselves) for the Controller to verify the actual number of written incident reports claimed under the mandate. The Controller’s audit findings are consistent with Government Code section 17561(d)(1)(C), which authorizes the Controller to audit the records of any local agency or school district to verify the actual amount of mandated costs.<sup>61</sup>

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<sup>55</sup> Exhibit A, IRC, filed August 22, 2017, pages 27-39.

<sup>56</sup> Exhibit A, IRC, filed August 22, 2017, pages 40-290 (SANDAG reports).

<sup>57</sup> Exhibit A, IRC, filed August 22, 2017, pages 4, 292-310 (DOJ reports and “Criminal Statistics Reporting Requirements” March 2000).

<sup>58</sup> Exhibit A, IRC, filed August 22, 2017, page 503 (Parameters and Guidelines).

<sup>59</sup> *In re Cindy B.* (1987) 192 Cal.App.3d 771, 783-784; *Clovis Unified School Dist. v. Chiang* (2010) 188 Cal.App.4th 794, 804-805.

<sup>60</sup> Exhibit B, Controller’s Comments on the IRC, filed January 22, 2018, page 20; Exhibit A, IRC, filed August 22, 2017, page 529 (Final Audit Report).

<sup>61</sup> See also Government Code section 12410, which states: “The Controller shall superintend the fiscal concerns of the state. The Controller shall audit all claims against the state, and may audit the disbursement of any state money, for correctness, legality, and for sufficient provisions of law for payment.” The courts have held that the Controller’s duty to audit includes the duty to

Based on this record, the Controller adequately considered the claimant's documentation, all relevant factors, and demonstrated a rational connection between those factors and the adjustments made.<sup>62</sup> Under these circumstances, the Commission is required to defer to the Controller's audit authority and presumed expertise.<sup>63</sup> There is no evidence that the Controller's calculation is arbitrary, capricious, or entirely lacking in evidentiary support.

**D. The Controller's Reduction in Finding 1 to the Claimant's Contracted Hourly Rates for Fiscal Years 2001-2002 Through 2006-2007 (Including the Adjustment to Annual Productive Hours) Is Correct as a Matter of Law and Not Arbitrary, Capricious, or Entirely Lacking in Evidentiary Support.**

Staff also finds that the Controller's reduction in Finding 1 to the claimant's contracted hourly rates for fiscal years 2001-2002 through 2006-2007 is correct as a matter of law and not arbitrary, capricious, or entirely lacking in evidentiary support.

The claimant contracts for all law enforcement services with the SDSO, not just for performing the reimbursable activity.<sup>64</sup> For fiscal years 2001-2002 through 2006-2007, the Controller found that the claimant overstated the contract rates applicable to the mandate, co-mingled multiple classifications [including deputy patrol, sergeant patrol, and sergeant detective] into one rate," and included employee classifications that did not perform the reimbursable activities.<sup>65</sup> The Controller also found that the claimant used an inconsistent number of annual contract hours to compute the claimed hourly rates for these years.<sup>66</sup>

The Parameters and Guidelines state that the "claimant is only allowed to claim and be reimbursed for increased costs for reimbursable activities identified . . .," and that "[i]ncreased cost is limited to the cost of an activity that the claimant is required to incur as a result of the mandate."<sup>67</sup> Regarding contracted services, the Parameters and Guidelines state that only the pro-rata portion of the services used to implement the reimbursable activities can be claimed.<sup>68</sup> The claimant included the costs for various classifications and overhead that accounted for all

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ensure that expenditures are authorized by law. (*Tirapelle v. Davis* (1993) 20 Cal.App.4th 1317, 1335.)

<sup>62</sup> *American Bd. of Cosmetic Surgery, Inc. v. Medical Bd. of California* (2008) 162 Cal.App.4th 534, 547-548.

<sup>63</sup> *American Bd. of Cosmetic Surgery, Inc. v. Medical Bd. of California* (2008) 162 Cal.App.4th 534, 547-548.

<sup>64</sup> Exhibit A, IRC, filed August 22, 2017, pages 316-468 (Contract for Law Enforcement Services). Exhibit B, Controller's Comments on the IRC, filed January 22, 2018, page 23.

<sup>65</sup> Exhibit A, IRC, filed August 22, 2017, page 532 (Final Audit Report); Exhibit B, Controller's Comments on the IRC, filed January 22, 2018, pages 20-23, 377-398.

<sup>66</sup> Exhibit A, IRC, filed August 22, 2017, pages 532-533 (Final Audit Report). Exhibit B, Controller's Comments on the IRC, filed January 22, 2018, pages 20-21, 377.

<sup>67</sup> Exhibit A, IRC, filed August 22, 2017, page 503 (Parameters and Guidelines).

<sup>68</sup> Exhibit A, IRC, filed August 22, 2017, page 506 (Parameters and Guidelines).

law enforcement services, so the hourly contract rates used by the claimant for fiscal years 2001-2002 through 2006-2007 are not specific to the mandated activities and therefore do not comply with the Parameters and Guidelines and the Controller's conclusion is correct as a matter of law.

To recalculate hourly rates, the Controller obtained from the SDSO salary and benefit rates segregated for each peace officer classification that performed the reimbursable activities and confirmed they were accurate.<sup>69</sup> The Controller divided the salary and benefit costs by 1,743 productive hours to calculate hourly contract rates for the disputed years.<sup>70</sup> The Controller also found that the claimant used an inconsistent number of annual productive hours to compute claimed hourly rates.<sup>71</sup> The Controller used 1,743 productive hours to calculate hourly contract rates for all fiscal years, which is the number of productive hours noted in the SDSO contract for the later undisputed years.<sup>72</sup>

This recalculation complies with the Parameters and Guidelines to ensure that only the pro-rata costs to comply with the mandate are reimbursable so it is correct as a matter of law and not arbitrary, capricious, or entirely lacking in evidentiary support. The claimant has not provided evidence that the Controller's recalculation of the SDSO's hourly rates is arbitrary, capricious, or entirely lacking in evidentiary support.

Therefore, staff finds that the reduction in Finding 1 to the claimant's contracted hourly rates for fiscal years 2001-2002 through 2006-2007 (including adjustments to the annual productive hours claimed) is correct as a matter of law and is not arbitrary, capricious, or entirely lacking in evidentiary support.

**E. The Controller's Reduction of Indirect Costs in Finding 2 for Fiscal Years 2007-2008 Through 2011-2012 Is Not Arbitrary, Capricious or Entirely Lacking in Evidentiary Support.**

Section V.B. of the Parameters and Guidelines addresses indirect costs and provides claimants the option of either claiming 10 percent of direct labor costs, or if indirect costs exceed the 10 percent rate, developing an indirect cost rate proposal by dividing the total allowable indirect costs by an equitable distribution rate.<sup>73</sup>

The Controller asserts that, for fiscal years 2007-2008 through 2011-2012, the claimant developed indirect cost rate proposals and applied those rates to costs for contracted law

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<sup>69</sup> Exhibit B, Controller's Comments on the IRC, filed January 22, 2018, page 21.

<sup>70</sup> Exhibit A, IRC, filed August 22, 2017, page 533 (Final Audit Report). 1,743 productive hours is in the SDSO contract for 2008-2008 through 2011-2012; Exhibit A, IRC, filed August 22, 2017, page 452 (Contract for Law Enforcement Services), Exhibit B, Controller's Comments on the IRC, filed January 22, 2018, page 406 (Contract for Law Enforcement Services).

<sup>71</sup> Exhibit A, IRC, filed August 22, 2017, page 532 (Final Audit Report). Exhibit B, Controller's Comments on the IRC, filed January 22, 2018, pages 20-21, 377.

<sup>72</sup> Exhibit A, IRC, filed August 22, 2017, page 533 (Final Audit Report).

<sup>73</sup> Exhibit A, IRC, filed August 22, 2017, pages 507-508 (Parameters and Guidelines).



enforcement services that were incorrectly claimed as direct labor costs.<sup>74</sup> The claimed indirect cost rates ranged from 80.8 to 91.8 percent for fiscal years 2007-2008 through 2011-2012.<sup>75</sup> The claimant challenges the Controller's recalculation methodology that included the cost for only one of seven sergeants in its calculation of indirect costs.

The Controller found that the claimed methodology was incorrect because the claimant contracted for law enforcement with the SDSO, so it was inappropriate to claim the costs as indirect "labor costs." The Controller also found that the claimant also applied the indirect cost rates to unallowable contract services costs identified in Finding 1.<sup>76</sup>

The Controller recalculated indirect cost rates for fiscal years 2007-2008 through 2011-2012 at 45.9 to 50.4 percent, by "dividing total contract overhead costs, station support staff costs, and "Sergeant Admin" position costs, by the contracted labor costs identified in the contract supplemental schedules," which reduced allowable rates by 35-45 percent over those claimed.<sup>77</sup> The other sergeant positions not included in the indirect cost pool remained classified as direct contract costs.<sup>78</sup>

Based on the record, staff finds that the Controller adequately considered the claimant's position throughout the audit, all relevant factors, and demonstrated a rational connection between those factors, the choices made, and calculated an indirect cost rate proposal consistent with the Parameters and Guidelines and the contracts with SDSO.<sup>79</sup> There is no evidence in the record that the Controller failed to explain its position or consider the claimant's documentation, as alleged in the IRC. Thus, staff finds that the Controller's calculation of indirect costs for fiscal years 2007-2008 through 2011-2012 in Finding 2 is not arbitrary, capricious, or entirely lacking in evidentiary support.

### **Conclusion**

Based on the forgoing analysis, staff finds that the Controller's audit findings are correct as a matter of law and not arbitrary, capricious, or entirely lacking in evidentiary support.

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<sup>74</sup> Exhibit A, IRC, filed August 22, 2017, page 541 (Final Audit Report).

<sup>75</sup> Exhibit A, IRC, filed August 22, 2017, page 542 (Final Audit Report).

<sup>76</sup> Exhibit A, IRC, filed August 22, 2017, page 541 (Final Audit Report).

<sup>77</sup> Exhibit A, IRC, filed August 22, 2017, pages 541-542 (Final Audit Report). Exhibit B, Controller's Comments on the IRC, filed January 22, 2018, pages 28, 411 (Calculation of Allowable Indirect Cost Rates).

<sup>78</sup> Exhibit B, Controller's Comments on the IRC, filed January 22, 2018, page 427 (Controller's email of April 17, 2017).

<sup>79</sup> *American Bd. of Cosmetic Surgery, Inc. v. Medical Bd. of California* (2008) 162 Cal.App.4th 534, 547-548.

**Staff Recommendation**

Staff recommends that the Commission adopt the Proposed Decision to deny the IRC. Staff further recommends that the Commission authorize staff to make any technical, non-substantive changes to the Proposed Decision following the hearing.

BEFORE THE  
 COMMISSION ON STATE MANDATES  
 STATE OF CALIFORNIA

**IN RE INCORRECT REDUCTION CLAIM**

Penal Code Sections 12025(h)(1) and (h)(3);  
 12031(m)(1) and (m)(3); 13014; 13023;  
 13730(a)

Statutes 1989, Chapter 1172 (SB 202);  
 Statutes 1992, Chapter 1338 (SB 1184);  
 Statutes 1993, Chapter 1230 (AB 2250);  
 Statutes 1998, Chapter 933 (AB 1999);  
 Statutes 1999, Chapter 571 (AB 491);  
 Statutes 2000, Chapter 626 (AB 715); and  
 Statutes 2004, Chapter 700 (SB 1234)

Fiscal Years 2001-2002, 2002-2003, 2003-  
 2004, 2004-2005, 2005-2006, 2006-2007,  
 2007-2008, 2008-2009, 2009-2010, 2010-  
 2011, 2011-2012

Filed on August 22, 2017

City of San Marcos, Claimant

Case No.: 17-0240-I-01

*Crime Statistics Reports for the Department  
 of Justice*

17-0240-I-01

**DECISION PURSUANT TO  
 GOVERNMENT CODE SECTION 17500  
 ET SEQ.; CALIFORNIA CODE OF  
 REGULATIONS, TITLE 2, DIVISION 2,  
 CHAPTER 2.5, ARTICLE 7.**

*(Adopted January 22, 2021)*

**DECISION**

The Commission in State Mandates (Commission) heard and decided this Incorrect Reduction Claim (IRC) during a regularly scheduled hearing on January 22, 2021. [Witness list will be included in the adopted Decision.]

The law applicable to the Commission’s determination of a reimbursable state-mandated program is article XIII B, section 6 of the California Constitution, Government Code sections 17500 et seq., and related case law.

The Commission [adopted/modified] the Proposed Decision to [approve/partially approve/deny] the IRC by a vote of [vote will be included in the adopted Decision], as follows:

<b>Member</b>	<b>Vote</b>
Lee Adams, County Supervisor	
Jeannie Lee, Representative of the Director of the Office of Planning and Research	
Gayle Miller, Representative of the Director of the Department of Finance, Chairperson	
Sarah Olsen, Public Member	
Spencer Walker, Representative of the State Treasurer, Vice Chairperson	

### **Summary of the Findings**

This Incorrect Reduction Claim (IRC) challenges the State Controller's (Controller's) reduction to reimbursement claims filed by the City of San Marcos (claimant) under the *Crime Statistics Reports for the Department of Justice* program for fiscal years 2001-2002 through 2011-2012 (audit period). According to the Final Audit Report, the Controller found that of the \$1,094,487 claimed during the audit period, \$722,360 is allowable and \$372,127 is unallowable.<sup>80</sup> As relevant to this IRC, the program requires local agencies to support all domestic violence-related calls for assistance with a written incident report, and to review and edit the report.<sup>81</sup>

The claimant contracts for all law enforcement services with the San Diego Sheriff's Office (SDSO). The claimant calculated the costs to perform the reimbursable activity by multiplying the number of domestic violence-related calls for assistance by an average of the estimated time to write the incident report. The claimant then multiplied the hours by the SDSO hourly rates to arrive at the total claimed costs.<sup>82</sup> The Controller found that the claimant misstated the number of written incident reports, misstated the time increments per activity, and misstated the contract productive hourly rates.<sup>83</sup> The claimant disputes only the reductions to the number of domestic violence incident reports in fiscal years 2001-2002 through 2006-2007, and the contract productive hourly rates in fiscal years 2001-2002 through 2006-2007 (Finding 1), and the reductions in indirect costs claimed in Finding 2.<sup>84</sup>

As a threshold matter, the Commission finds that the IRC was timely filed within three years of the date the Controller notified the claimant of the reduction.

The Commission further finds that it has no jurisdiction over the Controller's adjustment in Finding 1 to the increase in the allowable number of written reports of domestic violence-related calls for assistance in fiscal year 2001-2002. The claimant identified 208 written incident reports, and the Controller allowed 274 reports.<sup>85</sup> The Commission also lacks jurisdiction over the Controller's adjustment in Finding 2 to the calculation of indirect costs for fiscal years 2001-2002 through 2006-2007, because the Controller increased annual indirect cost rates from 10

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<sup>80</sup> Exhibit A, IRC, filed August 22, 2017, pages 517, 519 (Final Audit Report). These figures include some uncontested audit findings.

<sup>81</sup> Exhibit A, IRC, filed August 22, 2017, page 506 (Parameters and Guidelines). Penal Code section 13730.

<sup>82</sup> Exhibit A, IRC, filed August 22, 2017, page 528 (Final Audit Report).

<sup>83</sup> Exhibit A, IRC, filed August 22, 2017, page 528 (Final Audit Report).

<sup>84</sup> Exhibit A, IRC, filed August 22, 2017, pages 4-5, 6.

<sup>85</sup> Exhibit A, IRC, filed August 22, 2017, page 5; Exhibit B, Controller's Comments on the IRC, filed January 22, 2018, page 342.

percent to 47.7 percent.<sup>86</sup> Under Government Code section 17551(d), the Commission only has jurisdiction over audit reductions, but not adjustments that increase allowable costs.

On the merits, the Commission finds that the Controller's reduction in Finding 1 to the number of written reports for domestic violence-related calls for assistance claimed for fiscal years 2002-2003 through 2006-2007 is not arbitrary, capricious, or entirely lacking in evidentiary support. During the audit, the Controller requested supporting documentation to verify the number of domestic violence incidents claimed during the audit period that were supported by incident reports, and the SDSO provided reports from the Automated Regional Justice Information System (ARJIS) for the later fiscal years 2007-2008 through 2011-2012.<sup>87</sup> These reports identify the date and time of the domestic violence-related calls for assistance in fiscal years 2007-2008 through 2011-2012, the incident number, and the total number of incidents each year during this time period.<sup>88</sup> However, the SDSO was not able to provide ARJIS reports for incidents claimed for fiscal years 2002-2003 through 2006-2007, or the underlying written reports for the calls for assistance for those years.<sup>89</sup> The Controller therefore calculated an average annual incident count for fiscal years 2002-2003 through 2006-2007, based on the verified data for fiscal years 2007-2008 through 2011-2012. This resulted in a reduction of 412 incident reports for fiscal years 2002-2003 through 2006-2007.<sup>90</sup>

The claimant argues that by using an average from the five most recent audited years "does not adequately compensate the City for actual mandate related DV case costs. This SCO averaging resulted in an approximately 10% reduction to the City's costs claimed."<sup>91</sup> The claimant argues that supporting documentation was provided in the form of faxed reports from the SDSO, appearing to answer a query from the claimant representative regarding the annual incident count for several different offenses, including "the number of domestic violence calls for services and cases," for the two cities of Encinitas and San Marcos (the claimant);<sup>92</sup> 2002, 2007, and 2008 reports prepared by the San Diego Association of Governments (SANDAG), on "Crime in the San Diego Region;"<sup>93</sup> and Department of Justice (DOJ) crime data, "CJSC Statistics: Domestic Violence-Related Calls for Assistance," reported for the claimant's jurisdiction, and DOJ's March 2000 publication, "Criminal Statistics Reporting Requirements," which states that local

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<sup>86</sup> Exhibit A, IRC, filed August 22, 2017, page 542 (Final Audit Report).

<sup>87</sup> Exhibit A, IRC, filed August 22, 2017, page 529 (Final Audit Report); Exhibit B, Controller's Comments on the IRC, filed January 22, 2018, pages 344-375 (ARJIS reports of domestic violence-related calls for assistance for fiscal years 2007-2008 through 2011-2012).

<sup>88</sup> Exhibit B, Controller's Comments on the IRC, filed January 22, 2018, pages 344-375 (ARJIS reports of domestic violence-related calls for assistance for fiscal years 2007-2008 through 2011-2012).

<sup>89</sup> Exhibit A, IRC, filed August 22, 2017, page 529 (Final Audit Report).

<sup>90</sup> Exhibit A, IRC, filed August 22, 2017, page 529 (Final Audit Report).

<sup>91</sup> Exhibit A, IRC, filed August 22, 2017, page 4.

<sup>92</sup> Exhibit A, IRC, filed August 22, 2017, pages 27-39.

<sup>93</sup> Exhibit A, IRC, filed August 22, 2017, pages 40-290 (SANDAG reports).

agencies are required to report data on the number of domestic violence calls on a monthly basis.<sup>94</sup>

The Parameters and Guidelines, adopted in 2010, require that claims for actual costs must be traceable and supported by contemporaneous source documentation (documents created at or near the time costs were incurred) that show the validity of such costs, when they were incurred, and their relationship to the reimbursable activities) and define source documents to include employee time records or time logs, sign-in sheets, invoices and receipts.<sup>95</sup> Although the Parameters and Guidelines are regulatory in nature, due process requires that a claimant have reasonable notice of any law that affects their substantive rights and liabilities.<sup>96</sup> Here, the claimant was not on notice of the contemporaneous source document requirement (CSDR) when the costs were incurred in fiscal years 2002-2003 through 2006-2007 because the Parameters and Guidelines were not adopted until September 2010. Thus, for due process reasons, the CSDR cannot be strictly enforced in these fiscal years. However, the Controller is *not* strictly enforcing the CSDR because the Controller is not requiring contemporaneous documentation and did not reduce the costs claimed to \$0.

Instead, the Controller exercised its audit authority and calculated the number of written reports for domestic violence-related calls for assistance in fiscal years 2002-2003 through 2006-2007 “based on verified actual ARJIS data for FY 2007-08 through FY 2011-12 and applied this average to compute costs for unsupported years.”<sup>97</sup> Although the claimant has provided faxed documents from SDSO to the claimant’s representative and third party reports purportedly identifying a larger number of domestic violence related calls for assistance in the claim years, the claimant has not provided any source documentation (such as a list of incidents and the date they occurred, or the written incident reports themselves) for the Controller to verify the actual number of written incident reports claimed under the mandate. The Controller’s audit findings are consistent with Government Code section 17561(d)(1)(C), which authorizes the Controller to audit the records of any local agency or school district to verify the actual amount of mandated costs.<sup>98</sup>

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<sup>94</sup> Exhibit A, IRC, filed August 22, 2017, pages 4, 292-310 (DOJ reports and “Criminal Statistics Reporting Requirements” March 2000).

<sup>95</sup> Exhibit A, IRC, filed August 22, 2017, page 503 (Parameters and Guidelines).

<sup>96</sup> *In re Cindy B.* (1987) 192 Cal.App.3d 771, 783-784; *Clovis Unified School Dist. v. Chiang* (2010) 188 Cal.App.4th 794, 804-805.

<sup>97</sup> Exhibit B, Controller’s Comments on the IRC, filed January 22, 2018, page 20; Exhibit A, IRC, filed August 22, 2017, page 529 (Final Audit Report).

<sup>98</sup> See also Government Code section 12410, which states: “The Controller shall superintend the fiscal concerns of the state. The Controller shall audit all claims against the state, and may audit the disbursement of any state money, for correctness, legality, and for sufficient provisions of law for payment.” The courts have held that the Controller’s duty to audit includes the duty to ensure that expenditures are authorized by law. (*Tirapelle v. Davis* (1993) 20 Cal.App.4th 1317, 1335.)

Based on this record, the Controller adequately considered the claimant's documentation, all relevant factors, and demonstrated a rational connection between those factors and the adjustments made.<sup>99</sup> Under these circumstances, the Commission is required to defer to the Controller's audit authority and presumed expertise.<sup>100</sup> There is no evidence that the Controller's calculation is arbitrary, capricious, or entirely lacking in evidentiary support.

The Commission also finds that the Controller's reduction in Finding 1 to the claimant's contracted hourly rates for fiscal years 2001-2002 through 2006-2007 is correct as a matter of law and not arbitrary, capricious, or entirely lacking in evidentiary support. The claimant contracts for all law enforcement services with the SDSO, not just for performing the reimbursable activity.<sup>101</sup> For fiscal years 2001-2002 through 2006-2007, the Controller found that the claimant overstated the contract rates applicable to the mandate, "co-mingled multiple classifications [including deputy patrol, sergeant patrol, and sergeant detective] into one rate," and included employee classifications that did not perform the reimbursable activities.<sup>102</sup> The Controller also found that the claimant used an inconsistent number of annual contract hours to compute the claimed hourly rates for these years.<sup>103</sup>

The Parameters and Guidelines state that the "claimant is only allowed to claim and be reimbursed for increased costs for reimbursable activities identified . . .," and that "[i]ncreased cost is limited to the cost of an activity that the claimant is required to incur as a result of the mandate."<sup>104</sup> Regarding contracted services, the Parameters and Guidelines state that only the pro-rata portion of the services used to implement the reimbursable activities can be claimed.<sup>105</sup> The claimant included the costs for various classifications and overhead that accounted for all law enforcement services, so the hourly contract rates used by the claimant for fiscal years 2001-2002 through 2006-2007 do not comply with the Parameters and Guidelines because they do not segregate the salary and benefit rate by the classifications that performed the reimbursable activities. Therefore, the Controller's conclusion is correct as a matter of law.

To recalculate hourly rates, the Controller obtained salary and benefit rates from the SDSO that were segregated for each peace officer classification that performed the reimbursable activities

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<sup>99</sup> *American Bd. of Cosmetic Surgery, Inc. v. Medical Bd. of California* (2008) 162 Cal.App.4th 534, 547-548.

<sup>100</sup> *American Bd. of Cosmetic Surgery, Inc. v. Medical Bd. of California* (2008) 162 Cal.App.4th 534, 547-548.

<sup>101</sup> Exhibit A, IRC, filed August 22, 2017, pages 316-468 (Contracts for Law Enforcement Services). Exhibit B, Controller's Comments on the IRC, filed January 22, 2018, page 23.

<sup>102</sup> Exhibit A, IRC, filed August 22, 2017, page 532 (Final Audit Report); Exhibit B, Controller's Comments on the IRC, filed January 22, 2018, pages 20-23, 377-398.

<sup>103</sup> Exhibit A, IRC, filed August 22, 2017, pages 532-533 (Final Audit Report). Exhibit B, Controller's Comments on the IRC, filed January 22, 2018, pages 20-21, 377.

<sup>104</sup> Exhibit A, IRC, filed August 22, 2017, page 503 (Parameters and Guidelines).

<sup>105</sup> Exhibit A, IRC, filed August 22, 2017, page 506 (Parameters and Guidelines).

and confirmed they were accurate.<sup>106</sup> The Controller divided the salary and benefit costs by 1,743 productive hours (which is the number of productive hours noted in the SDSO contract for the later undisputed years) to calculate hourly contract rates for all years, including the disputed years.<sup>107</sup> This recalculation complies with the Parameters and Guidelines to ensure that only the pro-rata costs to comply with the mandate are reimbursable so it is correct as a matter of law and not arbitrary, capricious, or entirely lacking in evidentiary support. The claimant has not provided evidence to the contrary.

Finally, the Commission finds that the Controller's reduction of indirect costs in Finding 2 for fiscal years 2007-2008 through 2011-2012 is not arbitrary, capricious, or entirely lacking in evidentiary support. Section V.B. of the Parameters and Guidelines addresses indirect costs, and provides claimants the option of either claiming 10 percent of direct labor costs, or if indirect costs exceed the 10 percent rate, developing an indirect cost rate proposal by dividing the total allowable indirect costs by an equitable distribution rate.<sup>108</sup> For fiscal years 2007-2008 through 2011-2012, the claimant developed indirect cost rate proposals and applied those rates to costs for contracted law enforcement services that the Controller asserts were incorrectly claimed as direct labor costs, resulting in claimed indirect cost rates ranging from 80.8 to 91.8 percent annually.<sup>109</sup> The Controller found that the claimed methodology was incorrect because the claimant contracted for law enforcement with the SDSO, so it was inappropriate to claim the costs as indirect "labor costs." The claimant also applied the indirect cost rates to unallowable contract services costs identified in Finding 1.<sup>110</sup> The Controller recalculated indirect cost rates for fiscal years 2007-2008 through 2011-2012 at 45.9 to 50.4 percent, by "dividing total contract overhead costs, station support staff costs, and "Sergeant Admin" position costs, by the contracted labor costs identified in the contract supplemental schedules," which reduced allowable rates by 35-45 percent over those claimed.<sup>111</sup> The other sergeant positions not included in the indirect cost pool, as requested by the claimant, remained classified as direct contract costs.<sup>112</sup> The Commission finds that the Controller adequately considered the claimant's position throughout the audit, all relevant factors, and demonstrated a rational

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<sup>106</sup> Exhibit B, Controller's Comments on the IRC, filed January 22, 2018, page 21.

<sup>107</sup> Exhibit A, IRC, filed August 22, 2017, page 533 (Final Audit Report). 1,743 productive hours is in the SDSO contract for 2008-2008 through 2011-2012; Exhibit A, IRC, filed August 22, 2017, page 452 (Contract for Law Enforcement Services), Exhibit B, Controller's Comments on the IRC, filed January 22, 2018, page 406 (Contract for Law Enforcement Services).

<sup>108</sup> Exhibit A, IRC, filed August 22, 2017, pages 507-508 (Parameters and Guidelines).

<sup>109</sup> Exhibit A, IRC, filed August 22, 2017, page 542 (Final Audit Report).

<sup>110</sup> Exhibit A, IRC, filed August 22, 2017, page 541 (Final Audit Report).

<sup>111</sup> Exhibit A, IRC, filed August 22, 2017, pages 541-542 (Final Audit Report). Exhibit B, Controller's Comments on the IRC, filed January 22, 2018, pages 28, 411 (Calculation of Allowable Indirect Cost Rates).

<sup>112</sup> Exhibit B, Controller's Comments on the IRC, filed January 22, 2018, page 427 (Controller's email of April 17, 2017).



connection between those factors, the choices made, and calculated an indirect cost rate proposal consistent with the Parameters and Guidelines and the contracts with SDSO.<sup>113</sup> There is no evidence in the record that the Controller failed to explain its position or consider the claimant's documentation, as alleged in the IRC.

Therefore, the Commission denies this IRC.

## COMMISSION FINDINGS

### I. Chronology

- 04/06/2011 The claimant filed its fiscal year 2001-2002, 2002-2003, 2003-2004, 2004-2005, 2005-2006, 2006-2007, 2007-2008, 2008-2009, 2009-2010 reimbursement claims.<sup>114</sup>
- 01/26/2012 The claimant signed its fiscal year 2010-2011 reimbursement claim.<sup>115</sup>
- 02/05/2013 The claimant filed its fiscal year 2011-2012 reimbursement claim.<sup>116</sup>
- 05/23/2017 The Controller issued the Draft Audit Report.<sup>117</sup>
- 06/01/2017 The claimant submitted comments on the Draft Audit Report.<sup>118</sup>
- 06/30/2017 The Controller issued the Final Audit Report.<sup>119</sup>
- 08/22/2017 The claimant filed the IRC.<sup>120</sup>
- 01/22/2018 The Controller filed comments on the IRC.<sup>121</sup>
- 06/05/2019 Commission staff issued a "Second Notice of Incomplete Incorrect Reduction Claim" that notified the claimant of missing documents in the IRC.
- 06/13/2019 The claimant filed the missing documents.

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<sup>113</sup> *American Bd. of Cosmetic Surgery, Inc. v. Medical Bd. of California* (2008) 162 Cal.App.4th 534, 547-548.

<sup>114</sup> Exhibit B, Controller's Comments on the IRC, filed January 22, 2018, pages 136-186. Exhibit A, IRC, filed August 22, 2017, page 620-670 (Annual Reimbursement Claims).

<sup>115</sup> Exhibit B, Controller's Comments on the IRC, filed January 22, 2018, page 195 (2010-2011 Reimbursement Claim).

<sup>116</sup> Exhibit B, Controller's Comments on the IRC, filed January 22, 2018, page 202 (2011-2012 Reimbursement Claim).

<sup>117</sup> Exhibit B, Controller's Comments on the IRC, filed January 22, 2018, page 39 (Final Audit Report).

<sup>118</sup> Exhibit B, Controller's Comments on the IRC, filed January 22, 2018, pages 64-134 (Claimant's comments on the Draft Audit Report).

<sup>119</sup> Exhibit A, IRC, filed August 22, 2017, page 517 (Final Audit Report).

<sup>120</sup> Exhibit A, IRC, filed August 22, 2017.

<sup>121</sup> Exhibit B, Controller's Comments on the IRC, filed January 22, 2018.

09/04/2020 Commission staff issued the Draft Proposed Decision.<sup>122</sup>

11/06/2020 The claimant filed comments on the Draft Proposed Decision.<sup>123</sup>

## II. Background

### A. The Crime Statistics Reports for the Department of Justice Program

The *Crime Statistics Reports for the Department of Justice* Decision was approved by the Commission on June 26, 2008 and July 31, 2009. The test claim statutes require local agencies to report information related to specified types of crimes (homicide, hate crimes, firearms) to the DOJ, and as relevant here, to support all domestic violence-related calls for assistance with a written incident report.<sup>124</sup>

The Parameters and Guidelines were adopted on September 30, 2010, and authorize reimbursement for local law enforcement agencies to support all domestic violence-related calls for assistance with a written incident report, and to review and edit the report, beginning July 1, 2001.<sup>125</sup> The Parameters and Guidelines also require actual costs to 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.”<sup>126</sup>

The Parameters and Guidelines were amended on January 24, 2014, to clarify that certain activities related to supporting all domestic violence-related calls with a written report are not reimbursable.<sup>127</sup> The amendment does not affect this IRC.

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<sup>122</sup> Exhibit C, Draft Proposed Decision, issued September 4, 2020.

<sup>123</sup> Exhibit D, Claimant’s Comments on the Draft Proposed Decision, filed November 6, 2020.

<sup>124</sup> Penal Code section 13730(a), Exhibit A, IRC, filed August 22, 2017, pages 501-502 (Parameters and Guidelines).

<sup>125</sup> Exhibit A, IRC, filed August 22, 2017, pages 501-502 (Parameters and Guidelines).

<sup>126</sup> Exhibit A, IRC, filed August 22, 2017, page 503 (Parameters and Guidelines).

<sup>127</sup> Exhibit B, Controller’s Comments on the IRC, filed January 22, 2018, pages 317, 321 (Parameters and Guidelines, amended January 24, 2014). The amended Parameters and Guidelines clarify that:

Reimbursement is **not** required to interview parties, complete a booking sheet or restraining order, transport the victim to the hospital, book the perpetrator, or other related activities to enforce a crime and assist the victim.

In addition, reimbursement is **not** required to include the information in the incident report required by Penal Code section 13730(c)(1)(2), based on the Commission decision denying reimbursement for that activity in *Domestic Violence Training and Incident Reporting* (CSM-96-362-01). Reimbursement for including the information in the incident report required by Penal Code section 13730(c)(3) is not provided in these parameters and guidelines and may not be claimed under this program, but is addressed in *Domestic Violence Incident Reports II* (02-TC-18).

The *Crime Statistics Reports for the Department of Justice* program has been suspended by the Legislature pursuant to Government Code section 17581 since fiscal year 2012-2013.<sup>128</sup>

**B. The Controller's Audit and Summary of Issues**

The Controller found that of the \$1,094,487 claimed during the audit period, \$722,360 is allowable and \$372,127 is unallowable.<sup>129</sup> There are two primary findings in the audit.

**1. Finding 1 – The Controller Found that the Claimant Overstated the Number of Domestic Violence-Related Calls for Assistance and Its Contract Services Costs.**

The claimant classified its claimed costs as personnel costs even though city personnel do not perform the reimbursable activities. The claimant contracts for all law enforcement services with the SDSO, so the claimant did not incur any salaries and benefits costs as claimed. Thus, the Controller reallocated the claimed costs to the appropriate category of contract services.<sup>130</sup>

The claimant calculated the hours to perform the reimbursable activity (i.e., support all domestic violence-related calls for assistance with a written incident report, and review and edit the report) by multiplying the number of domestic violence-related calls for assistance by the estimated time to write the incident report. The claimant then multiplied the hours claimed by the SDSO hourly rates to determine the total claimed costs.<sup>131</sup> The Controller found that the claimant misstated the number of written incident report counts, misstated the time increments per activity, and misstated the contract productive hourly rates.<sup>132</sup> The claimant disputes only the reductions in Finding 1 to the number of domestic violence incident reports in fiscal years 2001-2002 through 2006-2007, and the contract productive hourly rates in fiscal years 2001-2002 through 2006-2007.<sup>133</sup>

a. The Controller Reduced the Overall Number of Written Reports for Domestic Violence-Related Calls for Assistance for Fiscal Years 2001-2002 Through 2006-2007.

The Controller requested supporting documentation to verify the number of domestic violence incidents claimed during the audit period that were supported by incident reports, and the SDSO provided reports from the Automated Regional Justice Information System (ARJIS) for fiscal

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<sup>128</sup> Statutes 2019, chapter 23, Item 8885-295-0001, Schedule (5)(i). Statutes 2018, chapter 29, Item 8885-295-0001, Schedule (5)(i). Statutes 2017, chapter 14, Item 8885-295-0001, Schedule (5)(i). Statutes 2016, chapter 23, Item 8885-295-0001, Schedule (5)(i). Statutes 2015, chapter 10, Item 8885-295-0001, Schedule (5)(i). Statutes 2014, chapter 25, Item 8885-295-0001, Schedule (3)(j). Statutes 2013, chapter 20, Item 8885-295-0001, Schedule (3)(k). Statutes 2012, chapter 21, Item 8885-295-001, Schedule (3)(ddd).

<sup>129</sup> Exhibit A, IRC, filed August 22, 2017, pages 517, 519 (Final Audit Report).

<sup>130</sup> Exhibit A, IRC, filed August 22, 2017, page 528 (Final Audit Report).

<sup>131</sup> Exhibit A, IRC, filed August 22, 2017, page 528 (Final Audit Report).

<sup>132</sup> Exhibit A, IRC, filed August 22, 2017, page 528 (Final Audit Report).

<sup>133</sup> Exhibit A, IRC, filed August 22, 2017, pages 4-5, 6.

years 2007-2008 through 2011-2012.<sup>134</sup> These reports identify the date and time of the domestic violence-related calls for assistance in fiscal years 2007-2008 through 2011-2012, the incident number, and the total number of incidents each year during this time period.<sup>135</sup> To verify the number of incidents identified in the ARJIS reports and whether they were supported with a written report, the Controller reviewed a random sample of 33 incidents of domestic violence-related calls for assistance in fiscal years 2010-2011 and 2011-2012. The review of the incident records revealed that only one incident report claimed did not include domestic violence-related information; a discrepancy the Controller determined was immaterial. Thus, the Controller used the verified incident counts to compute allowable costs for fiscal years 2007-2008 through 2011-2012.<sup>136</sup> According to the Controller, “the SDSO did a sufficient and appropriate job of generating the [incident] data from ARJIS. Therefore, we concluded that the query reports provided for FY 2007-08 through FY 2011-12 were reliable.”<sup>137</sup>

For fiscal years 2001-2002 through 2006-2007, the claimant identified 1,990 incidents of domestic violence-related calls supported with written reports.<sup>138</sup> However, unlike fiscal years

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<sup>134</sup> Exhibit A, IRC, filed August 22, 2017, page 529 (Final Audit Report); Exhibit B, Controller’s Comments on the IRC, filed January 22, 2018, pages 344-375 (ARJIS reports of domestic violence-related calls for assistance for fiscal years 2007-2008 through 2011-2012). According to the ARJIS website:

The Automated Regional Justice Information System (ARJIS) was created as a Joint Powers Agency to share information among justice agencies throughout San Diego and Imperial Counties, California. ARJIS has evolved into a complex criminal justice enterprise network used by 80+ local, state, and federal agencies in the two California counties that border Mexico. The ARJIS governance structure promotes data sharing and cooperation at all levels for member agencies, from chiefs to officers to technical staff.

ARJIS is responsible for major public safety initiatives, including wireless access to photos, warrants, and other critical data in the field, crime and sex offender mapping, crime analysis tools evaluation, and an enterprise system of applications that help users solve crimes and identify offenders. ARJIS also serves as the region’s information hub for officer notification, information sharing, and the exchange, validation, and real-time uploading of many types of public safety data.

Exhibit E, What Is ARJIS, <http://www.arjis.org/SitePages/WhatIsARJIS.aspx> (accessed on September 3, 2020).

<sup>135</sup> Exhibit B, Controller’s Comments on the IRC, filed January 22, 2018, pages 344-375 (ARJIS reports of domestic violence-related calls for assistance for fiscal years 2007-2008 through 2011-2012).

<sup>136</sup> Exhibit A, IRC, filed August 22, 2017, page 529 (Final Audit Report); Exhibit B, Controller’s Comments on the IRC, filed January 22, 2018, page 20.

<sup>137</sup> Exhibit A, IRC, filed August 22, 2017, page 529 (Final Audit Report).

<sup>138</sup> Exhibit A, IRC, filed August 22, 2017, pages 5, 529 (Final Audit Report), which show 208 claimed incident counts in fiscal year 2001-2001, 356 in fiscal year 2002-2003, 323 in fiscal year

2007-2008 to 2011-2012, the Controller found that: “The SDSO was not able to provide [ARJIS] reports or supporting documentation for incidents claimed for FY 2001-02 through FY 2006-07.”<sup>139</sup> The Controller therefore calculated an average annual incident count for fiscal years 2001-2002 through 2006-2007, based on the verified data for fiscal years 2007-2008 through 2011-2012. This resulted in an increase of 66 incidents to the 208 claimed for 2001-2002 and a reduction of 412 incidents from 782 claimed for fiscal years 2002-2003 through 2006-2007.<sup>140</sup>

b. The Controller Reduced the Contract Hourly Rates Claimed for Fiscal Years 2001-2002 Through 2006-2007.

For fiscal years 2001-2002 through 2006-2007, the Controller found that the claimant overstated the contract rates applicable to the mandate. For these fiscal years, the claimant used the contract rates charged by SDSO, which were billed on a “full cost per Patrol Deputy basis” and included all overhead costs built into that “unit” rate.<sup>141</sup> The Controller found that the salary and benefit rates claimed for these fiscal years were overstated due to “co-mingled multiple classifications [including deputy patrol, sergeant patrol, and sergeant detective] into one rate,” and included employee classifications that did not perform the reimbursable activities.<sup>142</sup> The SDSO provided “segregated contract salary and benefit amounts,” which the Controller used to calculate allowable rates for fiscal years 2001-2002 through 2006-2007.<sup>143</sup> The Controller also found that the claimant used inconsistent annual contract hours (from 3,102.5 to 1,742.91) to claim hourly rates, so the Controller recalculated the rates using 1,743 productive hours noted in the contract in the later undisputed years.<sup>144</sup> The combined recalculations resulted in annual reductions of contract hourly rates for sheriff deputies ranging from \$58.83 to \$87.54 for fiscal years 2001-2002 through 2006-2007.<sup>145</sup>

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2003-2004, 359 in fiscal year 2004-2005, 371 in fiscal year 2005-2006, and 373 in fiscal year 2006-2007, for a total of 1990 claimed incident counts.

<sup>139</sup> Exhibit A, IRC, filed August 22, 2017, page 529 (Final Audit Report).

<sup>140</sup> Exhibit A, IRC, filed August 22, 2017, page 529 (Final Audit Report).

<sup>141</sup> Exhibit A, IRC, filed August 22, 2017, page 6.

<sup>142</sup> Exhibit A, IRC, filed August 22, 2017, page 532 (Final Audit Report); Exhibit B, Controller’s Comments on the IRC, filed January 22, 2018, pages 20-23, 377-398.

<sup>143</sup> Exhibit A, IRC, filed August 22, 2017, page 532 (Final Audit Report); Exhibit B, Controller’s Comments on the IRC, filed January 22, 2018, pages 377-398.

<sup>144</sup> Exhibit A, filed August 22, 2017, IRC, pages 532-533 (Final Audit Report). Controller’s Comments on the IRC, filed January 22, 2018, pages 20-21, 377.

<sup>145</sup> Exhibit A, filed August 22, 2017, IRC, page 533 (Final Audit Report). For example, the deputy hourly rate for 2001-2002 was reduced from \$106.17 to \$47.34 (a \$58.83 reduction).

## **2. Finding 2 – The Controller Found that the Claimant Misstated Its Indirect Costs.**

Of the \$270,405 claimed for indirect costs during the audit period, the Controller found that \$238,920 is allowable and \$31,485 is unallowable because the claimant “misclassified claimed direct costs as salaries and benefits rather than contract services, inappropriately calculated indirect cost rates based on direct labor rather than contract services, and applied indirect cost rates to unallowable contract services costs as identified in Finding 1.”<sup>146</sup>

Specifically, for fiscal years 2001-2002 through 2006-2007, the claimant applied a 10 percent indirect cost rate to contract services costs that were incorrectly claimed as salaries and benefits. For fiscal years 2007-2008 through 2011-2012, the claimant prepared Indirect Cost Rate Proposals (ICRPs) of between 80.8 and 91.8 percent and applied those rates to the contract services costs that were incorrectly claimed as salaries and benefits.<sup>147</sup> The Controller found that the claimant’s methodology to compute indirect costs as labor costs was not appropriate because the claimant contracted with SDSO to perform the activities and therefore did not have salary and benefit costs. Thus, the Controller reviewed the contract agreements and schedules between the claimant and SDSO. For fiscal years 2007-2008 through 2011-2012, the Controller found that the overhead costs identified in the contract were appropriate as they related to the performance of the mandated activities. Thus, the Controller computed the contract-services indirect cost rates for these years at 45.9 to 50.4 percent by dividing total contract overhead costs, station support staff costs, and “Sergeant Admin” position costs, by the contracted labor costs identified in the contract supplemental schedules, resulting in a 35-45 percent reduction of the rates claimed for fiscal years 2007-2008 through 2011-2012.<sup>148</sup>

Because schedules were not available for fiscal years 2001-2002 through 2006-2007, the Controller calculated an average contract indirect cost rate based on the rates for the later fiscal years and applied it to fiscal years 2001-2002 through 2006-2007. This resulted in an *increase* in indirect cost rates from 10 percent to an adjusted rate of 47.7 percent.<sup>149</sup>

### **III. Positions of the Parties**

#### **A. City of San Marcos**

The claimant disputes the Controller’s findings relating to the number of domestic violence-related calls for assistance for fiscal years 2001-2002 through 2006-2007, the methodology to calculate the contract hourly rates for fiscal years 2001-2002 through 2006-2007, and the reduction and recalculation of indirect costs.

Regarding the number of domestic violence-related calls for assistance, the mandated activity is to “support” these calls with a written report, which must be reviewed and edited.<sup>150</sup> The

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<sup>146</sup> Exhibit A, filed August 22, 2017, IRC, page 541 (Final Audit Report).

<sup>147</sup> Exhibit A, filed August 22, 2017, IRC, pages 541-542 (Final Audit Report).

<sup>148</sup> Exhibit A, filed August 22, 2017, IRC, page 542 (Final Audit Report).

<sup>149</sup> Exhibit A, filed August 22, 2017, IRC, page 542 (Final Audit Report).

<sup>150</sup> See Exhibit A, IRC, filed August 22, 2017, page 506 (Parameters and Guidelines).

claimant argues that it should be permitted to use “actual Domestic Violence (DV) Statistics provided for fiscal years 2001-02 through 2006-07 in lieu of estimates developed by the State Controller’s Office (SCO), which proposed to use an average of the five most recent years of the audit.”<sup>151</sup> The claimant states that the Controller used an estimate because the SDSO “converted its data to a new system in 2007 and were not able to generate the detailed reports SCO requested during the audit,” including case numbers, dates, and applicable Penal Code sections.<sup>152</sup> The claimant argues that the “SDSO did however maintain the total annual case counts in summary format and believes these reports are adequate to prove the total number of Domestic Violence cases for which reports were written in compliance with the State Mandated program particularly since all the other five fiscal years audited proved 100% reliability.”<sup>153</sup> The reports the claimant relies on are (1) ARJIS annual reports submitted from the SDSO to the claimant’s consultant; (2) San Diego Association of Government reports from 2002, 2007, and 2008; and (3) annual statistical reports submitted to the State Department of Justice (DOJ).<sup>154</sup> The claimant argues that these are “‘actual’ and ‘contemporaneous’ statistics.”<sup>155</sup>

In comments on the Draft Proposed Decision, the claimant alleges that the DOJ audits the data provided to them by local law enforcement to verify its accuracy, which should “add credibility and confidence to the State DOJ and ... ARJIS statistics.”<sup>156</sup> The claimant also appears to explain the variation in the number of domestic violence-related calls for assistance by arguing:

This variation was due to the fact that the State Department of Justice (DOJ) statistics used to prepare the claims were based on calendar year reporting whereas the ARJIS statistics were reported by fiscal year. When the data is examined in total for the time period audited, the variation is extremely small. During the 5 years audited, the State found that the variation during this period was less than 10 cases out of an average of 1,300 cases examined (a negligible amount).<sup>157</sup>

In addition, the claimant alleges that crime throughout the City, including domestic violence incidents, trended downward throughout the audit period, and therefore “[u]sing an average from just the five most recent audited years does not adequately compensate the City for actual mandate related DV case costs.”<sup>158</sup> The claimant emphasizes that the audit of the data for fiscal

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<sup>151</sup> Exhibit A, IRC, filed August 22, 2017, page 4.

<sup>152</sup> Exhibit A, IRC, filed August 22, 2017, page 4.

<sup>153</sup> Exhibit A, IRC, filed August 22, 2017, page 4.

<sup>154</sup> Exhibit A, IRC, filed August 22, 2017, pages 4, 27-39 (ARJIS reports), 40-290 (SANDAG reports), 292-310 (DOJ reports and “Criminal Statistics Reporting Requirements” March 2000).

<sup>155</sup> Exhibit A, IRC, filed August 22, 2017, page 4.

<sup>156</sup> Exhibit D, Claimant’s Comments on the Draft Proposed Decision, filed November 6, 2020, page 2.

<sup>157</sup> Exhibit D, Claimant’s Comments on the Draft Proposed Decision, filed November 6, 2020, page 2.

<sup>158</sup> Exhibit A, IRC, filed August 22, 2017, page 4.

years 2007-2008 through 2011-2012 “found that data to be reliable and accurate,” so “. . . it is reasonable to conclude that [the same source of] data, which was prepared and submitted contemporaneously, should also be reliable sources for the prior fiscal years.”<sup>159</sup> This is reiterated in the claimant’s comments on the Draft Proposed Decision. The claimant also argues:

It took the State over 10 years to review the test claim, adopt Parameters and Guidelines, and release claiming instructions for this program. Then an additional 6 years for the State Controller’s Office (SCO) to initiate an audit of the program. It can be no surprise that “detailed” actual reports of each and every case are no longer available nor maintained by local agencies for State Controller to do their full review by case level. To expect that the same computer systems are still operational and full reports available after almost twenty years is beyond reasonable.

The City believes that it satisfied the Claiming Instructions requirements for records retention in an aggregate format, which was shown to be valid and reasonable and therefore, should not be reduced by the approximately 10% proposed by the SCO by using their averaging methodology.<sup>160</sup>

Regarding the Controller’s finding that the contract hourly rates were overstated, the claimant argues that “[t]he methodologies [it] used . . . to compute the billing rates were consistent with contract language.”<sup>161</sup> The claimant states that for fiscal years 2001-2002 through 2006-2007, “the City was billed for law enforcement services on a full cost per Patrol Deputy basis,” which included “overhead” costs for Sergeant and Sergeant Detective support “built into that one rate.”<sup>162</sup> As a result, the claimant used a unit cost for the Deputy position, and did not include any additional eligible costs for the Sergeants to review and approve reports because their costs were already factored into the Deputy’s hourly rate.<sup>163</sup>

The claimant further states that “[c]omingling of multiple positions in a contract situation is very common” and “[t]he City is not aware of any case where the SCO deconstructed attorney or consultant billed rates because the rates had included other overhead charges and not just the actual employee salary.”<sup>164</sup> The claimant maintains that the deconstruction of the contract rates to calculate salaries and benefits was inappropriate, but “[i]f the Commission determines the deconstruction method used by the SCO is valid, then the City believes the indirect rate should account for all of the applicable overhead costs in the contract as they are valid costs per OMB

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<sup>159</sup> Exhibit A, IRC, filed August 22, 2017, page 5.

<sup>160</sup> Exhibit D, Claimant’s Comments on the Draft Proposed Decision, filed November 6, 2020, page 2.

<sup>161</sup> Exhibit A, IRC, filed August 22, 2017, page 6.

<sup>162</sup> Exhibit A, IRC, filed August 22, 2017, page 6.

<sup>163</sup> Exhibit A, IRC, filed August 22, 2017, page 6.

<sup>164</sup> Exhibit A, IRC, filed August 22, 2017, page 6.



A-87.”<sup>165</sup> In its comments on the Draft Proposed Decision, the claimant argues that the costs were not commingled among the SDSO contract categories:

The contracts with San Diego County Sheriff’s Department/Office (SCSO) detail all costs by activity, and by direct and indirect costs for: PATROL – or general law enforcement activities; TRAFFIC enforcement activities; and CUSTOM units – broken down further by “Special Purpose Details” and “Special Purposes Officers”. This ensures that costs for TRAFFIC or CUSTOM or Special units are not comingled with the General Law Enforcement (PATROL) costs. [¶] . . . [¶]

The County [SDSO] had different overhead rates/charges for each type of unit; thus, only related applicable overhead would be included in the computation of the claim and Commission staff’s concerns that, “hourly contract rates used by the claimant for fiscal years 2001-02 through 2006-07 are not specific to the mandated activities” are unfounded.

The City did not request reimbursement for the Sergeant and the Detective Sergeant positions during FY 2001-02 though FY 2006-07, therefore there is no issue of overbilling the State. [¶] . . . [¶]

SCO “deconstruction” of rates to extract Sergeant and Detective positions was unnecessary as a portion of their costs was already included in the contractual overhead rate.<sup>166</sup>

The claimant also maintains that the Controller obtaining salary and benefit information from the SDSO, as the contracting entity, is not supported by the Parameters and Guidelines, the Claiming Instructions or the Claiming Manual. The claimant refers to the claiming instructions that require multiplying the number of hours by the hourly billing rate, arguing that the claimant calculated its services that way, and that there is no evidence that the Controller “felt that the San Diego County Sheriff’s Office (SDSO) rates charged were unreasonable or excessive.”<sup>167</sup> The claimant asserts that the Controller’s methodology of calculating an average hourly rate for the other contract years and applying it to fiscal years 2001-2002 through 2006-2007 is a “new methodology” that cannot be applied retroactively (citing *City of Modesto v. National Med. Inc.* (2005) 128 Cal.App.4th 518, 527).<sup>168</sup>

The claimant further argues:

The rates the Controller computed were not based on actual costs or actual billing rates as specified in Claiming Instructions or in Parameters and Guidelines. The city believes this new methodology used by the SCO to compute deconstructed

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<sup>165</sup> Exhibit A, IRC, filed August 22, 2017, page 6.

<sup>166</sup> Exhibit D, Claimant’s Comments on the Draft Proposed Decision, filed November 6, 2020, page 3.

<sup>167</sup> Exhibit D, Claimant’s Comments on the Draft Proposed Decision, filed November 6, 2020, page 3.

<sup>168</sup> Exhibit D, Claimant’s Comments on the Draft Proposed Decision, filed November 6, 2020, page 4.

contract billing rates constituted underground rule-making by the State Controller's Office and was erroneous.<sup>169</sup>

The claimant requests that "this new methodology not be allowed until new instructions are drafted and clarification is provided on how to implement this new 'contract rate deconstruction methodology.'"<sup>170</sup>

Related to the contract rates is the Controller's findings on indirect costs, which the claimant challenges separately for fiscal years 2001-2002 through 2006-2007, and 2007-2008 through 2011-2012. Regarding fiscal years 2001-2002 through 2006-2007, the claimant sought reimbursement based on a 10 percent default rate allowed in the Parameters and Guidelines that it applied to its direct contract costs. The Controller found that this was not appropriate because the Parameters and Guidelines allowed that 10 percent rate to be applied only to salaries and benefits, not to contract services costs, which already included overhead costs.<sup>171</sup> The Controller deconstructed the contract services costs, as discussed above, in order to isolate the actual hourly rates applicable to the mandated activities and then calculated an average indirect cost rate for fiscal years 2001-2002 through 2006-2007 based on the audited rate for fiscal years 2007-2008 through 2011-2012.<sup>172</sup> The claimant argues that "ICRP rates did not have to be computed for this time period, because the County charged hourly rates already included all indirect costs, WITH THE EXCEPTION OF LIABILITY and some equipment charges which were billed separately in the contract."<sup>173</sup> According to the claimant, "claiming the 10% was appropriate to compensate the City for the separately billed costs and also for the citywide overhead costs incurred to administer the contract ... ."<sup>174</sup> The Controller's calculated indirect cost rate for fiscal years 2001-2002 through 2006-2007 is 47.7 percent, based on an average of the last five years of the audit period.<sup>175</sup> The claimant disagrees that an averaging method was necessary and requests "if the Commission believes that deconstruction of [contract services] rates is appropriate, then the SCO be required to compute actual ICRP rates for these years using the County CLEP reports."<sup>176</sup>

Regarding fiscal years 2007-2008 through 2011-2012, the claimant alleges that the Controller's indirect cost rates, based on the "deconstructed" contract hourly rates, do not include all

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<sup>169</sup> Exhibit D, Claimant's Comments on the Draft Proposed Decision, filed November 6, 2020, page 5.

<sup>170</sup> Exhibit D, Claimant's Comments on the Draft Proposed Decision, filed November 6, 2020, page 5.

<sup>171</sup> Exhibit A, IRC, filed August 22, 2017, pages 541-542 (Final Audit Report).

<sup>172</sup> Exhibit A, IRC, filed August 22, 2017, page 542 (Final Audit Report).

<sup>173</sup> Exhibit A, IRC, filed August 22, 2017, page 7. Emphasis in original.

<sup>174</sup> Exhibit A, IRC, filed August 22, 2017, pages 7, 542 (Final Audit Report).

<sup>175</sup> Exhibit A, IRC, filed August 22, 2017, page 7.

<sup>176</sup> Exhibit A, IRC, filed August 22, 2017, page 8.

applicable indirect costs.<sup>177</sup> Specifically, the claimant states that the “SCO allowed only one sergeant...in their computation of ICRP rates.”<sup>178</sup> According to the claimant:

The SCO did not explain why the other approximately seven Sergeants who also have administrative and support duties were not considered allowable or "appropriate". Inclusion of only one of the seven is arbitrary and does not reflect the actual overhead incurred in the contract. Also, Detective charges were also excluded from the overhead computation, but those costs had always been considered overhead charges in prior contracts.<sup>179</sup>

The claimant also asserts that “[d]uring the course of the audit, the City asked the SCO staff what documentation would be required to prove the other Sergeants were indeed administrative and support positions, but the City received no response or direction.”<sup>180</sup> The claimant states that it “provided job descriptions, contracts and the Commanding officers’ statement along with his estimate of percentage of time each position spent on administrative duties.”<sup>181</sup>

In comments on the Draft Proposed Decision, the claimant asserts that the Controller’s methodology for calculating indirect costs for fiscal years 2007-2008 through 2011-2012 is incorrect because it is based on vendor billing methodology and a description in the SDSO contract, which states that the claimant would pay for “direct” staff such as detectives, sergeants, etc. The contract “is labeling a direct cost as one that is assignable to a particular CITY, ‘Each CITY shall pay for direct staff. . .’ and shared costs benefitting more than one agency ‘ . . . will be pooled and allocated as overhead to all the cities based on the number of deputies. . .’”<sup>182</sup> According to the claimant, the Controller’s decision to use the contract labels from the costing section of the contract to determine whether a cost was direct or indirect was “erroneous and not in accordance with State Instructions and Federal Guidelines.”<sup>183</sup>

The claimant argues that indirect costs should be “costs incurred for a joint purpose, benefitting more than one program” as required by the Parameters and Guidelines, as well state regulations and federal OMB guidelines. The claimant further argues that the sergeant positions meet the definition in these authorities because they are: (1) for a ‘common or joint purpose,’ (2) benefit more than one program, (3) benefit the cost objectives, and (4) may include the overhead in the

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<sup>177</sup> Exhibit A, IRC, filed August 22, 2017, page 8.

<sup>178</sup> Exhibit A, IRC, filed August 22, 2017, page 8.

<sup>179</sup> Exhibit A, IRC, filed August 22, 2017, page 8.

<sup>180</sup> Exhibit A, IRC, filed August 22, 2017, page 8.

<sup>181</sup> Exhibit A, IRC, filed August 22, 2017, page 8.

<sup>182</sup> Exhibit D, Claimant’s Comments on the Draft Proposed Decision, filed November 6, 2020, page 6. Emphasis in original. The claimant refers to Exhibit A, IRC, filed August 22, 2017, pages 413-414.

<sup>183</sup> Exhibit D, Claimant’s Comments on the Draft Proposed Decision, filed November 6, 2020, page 6.

unit performing the mandate.<sup>184</sup> The claimant states that the Controller based its analysis on “irrelevant billing contractual descriptions to classify costs rather than the actual functional criteria of those costs/positions as specified under the Parameter and Guidelines” and other relevant authorities.<sup>185</sup> The claimant further asserts that the Controller used an incorrect definition of ‘direct costs’ in its January 22, 2018 comments on the IRC that “may have also led to their error . . . in their classification of direct and indirect costs.”<sup>186</sup> The claimant reiterates that one sergeant position for indirect costs is insufficient because it requested that all or a majority of sergeant costs be included in its overhead calculation.<sup>187</sup> The claimant alleges that the Controller’s conclusion “was arbitrary and did not reasonably explain why they did not treat all employees who performed in an identical job classification consistently.”<sup>188</sup> Finally, the claimant argues that the Controller’s indirect cost conclusion “yields a clearly false and illogical result, showing a clear error in judgment” because:

With over 32 Patrol Deputies employed and working 24-hour shifts, it would be physically impossible for one single Sergeant working an eight-hour day to supervise multiple squads of officers working round the clock as well as the station's entire professional staff.<sup>189</sup>

### **B. State Controller’s Office**

The Controller maintains that its reductions are correct, and states that reductions related to the number of domestic violence-related calls for assistance in Finding 1 are based on a lack of supporting documentation.<sup>190</sup> The Controller states that the claimant “did not properly support the claimed number of domestic violence-related calls for assistance incidents for FY 2001-02 through FY 2006-07, as the city provided no supporting documentation beyond a total number of incidents claimed.”<sup>191</sup> The Controller states that “[a]s an alternative to allowing no costs in FY 2001-02 through FY 2006-07, the SCO computed an average number of incidents based on the actual data reports provided for FY 2007-08 through FY 2011-12,” and applied that average to

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<sup>184</sup> Exhibit D, Claimant’s Comments on the Draft Proposed Decision, filed November 6, 2020, page 8.

<sup>185</sup> Exhibit D, Claimant’s Comments on the Draft Proposed Decision, filed November 6, 2020, page 8.

<sup>186</sup> Exhibit D, Claimant’s Comments on the Draft Proposed Decision, filed November 6, 2020, page 9.

<sup>187</sup> Exhibit D, Claimant’s Comments on the Draft Proposed Decision, filed November 6, 2020, pages 9-11.

<sup>188</sup> Exhibit D, Claimant’s Comments on the Draft Proposed Decision, filed November 6, 2020, page 11.

<sup>189</sup> Exhibit D, Claimant’s Comments on the Draft Proposed Decision, filed November 6, 2020, page 11.

<sup>190</sup> Exhibit B, Controller’s Comments on the IRC, filed January 22, 2018, page 16.

<sup>191</sup> Exhibit B, Controller’s Comments on the IRC, filed January 22, 2018, page 17.

the earlier part of the audit period.<sup>192</sup> The Controller disagrees with the claimant's characterization of its audit finding as a qualitative assessment of the reliability of the compiled data:

In its final audit report, the SCO attested to the accuracy of full ARJIS reports provided for FY 2007-08 through FY 2011-12 that the SCO was able to analyze and verify .... However, the SCO did not attest to the reliability of counts claimed or any other historical data for other fiscal years of the audit period, as the city did not provide support for claimed incident counts FY 2001-02 through FY 2006-07.<sup>193</sup>

The Controller further states, “[t]he SCO would have audited the statistics for the entire audit period if supporting documentation had been provided for our review.”<sup>194</sup> The Controller notes:

Corroborating documentation cannot be substituted for actual source documents. The SCO cannot use unverified reports from other agencies, nor accept correspondence at face value; we must perform substantive testing procedures to verify the accuracy of claimed information.<sup>195</sup>

The Controller states that its audit found “variances” from the claimed amounts in each of the five years that it was able to analyze fully. According to the Controller:

Rather than guessing at the errors in the claimed counts for FY 2001-02 through FY 2006-07, the SCO relied on actual counts that had been verified... [and] computed an average incident count based on verified actual ARJIS data for FY 2007-08 through FY 2011-12 and applied this average to compute costs for unsupported years.<sup>196</sup>

As to the contract hourly rates (that the claimant calls “deconstructed” rates because the Controller separated them by classification), the Controller explains:

The claimed rates were overstated because the city used inconsistent methodology to compute claimed rates, used contract salary and benefit amounts that were co-mingled with multiple classifications, and applied inconsistent annual contract hours to compute claimed hourly rates.<sup>197</sup>

The Parameters and Guidelines allow “only the pro rata portion of the services used to implement the reimbursable activities be claimed.”<sup>198</sup> The Controller found that for 2001-2002 through 2006-2007, the claimant “co-mingled multiple classifications and overhead costs into

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<sup>192</sup> Exhibit B, Controller's Comments on the IRC, filed January 22, 2018, page 17.

<sup>193</sup> Exhibit B, Controller's Comments on the IRC, filed January 22, 2018, page 20.

<sup>194</sup> Exhibit B, Controller's Comments on the IRC, filed January 22, 2018, page 19.

<sup>195</sup> Exhibit B, Controller's Comments on the IRC, filed January 22, 2018, page 19.

<sup>196</sup> Exhibit B, Controller's Comments on the IRC, filed January 22, 2018, page 20.

<sup>197</sup> Exhibit B, Controller's Comments on the IRC, filed January 22, 2018, page 20.

<sup>198</sup> Exhibit B, Controller's Comments on the IRC, filed January 22, 2018, page 20.

one rate [for salaries and benefits].”<sup>199</sup> This included classifications that did not perform mandated activities, and so the Controller sought to separate the costs of mandated activities with those unrelated to the mandate, using cost schedules provided by SDSO.<sup>200</sup> For fiscal years 2007-2008 through 2011-2012, the costs were already segregated by classification within the contract, and so the Controller accepted those rates.<sup>201</sup> With respect to comingling positions within a contract, the Controller states “this should not preclude the city from determining which portion of the contract costs relate to the mandated program and which do not.”<sup>202</sup> Finally, the Controller asserts that “[r]e-computing claimed rates is one of those audit procedures necessary to determine whether claimed rates represent costs incurred for the performance of the mandated activities or whether those rates include costs outside the scope of the program.”<sup>203</sup>

With respect to the indirect cost issue, the Controller found that for fiscal years 2001-2002 through 2006-2007, indirect costs were claimed based on the 10 percent default rate allowed by the Parameters and Guidelines. The claimant applied the rates to contract services that the Controller found were incorrectly claimed as salaries and benefits.<sup>204</sup> Regarding fiscal years 2007-2008 through 2011-2012, the claimant prepared indirect cost rate proposals (ICRPs), but the Controller asserts they were misapplied to contract costs.<sup>205</sup>

The Controller determined that the contract services costs are not an appropriate cost basis against which to apply an indirect cost rate, whether it is the 10 percent default rate, or an ICRP.<sup>206</sup> Because the claimant’s contract with the SDSO for fiscal years 2007-2008 through 2011-2012 isolated costs by classification, and provided labor costs and additional overhead separately, the Controller was able to calculate an indirect cost rate for each of the last five years of the audit period based on salaries and benefits for those performing the mandated activities. The Controller then averaged those indirect cost rates to apply to the earlier part of the audit period, fiscal years 2001-2002 through 2006-2007, for which contract costs were not segregated by classification.<sup>207</sup>

The Controller calculated indirect costs for the latter five years of the audit period “by dividing the sum of total contract overhead line items plus Station Support Staff and Administrative Sergeant position costs, by the contracted labor costs identified in the contract supplemental schedules.”<sup>208</sup> The “contract overhead line items” included, for example, supplies, vehicles,

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<sup>199</sup> Exhibit B, Controller’s Comments on the IRC, filed January 22, 2018, page 21.

<sup>200</sup> Exhibit B, Controller’s Comments on the IRC, filed January 22, 2018, page 21.

<sup>201</sup> Exhibit B, Controller’s Comments on the IRC, filed January 22, 2018, page 21.

<sup>202</sup> Exhibit B, Controller’s Comments on the IRC, filed January 22, 2018, page 23.

<sup>203</sup> Exhibit B, Controller’s Comments on the IRC, filed January 22, 2018, page 23.

<sup>204</sup> Exhibit B, Controller’s Comments on the IRC, filed January 22, 2018, page 24.

<sup>205</sup> Exhibit B, Controller’s Comments on the IRC, filed January 22, 2018, page 24.

<sup>206</sup> Exhibit B, Controller’s Comments on the IRC, filed January 22, 2018, page 23.

<sup>207</sup> Exhibit B, Controller’s Comments on the IRC, filed January 22, 2018, pages 24-25.

<sup>208</sup> Exhibit B, Controller’s Comments on the IRC, filed January 22, 2018, page 24.

workspace, and other similar items.<sup>209</sup> The Controller notes that the rates it calculated are “contract-related indirect cost rates,” rather than ICRPs, because the costs are derived from the amounts in the contracts, and applied to the contract, rather than direct labor costs, which the claimant did not incur.<sup>210</sup> The claimant does not agree with the rates determined by the Controller, specifically because “the majority of the Sergeant Classification costs should be allocated as indirect costs.”<sup>211</sup> The Controller, however, maintains that it “accounted for all appropriate contracted overhead costs that benefited the implementation of the entire contract.”<sup>212</sup> With respect to the claimant’s argument that the other approximately seven Sergeants who also have administrative and support duties should be included in the calculation of indirect costs, the Controller explains:

As stated above, the SCO’s original position was that the city did not incur any direct or indirect labor costs. The SCO believed all labor costs listed in the contract should be considered direct contract costs. The SCO originally computed the overhead rates for FY 2007-08 through FY 2011-12 by dividing the subtotals of overhead amounts listed in the bullets above by total labor costs listed in Attachments B [sic] to account for total overhead costs benefiting the execution of the contract as a whole. The SCO presented these computations to the city during the status meeting held on April 10, 2016 (Tab 20). Following the discussions held at the status meeting, the SCO responded to the city’s comments via email dated April 17, 2017, and explained the SCO’s position regarding labor costs (Tab 21).

The city discussed the issue with the SCO’s auditors via a teleconference and email correspondence (Tab 22). The city reviewed the SCO’s methodology and proposed that we consider Station Support Staff and Administrative Sergeant position as part of the contract overhead cost pool. The city therefore proposed to move these costs into the contract indirect cost pool and exclude them from the direct labor amount. Although the SCO’s position still remained that the city had not incurred any direct or indirect labor costs, after consideration of the city’s proposal, the SCO concluded it was reasonable (Tab 22). The SCO revised its computations of the contracted indirect cost rates, and increased the allowable indirect cost rates accordingly to include these positions requested by the city (Tab 19). Therefore, the SCO’s determination to include only these positions in the overhead cost pool and not others was not arbitrary, but rather in direct response to the city’s requests (Tab 22). The SCO worked with the city to find a reasonable approach. The inclusion of the Station Support Staff and Administrative Sergeant position costs resulted in the increase of allowable indirect cost rates for the audit period. The Exit Conference Handout

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<sup>209</sup> Exhibit B, Controller’s Comments on the IRC, filed January 22, 2018, page 24.

<sup>210</sup> Exhibit B, Controller’s Comments on the IRC, filed January 22, 2018, page 27.

<sup>211</sup> Exhibit B, Controller’s Comments on the IRC, filed January 22, 2018, page 28. Exhibit D, Claimant’s Comments on the Draft Proposed Decision, filed November 6, 2020, page 9.

<sup>212</sup> Exhibit B, Controller’s Comments on the IRC, filed January 22, 2018, page 28.

demonstrates that allowable indirect cost rates increased from the initial finding presented at the status meeting (Tab 23).<sup>213</sup>

Regarding the claimant's objection to using an average indirect cost rate based on the later years of the audit period and applying it to the earlier years (2001-2002 through 2006-2007), the Controller notes that the claimant's proposed alternative methodology uses a cost schedule that "we were unable to reference, from the city's Exhibits."<sup>214</sup> The Controller states: "We believe the city is referring to the CLEP Costing Schedule for FY 2001-02 (Tab 16)," but adds that the claimant's proposal, based on the comingled contract rates and overhead line items, actually results in a lower indirect cost rate than the Controller's methodology.<sup>215</sup> The Summary of Indirect Costs, attached to the Controller's Comments on the IRC, shows that for fiscal years 2001-2002 through 2006-2007, the amount of allowable indirect costs is between \$7,126 and \$10,608 higher than the annual amount claimed.<sup>216</sup>

The Controller maintains that its audit adjustments are correct and should be upheld by the Commission.<sup>217</sup> The Controller did not file comments on the Draft Proposed Decision.

#### **IV. Discussion**

Government Code section 17561(d) authorizes the Controller to audit the claims filed by local agencies and school districts and to reduce any claim for reimbursement of state-mandated costs if the Controller determines that the claim is excessive or unreasonable.

Government Code section 17551(d) requires the Commission to hear and decide a claim that the Controller has incorrectly reduced payments to the local agency or school district. If the Commission determines that a reimbursement claim has been incorrectly reduced, section 1185.9 of the Commission's regulations requires the Commission to send the decision to the Controller and request that the costs in the claim be reinstated.

The Commission must review questions of law, including interpretation of the parameters and guidelines, de novo, without consideration of legal conclusions made by the Controller in the context of an audit. The Commission is vested with exclusive authority to adjudicate disputes over the existence of state-mandated programs within the meaning of article XIII B, section 6 of the California Constitution.<sup>218</sup> The Commission must also interpret the Government Code and implementing regulations in accordance with the broader constitutional and statutory scheme. In making its decisions, the Commission must strictly construe article XIII B, section 6 and not

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<sup>213</sup> Exhibit B, Controller's Comments on the IRC, filed January 22, 2018, page 29.

<sup>214</sup> Exhibit B, Controller's Comments on the IRC, filed January 22, 2018, page 27.

<sup>215</sup> Exhibit B, Controller's Comments on the IRC, filed January 22, 2018, pages 27-28.

<sup>216</sup> Exhibit B, Controller's Comments on the IRC, filed January 22, 2018, page 408 (Summary of Indirect Costs).

<sup>217</sup> Exhibit B, Controller's Comments on the IRC, filed January 22, 2018, page 29.

<sup>218</sup> *Kinlaw v. State of California* (1991) 54 Cal.3d 326, 331-334; Government Code sections 17551, 17552.



apply it as an “equitable remedy to cure the perceived unfairness resulting from political decisions on funding priorities.”<sup>219</sup>

With regard to the Controller’s audit decisions, the Commission must determine whether they were arbitrary, capricious, or entirely lacking in evidentiary support. This standard is similar to the standard used by the courts when reviewing an alleged abuse of discretion of a state agency.<sup>220</sup> Under this standard, the courts have found that:

When reviewing the exercise of discretion, “[t]he scope of review is limited, out of deference to the agency’s authority and presumed expertise: ‘The court may not reweigh the evidence or substitute its judgement for that of the agency. [Citation.]’” ... “In general ... the inquiry is limited to whether the decision was arbitrary, capricious, or entirely lacking in evidentiary support...” [Citations.] When making that inquiry, the “ ‘court must ensure that an agency has adequately considered all relevant factors, and has demonstrated a rational connection between those factors, the choice made, and the purposes of the enabling statute.’ ” [Citation.]”<sup>221</sup>

The Commission must review the Controller’s audit in light of the fact that the initial burden of providing evidence for a claim of reimbursement lies with the claimant.<sup>222</sup> In addition, sections 1185.1(f)(3) and 1185.2(d) and (e) of the Commission’s regulations require that any assertions of fact by the parties to an IRC must be supported by documentary evidence. The Commission’s ultimate findings of fact must be supported by substantial evidence in the record.<sup>223</sup>

**A. The Claimant Timely Filed This IRC Within Three Years from the Date the Claimant First Received from the Controller a Final State Audit Report, Letter, or Other Written Notice of Adjustment to a Reimbursement Claim.**

Government Code section 17561 authorizes the Controller to audit the reimbursement claims and records of local government to verify the actual amount of the mandated costs, and to reduce any claim that the Controller determines is excessive or unreasonable. If the Controller reduces a claim on a state-mandated program, the Controller is required by Government Code section 17558.5(c) to notify the claimant in writing, specifying the claim components adjusted, the

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<sup>219</sup> *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1264, 1281, citing *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1817.

<sup>220</sup> *Johnson v. Sonoma County Agricultural Preservation and Open Space Dist.* (2002) 100 Cal.App.4th 973, 983-984. See also *American Bd. of Cosmetic Surgery, Inc. v. Medical Bd. of California* (2008) 162 Cal.App.4th 534, 547.

<sup>221</sup> *American Bd. of Cosmetic Surgery, Inc. v. Medical Bd. of California* (2008) 162 Cal.App.4th 534, 547-548.

<sup>222</sup> *Gilbert v. City of Sunnyvale* (2005) 130 Cal.App.4th 1264, 1274-1275.

<sup>223</sup> Government Code section 17559(b), which provides that a claimant or the state may commence a proceeding in accordance with the provisions of section 1094.5 of the Code of Civil Procedure to set aside a decision of the Commission on the ground that the Commission’s decision is not supported by substantial evidence in the record.

amounts adjusted, interest charges on claims adjusted to reduce the overall reimbursement to the claimant, and the reason for the adjustment. The claimant may then file an IRC with the Commission alleging that the Controller's reduction was incorrect.<sup>224</sup> Section 1185.1 of the Commission's regulations requires IRCs to be filed no later than three years after the claimant first receives from the Controller a final state audit report, letter, or other written notice of adjustment to a reimbursement claim that complies with Government Code section 17558.5(c).

The Final Audit Report, dated June 30, 2017, specifies the claim components and amounts adjusted, and the reasons for the adjustments,<sup>225</sup> and thereby complies with the notice requirements in Government Code section 17558.5(c). The claimant filed the IRC on August 22, 2017.<sup>226</sup> Less than two months having elapsed between the issuance of the Final Audit Report and the IRC filing, the Commission finds that the IRC is timely filed.

**B. The Commission Does Not Have Jurisdiction to Determine the Controller's Adjustments to the Number of Reports of Domestic Violence-Related Calls for Assistance in Fiscal Year 2001-2002 (Finding 1), or the Adjustment to Indirect Costs for Fiscal Years 2001-2002 Through 2006-2007 (Finding 2), Because the Controller's Adjustments Did Not Result in a Reduction of Allowable Costs.**

The claimant challenges two adjustments made by the Controller that resulted in *increased* allowable costs for the claimant. First, the claimant alleges that the Controller's adjustments in Finding 1, related to the allowable number of written reports of domestic violence-related calls for assistance "in fiscal years 2001-2002 through 2006-2007," are incorrect.<sup>227</sup> The claimant and the Controller identify the number of incident reports claimed for fiscal year 2001-2002 as 208, and the number allowed by the Controller for fiscal year 2001-2002 as 274.<sup>228</sup> Thus, the Controller increased the allowable number of incident reports by 66 incidents for fiscal year 2001-2002, which increases allowable costs and does not result in a reduction of costs.

The claimant also alleges that the Controller's method of calculating indirect costs for the entire audit period is incorrect.<sup>229</sup> The Controller's calculation of indirect costs for fiscal years 2001-2002 through 2006-2007, however, resulted in an increase of annual indirect cost rates from 10 percent to 47.7 percent.<sup>230</sup>

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<sup>224</sup> Government Code sections 17551(d), 17558.7; California Code of Regulations, title 2, sections 1185.1, 1185.9.

<sup>225</sup> Exhibit A, IRC, filed August 22, 2017, page 517 (Final Audit Report, Cover Letter).

<sup>226</sup> Exhibit A, IRC, filed August 22, 2017, page 1.

<sup>227</sup> Exhibit A, IRC, filed August 22, 2017, page 5.

<sup>228</sup> Exhibit A, IRC, filed August 22, 2017, page 5; Exhibit B, Controller's Comments on the IRC, filed January 22, 2018, page 342.

<sup>229</sup> Exhibit A, IRC, filed August 22, 2017, pages 7-8.

<sup>230</sup> Exhibit A, IRC, filed August 22, 2017, page 542 (Final Audit Report).

Pursuant to Government Code section 17551(d), the Commission only has jurisdiction over reductions taken in the context of an audit. Therefore, the Commission does not have jurisdiction to consider these adjustments that increase allowable costs.

**C. The Controller’s Reduction in Finding 1 to the Number of Written Reports for Domestic Violence-Related Calls for Assistance Claimed for Fiscal Years 2002-2003 through 2006-2007 Is Not Arbitrary, Capricious, or Entirely Lacking in Evidentiary Support.**

The Controller reduced the number of reports for domestic violence-related calls for assistance claimed for fiscal years 2002-2003 through 2006-2007. The number of incident reports claimed are not reflected on the reimbursement claims for these fiscal years, but were “obtained [during the audit] from the summary schedule received 3/17/16,” and based on a combination of DOJ counts and ARJIS counts.”<sup>231</sup> Since the claimant was not able to provide ARJIS reports or supporting documentation to verify the number of incidents reports claimed for these years, the Controller calculated an average of 274 incident reports per year based on the verified data from fiscal years 2007-2008 through 2011-2012, and applied that average incident report count to each fiscal year from 2002-2003 through 2006-2007, resulting in a reduction of 412 reports for those years.<sup>232</sup> The claimant and the Controller identify the following number of incident reports claimed and the number allowed for these fiscal years:<sup>233</sup>

	<u>Claimed Incident Reports</u>	<u>Allowable Incident Reports</u>
FY 2002-2003	356	274
FY 2003-2004	323	274
FY 2004-2005	359	274
FY 2005-2006	371	274
FY 2006-2007	373	274

The claimant challenges this reduction stating that the SDSO “converted its data to a new system in 2007 and [was] not able to generated [sic] the detailed reports SCO requested during the audit – a detailed report showing each incident by case number, date and Penal Code for all the fiscal years.”<sup>234</sup> The claimant argues that:

The SDSO did however maintain the total annual case counts in summary format and believes these reports are adequate to prove the total number of Domestic Violence cases for which reports were written in compliance with the State

<sup>231</sup> Exhibit B, Controller’s Comments on the IRC, filed January 22, 2018, page 342.

<sup>232</sup> Exhibit A, IRC, filed August 22, 2017, pages 5, 529 (Final Audit Report).

<sup>233</sup> Exhibit A, IRC, filed August 22, 2017, page 5; Exhibit B, Controller’s Comments on the IRC, filed January 22, 2018, page 342.

<sup>234</sup> Exhibit A, IRC, filed August 22, 2017, page 4.

Mandated program particularly since all the other five fiscal years audited proved 100% reliability [sic].<sup>235</sup>

The “summary reports” that the claimant references are faxed reports from the SDSO, appearing to answer a query from the claimant representative as follows: “I am working with the following cities and would like to requests [sic] crime stats for the Cities of Encinitas and San Marcos [the claimant] for the following types of cases,” including “the number of domestic violence calls for services and cases.”<sup>236</sup> Specifically, for fiscal years 2002-2003 and 2003-2004, the single-page fax and cover pages are dated August 15, 2003 and August 24, 2004, and contain a handwritten annual incident count for several crimes including “the number of domestic violence calls for service and cases” for the City of San Marcos at 360 and 394, respectively.<sup>237</sup> For fiscal years 2004-2005, 2005-2006, and 2006-2007, the annual incident count for “domestic violence calls and cases” and “domestic violence calls for service” for the claimant is identified as 336, 350, and 346 respectively, based on the “Data Source: ARJIS”, “available as of August 8, 2005, August 30, 2006, and October 2, 2007.”<sup>238</sup>

According to the claimant: “[u]sing an average from just the five most recent audited years does not adequately compensate the City for actual mandate related DV case costs. This SCO averaging resulted in an approximately 10% reduction to the City's costs claimed.”<sup>239</sup>

In addition, the claimant provides other sources of data that it argues are “‘actual’ and ‘contemporaneous’ statistics” and “were prepared based on contemporaneously provided data.”<sup>240</sup> The first are 2002, 2007, and 2008 reports prepared by the San Diego Association of Governments (SANDAG), on “Crime in the San Diego Region.”<sup>241</sup> The claimant argues that these reports show that the claimed number of domestic violence-related calls for assistance match the DOJ statistics, are “extremely close” to ARJIS data provided, and that the rates of domestic violence were higher during 2002 through 2007 (the years costs were reduced) and were trending down.<sup>242</sup> In its comments on the Draft Proposed Decision, the claimant speaks to the discrepancy between DOJ and ARJIS statistics:

This variation was due to the fact that the State Department of Justice (DOJ) statistics used to prepare the claims were based on calendar year reporting whereas the ARJIS statistics were reported by fiscal year. When the data is examined in total for the time period audited, the variation is extremely small. During the 5 years audited, the State found that the variation during this period

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<sup>235</sup> Exhibit A, IRC, filed August 22, 2017, page 4.

<sup>236</sup> Exhibit A, IRC, filed August 22, 2017, pages 27-39.

<sup>237</sup> Exhibit A, IRC, filed August 22, 2017, pages 31-33.

<sup>238</sup> Exhibit A, IRC, filed August 22, 2017, pages 34-39; 5.

<sup>239</sup> Exhibit A, IRC, filed August 22, 2017, page 4.

<sup>240</sup> Exhibit A, IRC, filed August 22, 2017, page 4.

<sup>241</sup> Exhibit A, IRC, filed August 22, 2017, pages 40-290 (SANDAG reports).

<sup>242</sup> Exhibit A, IRC, filed August 22, 2017, page 4, 537 (Final Audit Report).

was less than 10 cases out of an average of 1,300 cases examined (a negligible amount).<sup>243</sup>

The claimant also provided emails from Brent Jordan, Sr., a Crime and Intel Analyst for SDSO, who states that the SANDAG reports represent “reported crime meaning that they had a case number and a written incident report,” and Lieutenant Schaller of the SDSO, stating: “Just confirming Brent’s statement here. These stats were generated by actual reports generated.”<sup>244</sup>

In addition, the claimant provided California DOJ crime data: “CJSC Statistics: Domestic Violence-Related Calls for Assistance,” reported for the claimant’s jurisdiction, which identifies the total number of domestic violence related calls for assistance in the claimant’s jurisdiction in calendar years 2002 through 2007,<sup>245</sup> and DOJ’s March 2000 publication, “Criminal Statistics Reporting Requirements,” which states that local agencies are required to report data on the number of domestic violence calls on a monthly basis.<sup>246</sup>

In response to the IRC, the Controller considered the claimant’s documentation, which corroborates the numbers of written domestic violence incident reports used in the claimant’s cost calculations, but states that the documentation does not allow the Controller to verify the validity of the number of incidents or whether they relate to the mandated activity. The Controller notes that the fax transmittals submitted by the claimant do not contain any detail or supporting information to show how the numbers were obtained, or how they related to domestic violence-related calls for assistance. The fax cover sheets also do not provide a list of cases for each fiscal year in question, so that the Controller could not verify whether they were accurate. The Controller also states that the SANDAG reports are not relevant because they do not provide a listing of incident counts to demonstrate that they relate to the reimbursable activity. And the Controller states that the DOJ reports do not provide any assurance that the reported information is accurate or related to the mandated program.<sup>247</sup> The Controller explains that:

The SCO cannot use unverified reports from other agencies, nor accept correspondence at face value; we must perform substantive testing procedures to verify the accuracy of claimed information. Accepting unsubstantiated statistics that cannot be traced to source documents contradicts our objectives that include verifying the information presented in the city’s claims.<sup>248</sup>

The Controller further explains that since the claimed incident counts from the ARJIS reports for fiscal years 2007-2008 through 2011-2012 contained errors, the Controller concluded that it was

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<sup>243</sup> Exhibit D, Claimant’s Comments on the Draft Proposed Decision, filed November 6, 2020, page 2.

<sup>244</sup> Exhibit A, IRC, filed August 22, 2017, page 537 (Final Audit Report); 615 (emails from Brent Jordan, Sr. and Lieutenant Schaller).

<sup>245</sup> Exhibit A, IRC, filed August 22, 2017, pages 292-297.

<sup>246</sup> Exhibit A, IRC, filed August 22, 2017, pages 4, 298-310 (DOJ reports and “Criminal Statistics Reporting Requirements” March 2000).

<sup>247</sup> Exhibit B, Controller’s Comments on the IRC, filed January 22, 2018, page 19.

<sup>248</sup> Exhibit B, Controller’s Comments on the IRC, filed January 22, 2018, page 19.

likely that the claimed incident counts for fiscal years 2002-2003 through 2006-2007 that are purportedly from “Data Source: ARJIS,” also contained errors.<sup>249</sup> For example, for FY 2007-08, the city claimed 291 domestic violence-related calls for assistance incidents. The Controller’s review of the ARJIS reports and the testing of actual incident files revealed a variance of 55 incidents (about 20 percent variance) and an allowable count of 236 incidents. The Controller’s analysis revealed that each of the five years contained deviations from claimed information.<sup>250</sup> Thus, “instead of allowing no costs,” the Controller computed the average incident count based on verified ARJIS data for fiscal years 2007-2008 through 2011-2012 and applied that average to fiscal years 2002-2003 through 2006-2007, stating:

Rather than guessing at the errors in the claimed counts for FY 2001-02 through FY 2006-07, the SCO relied on actual counts that had been verified for FY 2007-08 through FY 2011-12. Instead of allowing no costs, the SCO computed an average incident count based on verified actual ARJIS data for FY 2007-08 through FY 2011-12 and applied this average to compute costs for unsupported years.<sup>251</sup>

The Parameters and Guidelines, adopted in 2010, require that claims for actual costs must be traceable and supported by contemporaneous source documentation (documents created at or near the time costs were incurred that show the validity of such costs, when they were incurred, and their relationship to the reimbursable activities) and define source documents to include employee time records or time logs, sign-in sheets, invoices and receipts, as follows:

To be eligible for mandated cost reimbursement for any given 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, time sheets, worksheets, cost allocation reports (system generated), purchase orders, contracts, agendas, calendars, 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 reported in

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<sup>249</sup> Exhibit A, IRC, filed August 22, 2017, pages 529, 536 (Final Audit Report). Exhibit B, Controller’s Comments on the IRC, filed January 22, 2018, pages 17, 20.

<sup>250</sup> Exhibit B, Controller’s Comments on the IRC, filed January 22, 2018, pages 20, 342, 343-349.

<sup>251</sup> Exhibit B, Controller’s Comments on the IRC, filed January 22, 2018, page 20.

compliance with local, state, and federal government requirements. However, corroborating documents cannot be substituted for source documents.<sup>252</sup>

Although the Parameters and Guidelines are regulatory in nature, due process requires that a claimant have reasonable notice of any law that affects their substantive rights and liabilities.<sup>253</sup> Thus, if provisions in parameters and guidelines affect substantive rights or liabilities of the parties that change the legal consequences of past events, then the application of those provisions may be considered unlawfully retroactive under due process principles.<sup>254</sup> Provisions that impose new, additional, or different liabilities based on past conduct are unlawfully retroactive.<sup>255</sup>

Here, the claimant was not on notice of the *contemporaneous* source document requirement (CSDR) when the costs were incurred in fiscal years 2002-2003 through 2006-2007 because the Parameters and Guidelines were not adopted until September 2010. As the claimant argued in its comments on the Draft Proposed Decision:

It took the State over 10 years to review the test claim, adopt Parameters and Guidelines, and release claiming instructions for this program. Then an additional 6 years for the State Controller's Office (SCO) to initiate an audit of the program. It can be no surprise that "detailed" actual reports of each and every case are no longer available nor maintained by local agencies for State Controller to do their full review by case level. To expect that the same computer systems are still operational and full reports available after almost twenty years is beyond reasonable.<sup>256</sup>

The Commission agrees that, for due process reasons, the CSDR cannot be strictly enforced in these fiscal years. This is similar to the *Clovis Unified School Dist. v. Chiang* case, where the court addressed the Controller's use of the CSDR in audits before the rule was included in the parameters and guidelines, finding that the rule constituted an underground regulation. The court recognized that "it is now physically impossible to comply with the CSDR's requirement of contemporaneousness . . . ."<sup>257</sup> The Controller, however, requested that the court take judicial notice that the Commission adopted the contemporaneous source document rule by later amending the parameters and guidelines. The court denied the request and did not apply the

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<sup>252</sup> Exhibit A, IRC, filed August 22, 2017, page 503 (Parameters and Guidelines).

<sup>253</sup> *In re Cindy B.* (1987) 192 Cal.App.3d 771, 783-784; *Clovis Unified School Dist. v. Chiang* (2010) 188 Cal.App.4th 794, 804-805.

<sup>254</sup> *Department of Health Services v. Fontes* (1985) 169 Cal.App.3d 301, 304-305; *Tapia v. Superior Court* (1991) 53 Cal.3d 282, 287-292; *Murphy v. City of Alameda* (1993) 11 Cal.App.4th 906, 911-912.

<sup>255</sup> *City of Modesto v. National Med, Inc.* (2005) 128 Cal.App.4th 518, 527.

<sup>256</sup> Exhibit D, Claimant's Comments on the Draft Proposed Decision, filed November 6, 2020, page 2.

<sup>257</sup> *Clovis Unified School Dist. v. Chiang* (2010) 188 Cal.App.4th 794, 804-805.

CSDR, since the issue concerned the use of the rule in earlier years, when no notice was provided to the claimant. The court stated:

We deny this request for judicial notice. This is because the central issue in the present appeal concerns the Controller’s policy of using the CSDR *during the 1998 to 2003 fiscal years*, when the CSDR was an underground regulation. This issue is not resolved by the Commission’s *subsequent* incorporation of the CSDR into its Intradistrict Attendance and Collective Bargaining Programs’ P & G’s. (Emphasis in original.)<sup>258</sup>

In this case, the Controller is *not* strictly enforcing the CSDR because the Controller is not requiring contemporaneous documentation and did not reduce the costs claimed to \$0. Instead, the Controller found that, unlike the later fiscal years when the claimant provided the ARJIS data reports verifying the incident number and the date the incident occurred to support the number of written reports claimed, the claimant did not provide any source documents to verify the number of written reports identified and claimed in fiscal years 2002-2003 through 2006-2007. Thus, the Controller exercised its audit authority and calculated the number of written reports for domestic violence-related calls for assistance in fiscal years 2002-2003 through 2006-2007 “based on verified actual ARJIS data for FY 2007-08 through FY 2011-12 and applied this average to compute costs for unsupported years.”<sup>259</sup>

Thus, the issue is whether the Controller’s reduction of the number of incident reports in fiscal years 2002-2003 through 2006-2007 is arbitrary, capricious, or without evidentiary support. Under this standard, the courts have held that:

When reviewing the exercise of discretion, “[t]he scope of review is limited, out of deference to the agency’s authority and presumed expertise: ‘The court may not reweigh the evidence or substitute its judgement for that of the agency. [Citation.]’” ... “In general ... the inquiry is limited to whether the decision was arbitrary, capricious, or entirely lacking in evidentiary support...” [Citations.] When making that inquiry, the “ ‘ ‘court must ensure that an agency has adequately considered all relevant factors, and has demonstrated a rational connection between those factors, the choice made, and the purposes of the enabling statute.’ ” [Citation.]’ ”<sup>260</sup>

The Controller's discretionary or fact-finding powers generally involve the determination of the factual circumstances necessary to establish the validity of a particular claim.<sup>261</sup> Thus, even though the claimant urges the Commission to reject the Controller’s audit decisions and determination of the number of written incident reports, the Commission may *not* reweigh the evidence or substitute its judgement for that of the Controller. Instead, the inquiry is limited to

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<sup>258</sup> *Clovis Unified School Dist. v. Chiang* (2010) 188 Cal.App.4th 794, 809, fn. 5.

<sup>259</sup> Exhibit B, Controller’s Comments on the IRC, filed January 22, 2018, page 20; Exhibit A, IRC, filed August 22, 2017, page 529 (Final Audit Report).

<sup>260</sup> *American Bd. of Cosmetic Surgery, Inc. v. Medical Bd. of California* (2008) 162 Cal.App.4th 534, 547-548.

<sup>261</sup> *Tirapelle v. Davis* (1993) 20 Cal.App.4th 1317, 1329.



whether the Controller adequately considered the claimant's documentation, all relevant factors, and demonstrated a rational connection between those factors and the adjustments made. Based on this record, the Commission finds that the Controller has adequately met this burden.

As indicated above, the Controller found that the claimant's fax transmittals from the SDSO do not contain any detail or supporting information to show how the annual numbers were obtained. Unlike the ARJIS reports that were available for the Controller's review for fiscal years 2007-2008 through 2011-2012, which identified the date, time, and incident number for each domestic violence-related calls for assistance,<sup>262</sup> the fax transmittals sent to the claimant's representative for fiscal years 2002-2003 through 2006-2007 do not provide this information. The fax transmittals simply identify a total number of "domestic violence calls and cases" and "domestic violence calls for service" in the fiscal year as requested by the claimant's representative.<sup>263</sup> The fax transmittals do not provide a list of cases for each fiscal year in question so that the Controller could properly analyze and verify whether the total numbers actually related to the incident counts in the mandated program and whether the numbers were accurate.<sup>264</sup>

Also, the Controller found that the SANDAG reports for 2002, 2007, and 2008 are not reliable because, like the fax sheets, they do not provide a listing of incident counts to demonstrate that they relate to the reimbursable activity. Similarly, the DOJ reports do not provide any assurance that the reported information is accurate or related to the mandated program.<sup>265</sup> In its comments on the Draft Proposed Decision, the claimant alleges that the DOJ audits the data provided to them by local law enforcement to verify its accuracy, which should "add credibility and confidence to the State DOJ and ... ARJIS statistics."<sup>266</sup> However, the DOJ reports do not identify the date, time, and incident number for each domestic violence-related call for assistance, or whether a written incident report was prepared and claimed in accordance with the mandate.<sup>267</sup>

The Controller also explains that it did not accept the claimant's summary data for the disputed years, which were based on ARJIS and DOJ reports, because of the errors it found in the ARJIS incident counts for fiscal years 2007-2008 through 2011-2012. Thus, "[i]nstead of allowing no costs in the earlier years, the SCO computed an average incident count based on *verified* actual

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<sup>262</sup> Exhibit B, Controller's Comments on the IRC, filed January 22, 2018, pages 344-375 (ARJIS reports of domestic violence-related calls for assistance for fiscal years 2007-2008 through 2011-2012).

<sup>263</sup> Exhibit A, IRC, filed August 22, 2017, pages 27-39.

<sup>264</sup> Exhibit B, Controller's Comments on the IRC, filed January 22, 2018, page 19.

<sup>265</sup> The DOJ data are reported on a calendar year basis, while the ARJIS data is reported on a fiscal year basis. See Exhibit A, IRC, filed August 22, 2017, page 4.

<sup>266</sup> Exhibit D, Claimant's Comments on the Draft Proposed Decision, filed November 6, 2020, page 2.

<sup>267</sup> Exhibit A, IRC, filed August 22, 2017, pages 27-39.

ARJIS data for FY 2007-08 through FY 2011-12 and applied this average to compute costs for the unsupported years.”<sup>268</sup>

The record shows that the Controller adequately considered the claimant’s documentation, all relevant factors, and demonstrated a rational connection between those factors and the adjustments made to the number of written incident reports claimed. Although the claimant has provided faxed documents from SDSO to the claimant’s representative and third party reports purportedly identifying the number of domestic violence-related calls for assistance in the claim years, the claimant has not provided any source documentation (such as a list of incidents and the date they occurred, or the written incident reports themselves) for the Controller to verify the actual number of written incident reports prepared under the mandate and claimed.

The Controller’s audit findings are consistent with Government Code section 17561(d)(1)(C), which authorizes the Controller to audit the records of any local agency or school district to verify the actual amount of mandated costs. Moreover, the courts have held that the Controller’s duty to audit includes the duty to ensure that expenditures are authorized by law.<sup>269</sup> As indicated above, the Commission is required to defer to the Controller’s audit authority and presumed expertise in these circumstances.<sup>270</sup>

Based on this record, the Commission finds that the Controller’s reduction and recalculation in Finding 1 of the number of written reports for domestic violence-related calls for assistance in fiscal years 2002-2003 through 2006-2007 is not arbitrary, capricious, or entirely lacking in evidentiary support.

**D. The Controller’s Reduction in Finding 1 to the Claimant’s Contracted Hourly Rates for Fiscal Years 2001-2002 Through 2006-2007 (Including the Adjustment to Annual Productive Hours) Is Correct as a Matter of Law and Not Arbitrary, Capricious, or Entirely Lacking in Evidentiary Support.**

It is undisputed that the claimant contracts for all law enforcement services with the SDSO, not just for performing the reimbursable activities.<sup>271</sup> For fiscal years 2001-2002 through 2006-2007, the Controller found that the claimant overstated the contract rates applicable to the mandate. For these fiscal years, the claimant used the contract rates charged by SDSO, which were billed on a “full cost per Patrol Deputy basis” and included all overhead costs built into that

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<sup>268</sup> Exhibit B, Controller’s Comments on the IRC, filed January 22, 2018, page 20. Emphasis added.

<sup>269</sup> *Tirapelle v. Davis* (1993) 20 Cal.App.4th 1317, 1335; see also, Government Code section 12410 states: “The Controller shall superintend the fiscal concerns of the state. The Controller shall audit all claims against the state, and may audit the disbursement of any state money, for correctness, legality, and for sufficient provisions of law for payment.”

<sup>270</sup> *American Bd. of Cosmetic Surgery, Inc. v. Medical Bd. of California* (2008) 162 Cal.App.4th 534, 547-548.

<sup>271</sup> Exhibit A, IRC, filed August 22, 2017, pages 316-468 (Contract for Law Enforcement Services). Exhibit B, Controller’s Comments on the IRC, filed January 22, 2018, page 23.

“unit” rate.<sup>272</sup> The Controller found that the claimant’s salary and benefit rates claimed for these fiscal years were overstated due to “co-mingled multiple classifications [including deputy patrol, sergeant patrol, and sergeant detective] into one rate,” and included employee classifications that did not perform the reimbursable activities.<sup>273</sup> The SDSO provided “segregated contract salary and benefit amounts,” which the Controller used to calculate allowable rates for fiscal years 2001-2002 through 2006-2007.<sup>274</sup> The Controller also found that the claimant used an inconsistent number of annual contract hours (from 3,102.5 to 1,742.91) to compute the claimed hourly rates.<sup>275</sup> Since the Controller was able to get segregated contract salary and benefit amounts, the Controller adjusted the annual productive hours to 1,743, as noted in the contract for the later undisputed years.<sup>276</sup> The combined recalculations resulted in annual reductions of contract hourly rates for sheriff’s deputies ranging from \$58.83 to \$87.54 for fiscal years 2001-2002 through 2006-2007.<sup>277</sup>

According to the Controller, recalculating the hourly rates for fiscal years 2001-2002 through 2006-2007 was “necessary to determine whether claimed rates represent costs incurred for the performance of the mandated activities or whether those rates include costs outside the scope of the program.”<sup>278</sup>

The claimant contends that the Controller’s findings are incorrect since the rates used by the claimant are consistent with the contracts for these fiscal years. The claimant states:

During the FY 2001-02 through FY 2006-07 time period, the City was billed for law enforcement services on a full cost per Patrol Deputy basis. The County's "Unit Cost" charge was based on the number of Deputies they "purchased", and all overhead costs (which included an allocation for Sergeant & Detective Position support) were built into that one rate. [Citation omitted.]

Accordingly, the City claimed costs using the Unit Cost for the Deputy position, and did not include any additional costs for the Sergeant to review and approve reports, as were eligible, since their costs were already factored into the Deputy's hourly rate.

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<sup>272</sup> Exhibit A, IRC, filed August 22, 2017, page 6.

<sup>273</sup> Exhibit A, IRC, filed August 22, 2017, page 532 (Final Audit Report); Exhibit B, Controller’s Comments on the IRC, filed January 22, 2018, pages 20-23, 377-398.

<sup>274</sup> Exhibit A, IRC, filed August 22, 2017, page 532 (Final Audit Report); Exhibit B, Controller’s Comments on the IRC, filed January 22, 2018, pages 377-398.

<sup>275</sup> Exhibit A, IRC, filed August 22, 2017, pages 532-533 (Final Audit Report). Exhibit B, Controller’s Comments on the IRC, filed January 22, 2018, pages 20-21, 377.

<sup>276</sup> Exhibit A, IRC, filed August 22, 2017, pages 532-533 (Final Audit Report). Exhibit B, Controller’s Comments on the IRC, filed January 22, 2018, pages 20-21, 377.

<sup>277</sup> Exhibit A, IRC, filed August 22, 2017, page 533 (Final Audit Report). For example, the deputy hourly rate for 2001-2002 was reduced from \$106.17 to \$47.34 (a \$58.83 reduction).

<sup>278</sup> Exhibit B, Controller’s Comments on the IRC, filed January 22, 2018, page 23.

Comingling of multiple positions in a contract situation is very common. When an agency contracts for outside legal or consulting services, for example, the rates charged typically include other support and administrative positions, such as allocations of costs for secretaries, receptionist, clerks, etc. The inclusion of support staff by the County in the Deputy's hourly rates is the same principle. The City is not aware of any case where the SCO deconstructed attorney or consultant billed rates because the rates had included other overhead charges and not just the actual employee salary. This is standard practice for external contract services.

Instead of using the Unit Cost as a whole contract service cost to determine the actual costs incurred by the City, the SCO's deconstructed the rates based on what the County paid only its own Deputy position. The deconstruction of the Unit Cost is inappropriate because it does not reflect actual costs and actual methods by which the services were billed to the City pursuant to the contract.<sup>279</sup>

In its comments on the Draft Proposed Decision, the claimant argues that the costs were actually not commingled among the different SDSO contract categories for patrol, traffic, and special purpose officers and, therefore the hourly rates claimed for patrol officers are correct:

The contracts with San Diego County Sheriff's Department/Office (SCSO) detail all costs by activity, and by direct and indirect costs for: PATROL – or general law enforcement activities; TRAFFIC enforcement activities; and CUSTOM units – broken down further by “Special Purpose Details” and “Special Purposes Officers”. This ensures that costs for TRAFFIC or CUSTOM or Special units are not comingled with the General Law Enforcement (PATROL) costs. [¶] . . . [¶]

The County [SDSO] had different overhead rates/charges for each type of unit; thus, only related applicable overhead would be included in the computation of the claim and Commission staff's concerns that, “hourly contract rates used by the claimant for fiscal years 2001-02 through 2006-07 are not specific to the mandated activities” are unfounded.

The City did not request reimbursement for the Sergeant and the Detective Sergeant positions during FY 2001-02 through FY 2006-07, therefore there is no issue of overbilling the State. [¶] . . . [¶]

SCO “deconstruction” of rates to extract Sergeant and Detective positions was unnecessary as a portion of their costs was already included in the contractual overhead rate.<sup>280</sup>

The claimant also maintains that the Controller obtaining salary and benefit information from the SDSO, as the contracting entity, is not supported by the Parameters and Guidelines, the Claiming Instructions or the Claiming Manual. The claimant refers to the claiming instructions that require multiplying the number of hours by the hourly billing rate, arguing that the claimant

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<sup>279</sup> Exhibit A, IRC, filed August 22, 2017, page 6.

<sup>280</sup> Exhibit D, Claimant's Comments on the Draft Proposed Decision, filed November 6, 2020, page 3.

calculated its services that way, and that there is no evidence that the Controller “felt that the San Diego County Sheriff’s Office (SDSO) rates charged were unreasonable or excessive.”<sup>281</sup> The claimant further asserts that the Controller’s audit methodology, used to calculate an average hourly rate for the other contract years and applying it to fiscal years 2001-2002 through 2006-2007, is a “new methodology” that cannot be applied retroactively (citing *City of Modesto v. National Med. Inc.* (2005) 218 Cal.App.4th 518, 527).<sup>282</sup> The claimant argues:

The rates the Controller computed were not based on actual costs or actual billing rates as specified in Claiming Instructions or in Parameters and Guidelines. The city believes this new methodology used by the SCO to compute deconstructed contract billing rates constituted underground rule-making by the State Controller’s Office and was erroneous.<sup>283</sup>

The claimant requests that “this new methodology not be allowed until new instructions are drafted and clarification is provided on how to implement this new ‘contract rate deconstruction methodology.’”<sup>284</sup>

The Controller disagrees with the claimant, stating:

For FY 2001-02 through FY 2006-07 period, the SDSO costed the contract covering these fiscal years by task or patrol vehicle. The unit cost that the city refers to included various classifications and overhead to account for a great variety of law enforcement services provided to the city. While the city “purchased” these services by paying the “Unit Cost,” in doing so the city acquired all law enforcement activities that would be performed by the SDSO. Therefore, claiming the entire “Unit Cost” would result in the city seeking reimbursement for costs of services unrelated to the mandated program that was included in the same rate.<sup>285</sup>

The Commission finds that the Controller’s reduction in Finding 1 to the claimant’s contracted hourly rates for fiscal years 2001-2002 through 2006-2007, including the Controller’s adjustments to the annual productive hours claimed, is correct as a matter of law and not arbitrary, capricious, or entirely lacking in evidentiary support.

Article XIII B, section 6 requires reimbursement only for the costs incurred to comply with the reimbursable state-mandated activities. Consequently, Section IV. of the Parameters and Guidelines states that the “claimant is only allowed to claim and be reimbursed for increased

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<sup>281</sup> Exhibit D, Claimant’s Comments on the Draft Proposed Decision, filed November 6, 2020, page 3.

<sup>282</sup> Exhibit D, Claimant’s Comments on the Draft Proposed Decision, filed November 6, 2020, page 4.

<sup>283</sup> Exhibit D, Claimant’s Comments on the Draft Proposed Decision, filed November 6, 2020, page 5.

<sup>284</sup> Exhibit D, Claimant’s Comments on the Draft Proposed Decision, filed November 6, 2020, page 5.

<sup>285</sup> Exhibit B, Controller’s Comments on the IRC, filed January 22, 2018, page 23.

costs for reimbursable activities identified . . .,” and that “[i]ncreased cost is limited to the cost of an activity that the claimant is required to incur as a result of the mandate.”<sup>286</sup> Section V.3. of the Parameters and Guidelines governs contracted services, and states that only the pro-rata portion of the services used to implement the reimbursable activities can be claimed, as follows:

Report the name of the contractor and services performed to implement the reimbursable activities. 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 services that were performed during the period covered by the reimbursement claim. *If the contract services were also used for purposes other than the reimbursable activities, only the pro-rata portion of the services used to implement the reimbursable activities can be claimed.* Submit contract consultant and invoices with the claim and a description of the contract scope of services.<sup>287</sup>

The Parameters and Guidelines are regulatory in nature, and are binding on the parties.<sup>288</sup>

Here, the Controller found that for fiscal years 2001-2002 through 2006-2007, the claimant calculated hourly rates by using the “unit cost” identified in the contract for the task or patrol vehicle, which includes the costs for various classifications and overhead and accounts for all law enforcement services provided to the claimant.<sup>289</sup> This calculation is different than the calculation the claimant used for fiscal years 2007-2008 through 2011-2012, which correctly segregated the contract salary and benefit amounts specific to those peace officer classifications performing the mandate.<sup>290</sup> The claimant does not dispute the facts and submitted its SDSO contracts that support the Controller’s conclusions.<sup>291</sup> For example, the contract for general law enforcement and traffic services from July 1, 1996 to June 30, 2001, states:<sup>292</sup>

a) ... Total costs for said [County] services shall be determined by multiplying the unit cost of each identifiable service option by the number of units service [sic] to

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<sup>286</sup> Exhibit A, IRC, filed August 22, 2017, page 503 (Parameters and Guidelines).

<sup>287</sup> Exhibit A, IRC, filed August 22, 2017, page 506 (Parameters and Guidelines). Emphasis added.

<sup>288</sup> *California School Boards Association v. State of California* (2009) 171 Cal.App.4th 1183, 1201; *Clovis Unified School Dist. v. Chiang* (2010) 188 Cal.App.4th 794, 799.

<sup>289</sup> Exhibit B, Controller’s Comments on the IRC, filed January 22, 2018, pages 23, 380-398 (Attachment B to the contracts between the claimant and SDSO for fiscal years 2001-2002 through 2006-2007).

<sup>290</sup> Exhibit A, IRC, filed August 22, 2017, page 532 (Final Audit Report).

<sup>291</sup> Exhibit A, IRC, filed August 22, 2017, pages 6, 316-468 (Contracts for Law Enforcement Services).

<sup>292</sup> See Exhibit A, IRC, filed August 22, 2017, page 324 (Contract for Law Enforcement Services).

be provided, and multiplying the product derived by CITY's applicable beat factors, as defined below.

[¶] . . . [¶]

g) In addition to the adjustments made in paragraphs (c) and (d) of Section 5, the beat factors of CITY for each of the applicable services agreed to in the Joint Operating and Financial Plan (Attachment B) shall be adjusted annually. The beat factor is the percentage of the total on-call time spent by contracted service units inside CITY limits. The beat factor shall be that determined for the CITY for each type of service option during the calendar year immediately preceding the prospective contract year beginning July 1.<sup>293</sup>

Attachment B of the contract indicates that for fiscal year 2001-2002, the claimant purchased 15 units of sedan patrol units at \$329,387 per unit with a beat factor of .99940 and 46,537.5 hours (or 3,102.5 hours per patrol unit), in addition to traffic services and custom (special purpose officer) services.<sup>294</sup> Thus, the annual contract hourly rate claimed was \$106.17 ( $\$329,387 \div 3,102.5 = \$106.17$ ).<sup>295</sup>

The contract for general law enforcement and traffic services from July 1, 2002 to June 30, 2007, similarly states:<sup>296</sup>

a) . . . Total costs for said services shall be determined by multiplying the unit cost of each identifiable service option by the number of units service to be provided, and multiplying the product derived by CITY'S applicable beat factors, as defined below.

[¶] . . . [¶]

g) . . . The beat factor is the percentage of the total on-call time spent by contracted service units inside CITY limits. The beat factor shall be that determined for the CITY for each type of service option during the calendar year immediately preceding the prospective contract year beginning July 1.<sup>297</sup>

Attachment B of the contract indicates that for fiscal year 2002-2003, the claimant purchased 15 units of sedan patrol units at \$355,249 per unit with a beat factor of 1.0 and 46,537.5 hours (or

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<sup>293</sup> Exhibit A, IRC, filed August 22, 2017, pages 319-320 (Contract for Law Enforcement Services).

<sup>294</sup> Exhibit A, IRC, filed August 22, 2017, page 362 (Contract Attachment B). The 3,102.5 hours per patrol unit is 365 days per year times 8.5 hours per day. See Exhibit B, Controller's Comments on the IRC, filed January 22, 2018, page 377 (Controller's calculation of hourly contract rates).

<sup>295</sup> This comports with the Controller's calculation of the claimed hourly rate in Exhibit B, Controller's Comments on the IRC, filed January 22, 2018, page 21.

<sup>296</sup> See Exhibit A, IRC, filed August 22, 2017, pages 364-385 (Contract for Law Enforcement Services).

<sup>297</sup> See Exhibit A, IRC, filed August 22, 2017, pages 368-369 (Contract for Law Enforcement Services).

3,102.5 hours per patrol unit), in addition to traffic services and custom (special purpose officer) services.<sup>298</sup> Thus, the annual contract hourly rate claimed was \$114.50 ( $\$355,249 \div 3,102.5 = \$114.50$ ).<sup>299</sup>

The claimant now argues that the contract categories for patrol and traffic are not commingled and have different overhead and rates for each type of unit.<sup>300</sup> However, the contracts show the claimed hourly contract unit rates include costs for all personnel performing law enforcement services, which are beyond the scope of the mandated program to prepare written reports for domestic violence-related calls for assistance. In this respect, the hourly contract rates used by the claimant for fiscal years 2001-2002 through 2006-2007 are not the “pro-rata portion of the services used to implement the reimbursable activities” as required by the Section V.3. of the Parameters and Guidelines. Nor did the claimant comply with Section IV., which states that the “claimant is only allowed to claim and be reimbursed for increased costs for reimbursable activities identified . . .,” and that “[i]ncreased cost is limited to the cost of an activity that the claimant is required to incur as a result of the mandate.”<sup>301</sup> Accordingly, the Controller’s reduction based on the conclusion that the claimant did not comply with the Parameters and Guidelines is correct as a matter of law.

To recalculate the hourly rates related to the mandate, the Controller obtained from the SDSO salary and benefit rates segregated for each peace officer classification that performed the reimbursable activities, like the claimant used for fiscal years 2007-2008 through 2011-2012, and traced the claimed amounts to the contract information and confirmed they were accurate.<sup>302</sup> For example, for fiscal year 2001-2002, the Controller obtained annual salary and benefit information for a Patrol Deputy (\$82,510),<sup>303</sup> and divided it by the annual productive hours (1,743),<sup>304</sup> calculating the 2001-2002 hourly rate for a Patrol Deputy at \$47.34.<sup>305</sup> The Controller also added \$57.72 per hour for a Patrolling Sergeant and Detective Sergeant, a cost not separately included in the filed reimbursement claims.<sup>306</sup> This recalculation complies with

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<sup>298</sup> Exhibit A, IRC, filed August 22, 2017, page 383 (Contract Attachment B).

<sup>299</sup> This comports with the Controller’s calculation of the claimed hourly rate in the Final Audit Report, Exhibit A, IRC, filed August 22, 2017, page 533 (Final Audit Report).

<sup>300</sup> Exhibit D, Claimant’s Comments on the Draft Proposed Decision, filed November 6, 2020, page 3.

<sup>301</sup> Exhibit A, IRC, filed August 22, 2017, page 503 (Parameters and Guidelines).

<sup>302</sup> Exhibit B, Controller’s Comments on the IRC, filed January 22, 2018, page 21.

<sup>303</sup> Exhibit B, Controller’s Comments on the IRC, filed January 22, 2018, page 382 (SDSO FY 01/02 CLEP Costing).

<sup>304</sup> Exhibit A, IRC, filed August 22, 2017, page 452 (Contract for Law Enforcement Services). Exhibit B, Controller’s Comments on the IRC, filed January 22, 2018, page 406 (Contract for Law Enforcement Services).

<sup>305</sup> Exhibit A, IRC, filed August 22, 2017, page 533 (Final Audit Report). Exhibit B, Controller’s Comments on the IRC, filed January 22, 2018, page 21.

<sup>306</sup> Exhibit A, IRC, filed August 22, 2017, pages 533-534 (Final Audit Report).



the Parameters and Guidelines to ensure that only the pro-rata costs to comply with the mandate are reimbursable and is, therefore, correct as a matter of law and not arbitrary, capricious, or without evidentiary support.

The Commission also finds that the Controller's adjustment to the annual productive hours claimed for fiscal years 2001-2002 through 2006-2007 is not arbitrary, capricious, or entirely without evidentiary support. The Controller found that the claimant used an inconsistent number of annual productive hours to compute claimed hourly rates.<sup>307</sup> For example, 3,102.5 productive hours were used to compute the rates for fiscal years 2001-2002 through 2006-2007, but between 1,742.91 and 1,799.94 hours were used to compute the later years of the audit period.<sup>308</sup> The Controller used 1,743 productive hours to calculate hourly contract rates for all fiscal years,<sup>309</sup> which is the number of productive hours noted in the SDSO contract for the later undisputed years.<sup>310</sup>

Finally, the Commission is not persuaded by the claimant's argument, in its comments on the Draft Proposed Decision, that the Controller's methodology of calculating an average hourly rate for the later contract years and applying it to fiscal years 2001-2002 through 2006-2007 is a "new methodology" amounting to an underground regulation that cannot be applied retroactively (citing *City of Modesto v. National Med. Inc.* (2005) 128 Cal.App.4th 518, 527).<sup>311</sup> In the *City of Modesto* case, the City Council amended a business license tax ordinance and attempted to collect a tax deficiency. The court found that the City's amended ordinance was intended to apply retroactively only as to procedural changes, but not as to substantive changes. The court held that "a statutory change is substantive if it imposes new, additional or different liabilities based on past conduct."<sup>312</sup> This case, however, involves an audit decision rather than a law like the ordinance in the *City of Modesto* case and therefore the rule against retroactive application does not apply.

Moreover, the Commission disagrees with the claimant's argument that "deconstructed contract billing rates constituted underground rule-making by the State Controller's Office and was erroneous."<sup>313</sup> To constitute underground rule-making, an agency must: (1) intend its rule to

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<sup>307</sup> Exhibit A, IRC, filed August 22, 2017, page 532 (Final Audit Report). Exhibit B, Controller's Comments on the IRC, filed January 22, 2018, pages 20-21, 377.

<sup>308</sup> Exhibit B, Controller's Comments on the IRC, filed January 22, 2018, pages 20-21, 377.

<sup>309</sup> Exhibit A, IRC, filed August 22, 2017, page 533 (Final Audit Report).

<sup>310</sup> Exhibit A, IRC, filed August 22, 2017, page 452 (Contracts for Law Enforcement Services for 2007-2008 through 2011-2012). Exhibit B, Controller's Comments on the IRC, filed January 22, 2018, page 406 (Contracts for Law Enforcement Services for 2007-2008 through 2011-2012).

<sup>311</sup> Exhibit D, Claimant's Comments on the Draft Proposed Decision, filed November 6, 2020, page 4.

<sup>312</sup> *City of Modesto v. National Med. Inc.* (2005) 128 Cal.App.4th 518, 527.

<sup>313</sup> Exhibit D, Claimant's Comments on the Draft Proposed Decision, filed November 6, 2020, page 5.

apply generally or to a class of cases rather than to a specific case, and (2) must adopt the rule to implement, interpret, or make specific the law enforced by the agency.<sup>314</sup> The claimant has not shown that the Controller's methodology is applied generally or to a class of cases. As a discretionary decision made in the context of an audit, the methodology does not apply generally or to a class of cases.<sup>315</sup>

In assessing reductions based on the Controller's audit decisions, the Commission's review of the audit is limited to ensuring that the Controller "adequately considered all relevant factors, and has demonstrated a rational connection between those factors, the choice made, and the purposes of the enabling statute."<sup>316</sup> The Commission must not reweigh the evidence, or substitute its judgment for the judgment of the Controller.<sup>317</sup> The claimant has not provided evidence that the Controller's recalculation of the SDSO salary and benefit hourly rates are incorrect, or arbitrary or capricious.

Accordingly, the Controller's reduction in Finding 1 to the claimant's contracted hourly rates for fiscal years 2001-2002 through 2006-2007 (including adjustments to the annual productive hours claimed) is correct as a matter of law and is not arbitrary, capricious, or entirely lacking in evidentiary support.

**E. The Controller's Reduction of Indirect Costs in Finding 2 for Fiscal years 2007-2008 Through 2011-2012 Is Not Arbitrary, Capricious or Entirely Lacking in Evidentiary Support.**

Section V.B. of the Parameters and Guidelines addresses indirect costs, and provides claimants the option of either claiming 10 percent of direct labor costs, or if indirect costs exceed the 10 percent rate, developing an indirect cost rate proposal by dividing the total allowable indirect costs by an equitable distribution rate.<sup>318</sup>

For fiscal years 2007-2008 through 2011-2012, the claimant developed indirect cost rate proposals, and applied those rates to costs for contracted law enforcement services that were incorrectly claimed as direct labor costs. The claimed indirect cost rates ranged from 80.8 to 91.8 percent for fiscal years 2007-2008 through 2011-2012.<sup>319</sup>

The Controller found that the claimed methodology was incorrect because the claimant contracted for law enforcement with the SDSO and did not incur direct or indirect labor costs. Therefore, the Controller found that it was inappropriate to classify and claim the costs as

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<sup>314</sup> *Tidewater Marine Western, Inc. v. Bradshaw* (1996) 14 Cal.4th 557, 571.

<sup>315</sup> *Modesto City Schools v. Education Audit Appeals Panel* (2004) 123 Cal.App.4th 1365, 1381-1382.

<sup>316</sup> *American Bd. of Cosmetic Surgery, Inc. v. Medical Bd. of California* (2008) 162 Cal.App.4th 534, 547-548.

<sup>317</sup> *American Bd. of Cosmetic Surgery, Inc. v. Medical Bd. of California* (2008) 162 Cal.App.4th 534, 547-548.

<sup>318</sup> Exhibit A, IRC, filed August 22, 2017, pages 507-508 (Parameters and Guidelines).

<sup>319</sup> Exhibit A, IRC, filed August 22, 2017, page 542 (Final Audit Report).

indirect “labor costs.” In addition, the claimant applied the indirect cost rates to unallowable contract services costs identified in Finding 1.<sup>320</sup>

However, the Controller recognized that the contract costs have general overhead costs associated with the performance of all law enforcement activities that the claimant purchased.<sup>321</sup> Thus, the Controller recalculated indirect cost rates for fiscal years 2007-2008 through 2011-2012 at 45.9 to 50.4 percent, by “dividing total contract overhead costs, station support staff costs, and “Sergeant Admin” position costs, by the contracted labor costs identified in the contract supplemental schedules,” which reduced allowable rates by 35-45 percent over those claimed.<sup>322</sup> The Controller then applied the audited rates (45.9 to 50.4 percent) to the total allowable contract services costs.<sup>323</sup> This resulted in a reduction of \$89,257 in fiscal years 2007-2008 through 2011-2012.<sup>324</sup>

The claimant argues that if the Controller’s “deconstructed method is to be followed, the City requests that all applicable, contractually obligated, indirect costs be included in the computation of the ICRP [indirect cost rate proposal] rates.”<sup>325</sup> The Controller only allowed the Administrative Sergeant in the calculation, but the “approximately seven Sergeants who also have administrative and support duties were not considered allowable or ‘appropriate.’”<sup>326</sup> The claimant contends that including only one Sergeant in the overhead calculation, and excluding the Detective Sergeant position, is arbitrary and does not reflect the actual overhead incurred in the contract, as follows:

The SCO allowed only one sergeant (Administrative Sergeant) in their computation of the ICRP rates. The SCO states, “we already accounted for all appropriate contracted labor costs and contracted overhead that benefited the implementation of the entire contract.”

The SCO did not explain why the other approximately seven Sergeants who also have administrative and support duties were not considered allowable or “appropriate.” Inclusion of only one of the seven is arbitrary and does not reflect the actual overhead incurred in the contract. Also, Detective charges were also

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<sup>320</sup> Exhibit A, IRC, filed August 22, 2017, page 541 (Final Audit Report).

<sup>321</sup> Exhibit A, IRC, filed August 22, 2017, page 542 (Final Audit Report).

<sup>322</sup> Exhibit A, IRC, filed August 22, 2017, pages 541-542 (Final Audit Report). Exhibit B, Controller’s Comments on the IRC, filed January 22, 2018, pages 28, 411 (Calculation of Allowable Indirect Cost Rates).

<sup>323</sup> Exhibit A, IRC, filed August 22, 2017, page 543 (Final Audit Report).

<sup>324</sup> Exhibit A, IRC, filed August 22, 2017, page 543 (Final Audit Report). The \$89,257 adjustment was reduced by the understated indirect costs allowed in fiscal years 2001-2002 through 2006-2007, resulting in a net reduction of indirect costs during the audit period of \$31,485. (Exhibit A, IRC, filed August 22, 2017, page 542 (Final Audit Report).)

<sup>325</sup> Exhibit A, IRC, filed August 22, 2017, page 8.

<sup>326</sup> Exhibit A, IRC, filed August 22, 2017, page 8.

excluded from the overhead computation, but those costs had always been considered overhead charges in prior contracts.

According to Sheriff Administrative Lieutenant (station Supervisor), the contract and county job descriptions, ALL Sergeants are administrative/support positions to the Deputies and therefore, all should be included into the computation of the overhead rate.

During the course of the audit, the City asked the SCO staff what documentation would be required to prove the other Sergeants were indeed administrative and support positions, but the City received no response or direction. The City provided job descriptions, contracts and the Commanding officers statement along with his estimate of percentage of time each position spend on administrative duties. The City would be happy to provide other support if told what would satisfy the SCO.<sup>327</sup>

In its comments on the Draft Proposed Decision, the claimant argues that the Controller's decision to use the contract labels from the costing section of the contract to determine whether a cost was direct or indirect was "erroneous and not in accordance with State Instructions and Federal Guidelines."<sup>328</sup> Specifically, the claimant states that the Controller relies on the section of the SDSO contract entitled "C. 1. Cost Center Development, A Cost Center model showing both the CITY and the COUNTY costs for each station will be developed. (emphasis added)" (See IRC, bates page 413-414)." According to the claimant, this was an erroneous methodology and inconsistent with State and Federal Guidelines because the contract "is labeling a direct cost as one that is assignable to a particular CITY, 'Each CITY will pay for direct staff. . . ' and shared costs benefitting more than one agency ' . . . will be pooled and allocated as overhead to all the cities based on the number of deputies. . . '"<sup>329</sup>

The claimant points out that indirect costs must be "costs incurred for a joint purpose, benefitting more than one program" as required by the Parameters and Guidelines, as well state regulations and federal OMB guidelines. The claimant argues that the sergeant position meets the definition in these authorities because it: (1) is for a 'common or joint purpose,' (2) benefits more than one program, (3) benefits the cost objectives, and (4) may include the overhead in the unit performing the mandate. According to the claimant, the Controller based its analysis on "irrelevant billing contractual descriptions to classify costs rather than the actual functional criteria of those costs/positions as specified under Parameter and Guidelines," and other relevant authorities.<sup>330</sup> The claimant further asserts that the Controller used an incorrect definition of

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<sup>327</sup> Exhibit A, IRC, filed August 22, 2017, page 8.

<sup>328</sup> Exhibit D, Claimant's Comments on the Draft Proposed Decision, filed November 6, 2020, page 6.

<sup>329</sup> Exhibit D, Claimant's Comments on the Draft Proposed Decision, filed November 6, 2020, page 6. Emphasis in original. The claimant refers to Exhibit A, IRC, filed August 22, 2017, pages 413-414.

<sup>330</sup> Exhibit D, Claimant's Comments on the Draft Proposed Decision, filed November 6, 2020, page 8.

‘direct costs’ in its January 22, 2018 comments on the IRC that “may have also led to their error . . . in their classification of direct and indirect costs.”<sup>331</sup> The claimant reiterates that one sergeant position for indirect costs is insufficient because it requested that all or a majority of sergeant costs be included in its overhead calculation.<sup>332</sup> The claimant argues that the Controller’s conclusion “was arbitrary and did not reasonably explain why they did not treat all employees who performed in an identical job classification consistently.”<sup>333</sup> Finally, the claimant asserts that the Controller’s conclusion “yields a clearly false and illogical result, showing a clear error in judgment” because:

With over 32 Patrol Deputies employed and working 24-hour shifts, it would be physically impossible for one single Sergeant working an eight-hour day to supervise multiple squads of officers working round the clock as well as the station's entire professional staff.<sup>334</sup>

Since the claimant only challenges the Controller’s methodology for recalculating indirect costs (by including the cost of only one of seven sergeants in its calculation of indirect costs), the Commission must determine whether the Controller’s recalculation was arbitrary, capricious, or entirely lacking in evidentiary support. As stated above, the Commission’s review of audit decisions is limited to ensuring that the Controller “adequately considered all relevant factors, and has demonstrated a rational connection between those factors, the choice made, and the purposes of the enabling statute.”<sup>335</sup> The Commission must not reweigh the evidence, or substitute its judgment for the judgment of the Controller.<sup>336</sup>

On this record, the Commission finds that the Controller’s calculation of indirect costs for fiscal years 2007-2008 through 2011-2012 based on the claimant’s SDSO contract is not arbitrary, capricious, or without evidentiary support.

The Controller initially took the position that the claimant did not incur any direct or indirect labor costs and instead believed that all labor costs resulting from the contract should be considered direct contract costs.<sup>337</sup> However, the Controller reviewed the contracts between the claimant and the SDSO, and for fiscal years 2007-2008 through 2011-2012, the SDSO contract

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<sup>331</sup> Exhibit D, Claimant’s Comments on the Draft Proposed Decision, filed November 6, 2020, page 9.

<sup>332</sup> Exhibit D, Claimant’s Comments on the Draft Proposed Decision, filed November 6, 2020, pages 9-11.

<sup>333</sup> Exhibit D, Claimant’s Comments on the Draft Proposed Decision, filed November 6, 2020, page 11.

<sup>334</sup> Exhibit D, Claimant’s Comments on the Draft Proposed Decision, filed November 6, 2020, page 11.

<sup>335</sup> *American Bd. of Cosmetic Surgery, Inc. v. Medical Bd. of California* (2008) 162 Cal.App.4th 534, 547-548.

<sup>336</sup> *American Bd. of Cosmetic Surgery, Inc. v. Medical Bd. of California* (2008) 162 Cal.App.4th 534, 547-548.

<sup>337</sup> Exhibit B, Controller’s Comments on the IRC, filed January 22, 2018, page 29.

agreements provided supplemental schedules and identified contracted labor and overhead costs. As a result, the Controller determined that overhead costs included in the contract were appropriate as they related to the performance of mandated activities. In notes provided to the claimant for an April 10, 2016 status meeting, the Controller explained that it computed indirect cost rates for contract services for these years by dividing total contract overhead costs by the contracted labor costs identified in the contract supplemental schedules, allowing rates from 33.70 to 37.10 percent.<sup>338</sup>

On April 17, 2017, the Controller's Office emailed the claimant to explain the Controller's position on indirect costs:

The contract refers to deputies, detectives, sergeants, and community officers as direct positions. Therefore, we believe our proposed computation of indirect costs is appropriate. It computed a straight forward ratio of ancillary support costs, vehicles, supplies, management support, liability to all direct labor positions, thus arriving at contract-wide overhead rate that can be applied to claim costs for various mandated programs.<sup>339</sup>

On April 26, 2017, the claimant responded by email requesting that the Controller include the Station Support Staff and Sergeant Admin costs as indirect costs, and not as direct costs as follows:

You referenced in the contract:

V. Cost of Services/Consideration, C. Modified Cost Center, 2. Direct Costs:

Each CITY will pay for *direct* staff, which includes deputies, detectives, sergeants and Community Service Officers. (emphasis added)

It is very clear that it does no[t] list "Station Staff" or "Station Support Staff" as direct staff. Therefore, the amount on Attachment B should be excluded from the direct costs and included in the "Indirect Costs" calculations. The Attachment C, Overhead Cost Detail Sheet of the contract also supports this, as it specifically listed the station support staff. And, although sergeants are listed as direct staff, it is fair to say that Sergeant Admin position is a support position, therefore, should also be excluded from the direct costs and included in the "Indirect Costs" calculations.<sup>340</sup>

The Controller's Office responded to the claimant's April 17, 2017 email the same day as follows:

Thank you for your clarifying email as we had a difficult time understanding your consultant's written rebuttal. Your clarifying email points out the city's request to consider including Station Support Staff and Sergeant Admin position as part of

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<sup>338</sup> Exhibit B, Controller's Comments on the IRC, filed January 22, 2018, pages 29, 423 (Controller's Notes for April 10, 2016 Status Meeting).

<sup>339</sup> Exhibit B, Controller's Comments on the IRC, filed January 22, 2018, page 427.

<sup>340</sup> Exhibit B, Controller's Comments on the IRC, filed January 22, 2018, pages 431-432.

our computations of allowable indirect costs within the city's contracted costs. Now that we understand the city's position clearly, we can work toward potential resolution.

We will consider the city's request and we'll review our computations one more time in regards to indirect costs. . . .<sup>341</sup>

On May 8, 2017, the Controller's auditors emailed the claimant indicating that they "considered and evaluated the city's request to include Station Support Staff and Sergeant Admin position as part of our computations of allowable indirect costs within the city's contracted costs. We concluded that due to the nature of those classifications performing indirect activities, the city's request . . . is reasonable."<sup>342</sup> The Controller summarized its reasoning and interactions with the claimant as follows:

. . . [T]he SCO's original position was that the city did not incur any direct or indirect labor costs. The SCO believed all labor costs listed in the contract should be considered direct contract costs. The SCO originally computed the overhead rates for FY 2007-08 through FY 2011-12 by dividing the subtotals of overhead amounts listed in the bullets above by total labor costs listed in Attachments B [sic] to account for total overhead costs benefiting the execution of the contract as a whole. The SCO presented these computations to the city during the status meeting held on April 10, 2016 (Tab 20). Following the discussions held at the status meeting, the SCO responded to the city's comments via email dated April 17, 2017, and explained the SCO's position regarding labor costs (Tab 21).

The city discussed the issue with the SCO's auditors via a teleconference and email correspondence (Tab 22). The city reviewed the SCO's methodology and proposed that we consider Station Support Staff and Administrative Sergeant position as part of the contract overhead cost pool. The city therefore proposed to move these costs into the contract indirect cost pool and exclude them from the direct labor amount. Although the SCO's position still remained that the city had not incurred any direct or indirect labor costs, after consideration of the city's proposal, the SCO concluded it was reasonable (Tab 22). The SCO revised its computations of the contracted indirect cost rates, and increased the allowable indirect cost rates accordingly to include these positions requested by the city (Tab 19). Therefore, the SCO's determination to include only these positions in the overhead cost pool and not others was not arbitrary, but rather in direct response to the city's requests (Tab 22). The SCO worked with the city to find a reasonable approach. The inclusion of the Station Support Staff and Administrative Sergeant position costs resulted in the increase of allowable indirect cost rates for the audit period [to 45.9 to 50.4 percent]. The Exit

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<sup>341</sup> Exhibit B, Controller's Comments on the IRC, filed January 22, 2018, page 431.

<sup>342</sup> Exhibit B, Controller's Comments on the IRC, filed January 22, 2018, pages 29, 430.

Conference Handout demonstrates that allowable indirect cost rates increased from the initial finding presented at the status meeting (Tab 23).<sup>343</sup>

The claimant's arguments in comments on the Draft Proposed Decision that the Controller did not follow the Parameters and Guidelines and other State and Federal guidelines presupposes that the claimant's indirect costs apply to direct labor costs rather than, as the case here, contract costs.

More importantly, the Commission finds that the record indicates the Controller adequately considered the claimant's position throughout the audit, all relevant factors, and has demonstrated a rational connection between those factors, the choices made, and calculated an indirect cost rate proposal consistent with the Parameters and Guidelines and the contracts with SDSO. The other sergeant positions not included in the indirect cost pool remained classified as direct contract costs.<sup>344</sup> There is no evidence in the record that the Controller failed to explain its position or consider the claimant's documentation, as alleged in the IRC.

Accordingly, the Controller's calculation of indirect costs for fiscal years 2007-2008 through 2011-2012 is not arbitrary, capricious, or without evidentiary support and, thus, the reductions are correct.

## **V. Conclusion**

Based on the forgoing, the Commission denies this IRC.

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<sup>343</sup> Exhibit B, Controller's Comments on the IRC, filed January 22, 2018, pages 29, 412-451 (Controller's correspondence with the claimant). Exhibit A, IRC, filed August 22, 2017, page 543 (Final Audit Report).

<sup>344</sup> Exhibit B, Controller's Comments on the IRC, filed January 22, 2018, page 427 (Controller's email of April 17, 2017).



**DECLARATION OF SERVICE BY EMAIL**

I, the undersigned, declare as follows:

I am a resident of the County of Sacramento and I am over the age of 18 years, and not a party to the within action. My place of employment is 980 Ninth Street, Suite 300, Sacramento, California 95814.

On January 6, 2021, I served the:

- **Proposed Decision issued January 6, 2021**

*Crime Statistics Reports for the Department of Justice (DOJ), 17-0240-I-01*  
Penal Code Sections 12025(h)(1), (h)(3); 12031(m)(1) and (m)(3); 13014; 13023;  
13730(a); Statutes 1989, Chapter 1172 (SB 202); Statutes 1992, Chapter 1338 (SB 1184);  
Statutes 1993, Chapter 1230 (AB 2250); Statutes 1998, Chapter 933 (AB 1999); Statutes  
1999, Chapter 571 (AB 491); Statutes 2000, Chapter 626 (AB 715); and Statutes 2004,  
Chapter 700 (SB 1234)  
Fiscal Years: 2001-2002, 2002-2003, 2003-2004, 2004-2005, 2005-2006, 2006-2007,  
2007-2008, 2008-2009, 2009-2010, 2010-2011, 2011-2012  
City of San Marcos, Claimant

by making it available on the Commission's website and providing notice of how to locate it to the email addresses provided on the attached mailing list.

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 January 6, 2021 at Sacramento, California.



Jill L. Magee  
Commission on State Mandates  
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Sacramento, CA 95814  
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# COMMISSION ON STATE MANDATES

## Mailing List

**Last Updated:** 1/4/21

**Claim Number:** 17-0240-I-01

**Matter:** Crime Statistics Reports for the Department of Justice

**Claimant:** City of San Marcos

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