



September 4, 2020

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: Draft Proposed Decision, Schedule for Comments, and Notice of Hearing
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 Draft Proposed Decision for the above-captioned matter is enclosed for your review and comment.

Written Comments

Written comments may be filed on the Draft Proposed Decision by **September 25, 2020**. Please note that all representations of fact submitted to the Commission must be signed under penalty of perjury by persons who are authorized and competent to do so and must be based upon the declarant's personal knowledge, information, or belief. (Cal. Code Regs., tit. 2, § 1187.5.) Hearsay evidence may be used for the purpose of supplementing or explaining other evidence but shall not be sufficient in itself to support a finding unless it would be admissible over an objection in civil actions. (Cal. Code Regs., tit. 2, § 1187.5.) The Commission's ultimate findings of fact must be supported by substantial evidence in the record.¹

You are advised that comments filed with the Commission are required to be electronically filed (e-filed) in an unlocked legible and searchable PDF file, using the Commission's Dropbox. (Cal. Code Regs., tit. 2, § 1181.3(c)(1).) Refer to http://www.csm.ca.gov/dropbox_procedures.php on the Commission's website for electronic filing instructions. If e-filing would cause the filer undue hardship or significant prejudice, filing may occur by first class mail, overnight delivery

¹ 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.

Ms. Chinn and Ms. Sidarous

September 4, 2020

Page 2

or personal service only upon approval of a written request to the executive director. (Cal. Code Regs., tit. 2, § 1181.3(c)(2).)

If you would like to request an extension of time to file comments, please refer to section 1187.9(a) of the Commission's regulations.

Hearing

This matter is set for hearing on **Friday, December 4, 2020**, at 10:00 a.m. via Zoom. The Proposed Decision will be issued on or about November 20, 2020.

Please notify Commission staff not later than the Wednesday prior to the hearing that you or a witness you are bringing plan to testify and please specify the names of the people who will be speaking for inclusion on the witness list and so that detailed instructions regarding how to participate as a witness in this meeting on Zoom can be provided to them. When calling or emailing, please identify the item you want to testify on and the entity you represent. The Commission Chairperson reserves the right to impose time limits on presentations as may be necessary to complete the agenda.

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

Sincerely,

A handwritten signature in blue ink, appearing to read "Heather Halsey".

Heather Halsey
Executive Director

ITEM ____
INCORRECT REDUCTION CLAIM
DRAFT 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

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.¹ 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.²

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.³ 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.⁴ The claimant disputes only the reductions to the

¹ Exhibit A, IRC, pages 517, 519 (Final Audit Report). These figures include some uncontested audit findings.

² Exhibit A, IRC, page 506 (Parameters and Guidelines). Penal Code section 13730.

³ Exhibit A, IRC, page 528 (Final Audit Report).

⁴ Exhibit A, IRC, page 528 (Final Audit Report).

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).⁵ The claimant also disputes reductions in indirect costs claimed in Finding 2.

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, 2011.⁶ The claimant signed its fiscal year 2010-2011 reimbursement claim on January 1, 2012, and filed its 2011-2012 reimbursement claim on February 5, 2013.⁷ The Controller issued a Draft Audit Report on May 23, 2017,⁸ upon which the claimant submitted comments on June 1, 2017.⁹ The Controller issued the Final Audit Report on June 30, 2017.¹⁰ The claimant filed the IRC on August 22, 2017.¹¹ The Controller filed comments on the IRC on January 22, 2018.¹² The claimant did not file rebuttal comments. Commission staff issued the Draft Proposed Decision on September 4, 2020.¹³

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

⁵ Exhibit A, IRC, pages 4-5, 6.

⁶ Exhibit B, Controller's Comments on the IRC, pages 136-186. Exhibit A, IRC, page 620-670 (Annual Reimbursement Claims).

⁷ Exhibit B, Controller's Comments on the IRC, page 195 (2010-2011 Reimbursement Claim).

⁸ Exhibit B, Controller's Comments on the IRC, page 39 (Final Audit Report).

⁹ Exhibit B, Controller's Comments on the IRC, pages 64-134 (Claimant's comments on the Draft Audit Report).

¹⁰ Exhibit A, IRC, page 517 (Final Audit Report).

¹¹ Exhibit A, IRC. 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.

¹² Exhibit B, Controller's Comments on the IRC.

¹³ Exhibit C, Draft Proposed Decision.

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.¹⁴ 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.”¹⁵

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.¹⁶

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.¹⁷ 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.¹⁸

Claims

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

Issue	Description	Staff Recommendation
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	<i>Timely filed</i> – The Final Audit Report was issued June 30, 2017. ¹⁹ The IRC was filed on August 22, 2017, ²⁰ less than

¹⁴ *Kinlaw v. State of California* (1991) 54 Cal.3d 326, 331-334; Government Code sections 17551, 17552.

¹⁵ *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.

¹⁶ *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.

¹⁷ *Gilbert v. City of Sunnyvale* (2005) 130 Cal.App.4th 1264, 1274-1275.

¹⁸ 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.

¹⁹ Exhibit A, IRC, page 517 (Final Audit Report, Cover Letter).

²⁰ Exhibit A, IRC, page 1.

Issue	Description	Staff Recommendation
	report, or other notice of adjustment that complies with Government Code section 17558.5(c).	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?	<p>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.”</p> <p>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 reports²¹ and increased the indirect cost rate for fiscal years 2001-2002 through 2006-2007 in Finding 2 from 10 percent to 47.7 percent.²²</p>	<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 violence-related calls for assistance for fiscal years 2002-2003 to 2006-2007 arbitrary, capricious, or entirely lacking in evidentiary support?	<p>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).²³</p> <p>The San Diego Sheriff’s Office (SDSO), who the</p>	<i>Not arbitrary, capricious, or entirely lacking in evidentiary support</i> – Although the 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. ²⁹ Here, the claimant was not on notice of the contemporaneous source

²¹ Exhibit A, IRC, page 5; Exhibit B, Controller’s Comments on the IRC, page 342.

²² Exhibit A, IRC, page 542 (Final Audit Report).

²³ Exhibit A, IRC, page 503 (Parameters and Guidelines).

²⁹ *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>claimant contracts with for law enforcement services, was not able to provide Automated Regional Justice Information System (ARJIS) reports for incidents claimed for fiscal years 2002-03 through 2006-2007, or the underlying written reports created at or near the same time as the call for assistance.²⁴ 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 2006-2007.²⁵</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 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);²⁶</p>	<p>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 2006-2007 “based on verified actual ARJIS data for FY 2007-08 through FY 2011-12 and applied this average to compute costs for unsupported years.”³⁰ The data presented by the claimant provides summaries of all crime, but does not</p>

²⁴ Exhibit A, IRC, page 529 (Final Audit Report).

²⁵ Exhibit A, IRC, page 529 (Final Audit Report).

²⁶ Exhibit A, IRC, pages 27-39.

³⁰ Exhibit B, Controller’s Comments on the IRC, page 20; Exhibit A, IRC, page 529 (Final Audit Report).

Issue	Description	Staff Recommendation
	<p>2002, 2007, and 2008 reports prepared by the San Diego Association of Governments (SANDAG), on “Crime in the San Diego Region”²⁷; 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.²⁸</p>	<p>verify the number of written reports for domestic violence-related calls for assistance.</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 adjustments made.³¹ There is no evidence that the Controller’s calculation is arbitrary, capricious, or entirely lacking in evidentiary support.</p>
<p>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>	<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.³² The Controller asserts that</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</p>

²⁷ Exhibit A, IRC, pages 40-290 (SANDAG reports).

²⁸ Exhibit A, IRC, pages 4, 292-310 (DOJ reports and “Criminal Statistics Reporting Requirements” March 2000).

³¹ *American Bd. of Cosmetic Surgery, Inc. v. Medical Bd. of California* (2008) 162 Cal.App.4th 534, 547-548.

³² Exhibit A, IRC, page 532 (Final Audit Report); Exhibit B, Controller’s Comments on the IRC, pages 20-23, 377-398.

Issue	Description	Staff Recommendation
	<p>the claimant also used an inconsistent number of annual contract hours to compute claimed hourly rates for these years.³³</p> <p>The Parameters and Guidelines state that for contracted services, only the pro-rata portion of the services used to implement the reimbursable activities can be claimed.³⁴</p>	<p>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 confirmed the rates were accurate.³⁵ The Controller divided the salary and benefit costs by 1,743 productive hours to calculate hourly contract rates for the disputed years.³⁶ 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.</p>
<p>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</p>	<p>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</p>	<p><i>The reduction is correct as a matter of law and the recalculation is not arbitrary, capricious, or entirely lacking in evidentiary support – Based on the</i></p>

³³ Exhibit A, IRC, pages 532-533 (Final Audit Report). Exhibit B, Controller’s Comments on the IRC, pages 20-21, 377.

³⁴ Exhibit A, IRC, page 506 (Parameters and Guidelines).

³⁵ Exhibit B, Controller’s Comments on the IRC, page 21.

³⁶ Exhibit A, IRC, page 533 (Final Audit Report). 1,743 productive hours is in the SDSO contract for 2008-2008 through 2011-2012; Exhibit A, IRC, page 452 (SDSO contract), Exhibit B, Controller’s Comments on the IRC, page 406 (SDSO contract).

Issue	Description	Staff Recommendation
<p>law and not arbitrary, capricious, or entirely lacking in evidentiary support?</p>	<p>percent rate, developing an indirect cost rate proposal by dividing the total allowable indirect costs by an equitable distribution rate.³⁷</p> <p>For 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 found were incorrectly claimed as direct labor costs, resulting in claimed indirect cost rates ranging from 80.8 to 91.8 percent annually.³⁸ 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 1.³⁹</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</p>	<p>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. 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>

³⁷ Exhibit A, IRC, pages 507-508 (Parameters and Guidelines).

³⁸ Exhibit A, IRC, page 542 (Final Audit Report).

³⁹ Exhibit A, IRC, page 541 (Final Audit Report).

Issue	Description	Staff Recommendation
	<p>contracted labor costs identified in the contract supplemental schedules,” which reduced allowable rates by 35-45 percent over those claimed.⁴⁰ The other sergeant positions not included in the indirect cost pool remained classified as direct contract costs.⁴¹</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).⁴² Because the claimant filed the IRC on August 22, 2017,⁴³ 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

⁴⁰ Exhibit A, IRC, pages 541-542 (Final Audit Report). Exhibit B, Controller’s Comments on the IRC, pages 28, 411 (Calculation of Allowable Indirect Cost Rates).

⁴¹ Exhibit B, Controller’s Comments on the IRC, page 427 (Controller’s email of April 17, 2017).

⁴² Exhibit A, IRC, page 517 (Final Audit Report, Cover Letter).

⁴³ Exhibit A, IRC, page 1.

allowable number of written reports of domestic violence-related calls for assistance “in fiscal years 2001-2002 through 2006-2007,” are incorrect.⁴⁴ 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 274,⁴⁵ 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 method of calculating indirect costs for the entire audit period is incorrect.⁴⁶ 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.⁴⁷

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 2011-2012.⁴⁸ 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.⁴⁹ However, the SDSO was not able to provide ARJIS reports for incidents claimed for fiscal years 2002-03 through 2006-2007, or the underlying written reports created at or near the same time as the call for assistance for those years.⁵⁰ 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 2006-2007.⁵¹

⁴⁴ Exhibit A, IRC, page 5.

⁴⁵ Exhibit A, IRC, page 5; Exhibit B, Controller’s Comments on the IRC, page 342.

⁴⁶ Exhibit A, IRC, pages 7-8.

⁴⁷ Exhibit A, IRC, page 542 (Final Audit Report).

⁴⁸ Exhibit A, IRC, page 529 (Final Audit Report); Exhibit B, Controller’s Comments on the IRC, pages 344-375 (ARJIS reports of domestic violence- related calls for assistance for fiscal years 2007-2008 through 2011-2012).

⁴⁹ Exhibit B, Controller’s Comments on the IRC, pages 344-375 (ARJIS reports of domestic violence- related calls for assistance for fiscal years 2007-2008 through 2011-2012).

⁵⁰ Exhibit A, IRC, page 529 (Final Audit Report).

⁵¹ Exhibit A, IRC, page 529 (Final Audit Report).

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.”⁵² 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 cases,” for the cities of Encinitas and San Marcos (the claimant);⁵³ as well as 2002, 2007, and 2008 reports prepared by the San Diego Association of Governments (SANDAG), on “Crime in the San Diego Region;”⁵⁴ 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.⁵⁵

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).⁵⁶ 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.⁵⁷ 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 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 2006-2007 “based on verified actual ARJIS data for FY 2007-08 through FY 2011-12 and applied this average to compute costs for unsupported years.”⁵⁸ Under this standard, the Commission may not reweigh the evidence or substitute its judgement for that of the Controller. Instead, the inquiry is limited to whether the Controller adequately considered the claimant’s documentation,

⁵² Exhibit A, IRC, page 4.

⁵³ Exhibit A, IRC, pages 27-39.

⁵⁴ Exhibit A, IRC, pages 40-290 (SANDAG reports).

⁵⁵ Exhibit A, IRC, pages 4, 292-310 (DOJ reports and “Criminal Statistics Reporting Requirements” March 2000).

⁵⁶ Exhibit A, IRC, page 503 (Parameters and Guidelines).

⁵⁷ *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.

⁵⁸ Exhibit B, Controller’s Comments on the IRC, page 20; Exhibit A, IRC, page 529 (Final Audit Report).

all relevant factors, and demonstrated a rational connection between those factors and the adjustments made⁵⁹

Staff finds that the Controller considered the claimant's documentation, which corroborates the numbers used in the claimant's cost calculations. However, as the Controller states, the documentation does not allow the Controller to verify the validity of the number of incidents or whether they relate to the mandated activity.⁶⁰ The claimant's fax transmittals from the SDSO do not contain any detail or supporting information to show how the annual numbers were obtained.⁶¹ 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.⁶² 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.⁶³ Similarly, the DOJ reports do not provide any assurance that the reported information is accurate or related to the mandated program.⁶⁴ In addition, the claimant has not shown that the Controller's computation or application of the average number of reports from the later years is incorrect, or arbitrary or capricious.

Based on this record, staff finds that the Controller's calculation 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.

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.⁶⁵ 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

⁵⁹ *American Bd. of Cosmetic Surgery, Inc. v. Medical Bd. of California* (2008) 162 Cal.App.4th 534, 547-548.

⁶⁰ Exhibit B, Controller's Comments on the IRC, page 19.

⁶¹ Exhibit B, Controller's Comments on the IRC, page 19.

⁶² Exhibit B, Controller's Comments on the IRC, page 19.

⁶³ Exhibit B, Controller's Comments on the IRC, page 19.

⁶⁴ Exhibit B, Controller's Comments on the IRC, page 19. 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, page 4.

⁶⁵ Exhibit A, IRC, pages 316-468 (SDSO Contracts). Exhibit B, Controller's Comments on the IRC, page 23.

classifications [including deputy patrol, sergeant patrol, and sergeant detective] into one rate,” and included employee classifications that did not perform the reimbursable activities.⁶⁶ The Controller also found that the claimant used an inconsistent number of annual contract hours to compute the claimed hourly rates for these years.⁶⁷

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.”⁶⁸ 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.⁶⁹ 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 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.⁷⁰ The Controller divided the salary and benefit costs by 1,743 productive hours to calculate hourly contract rates for the disputed years.⁷¹ The Controller also found that the claimant used an inconsistent number of annual productive hours to compute claimed hourly rates.⁷² 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.⁷³

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.

⁶⁶ Exhibit A, IRC, page 532 (Final Audit Report); Exhibit B, Controller’s Comments on the IRC, pages 20-23, 377-398.

⁶⁷ Exhibit A, IRC, pages 532-533 (Final Audit Report). Exhibit B, Controller’s Comments on the IRC, pages 20-21, 377.

⁶⁸ Exhibit A, IRC, page 503 (Parameters and Guidelines).

⁶⁹ Exhibit A, IRC, page 506 (Parameters and Guidelines).

⁷⁰ Exhibit B, Controller’s Comments on the IRC, page 21.

⁷¹ Exhibit A, IRC, page 533 (Final Audit Report). 1,743 productive hours is in the SDSO contract for 2008-2008 through 2011-2012; Exhibit A, IRC, page 452 (SDSO contract), Exhibit B, Controller’s Comments on the IRC, page 406 (SDSO contract).

⁷² Exhibit A, IRC, page 532 (Final Audit Report). Exhibit B, Controller’s Comments on the IRC, pages 20-21, 377.

⁷³ Exhibit A, IRC, page 533 (Final Audit Report).

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.⁷⁴

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 enforcement services that were incorrectly claimed as direct labor costs.⁷⁵ The claimed indirect cost rates ranged from 80.8 to 91.8 percent for fiscal years 2007-2008 through 2011-2012.⁷⁶ 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 1.⁷⁷

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.⁷⁸ The other sergeant positions not included in the indirect cost pool remained classified as direct contract costs.⁷⁹

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

⁷⁴ Exhibit A, IRC, pages 507-508 (Parameters and Guidelines).

⁷⁵ Exhibit A, IRC, page 541 (Final Audit Report).

⁷⁶ Exhibit A, IRC, page 542 (Final Audit Report).

⁷⁷ Exhibit A, IRC, page 541 (Final Audit Report).

⁷⁸ Exhibit A, IRC, pages 541-542 (Final Audit Report). Exhibit B, Controller's Comments on the IRC, pages 28, 411 (Calculation of Allowable Indirect Cost Rates).

⁷⁹ Exhibit B, Controller's Comments on the IRC, page 427 (Controller's email of April 17, 2017).

Parameters and Guidelines and the contracts with SDSO.⁸⁰ 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.

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.

⁸⁰ *American Bd. of Cosmetic Surgery, Inc. v. Medical Bd. of California* (2008) 162 Cal.App.4th 534, 547-548.

BEFORE THE
 COMMISSION ON STATE MANDATES
 STATE OF CALIFORNIA

<p>IN RE INCORRECT REDUCTION CLAIM</p> <p>Penal Code Sections 12025(h)(1) and (h)(3); 12031(m)(1) and (m)(3); 13014; 13023; 13730(a)</p> <p>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)</p> <p>Fiscal Years 2001-2002, 2002-2003, 2003-2004, 2004-2005, 2005-2006, 2006-2007, 2007-2008, 2008-2009, 2009-2010, 2010-2011, 2011-2012</p> <p>Filed on August 22, 2017</p> <p>City of San Marcos, Claimant</p>	<p>Case No.: 17-0240-I-01</p> <p><i>Crime Statistics Reports for the Department of Justice</i></p> <p>17-0240-I-01</p> <p>DECISION PURSUANT TO GOVERNMENT CODE SECTION 17500 ET SEQ.; CALIFORNIA CODE OF REGULATIONS, TITLE 2, DIVISION 2, CHAPTER 2.5, ARTICLE 7.</p> <p><i>(Adopted December 4, 2020)</i></p>
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DECISION

The Commission in State Mandates (Commission) heard and decided this Incorrect Reduction Claim (IRC) during a regularly scheduled hearing on December 4, 2020. [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:

Member	Vote
Lee Adams, County Supervisor	
Mark Hariri, Representative of the State Treasurer, Vice Chairperson	
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	

Carmen Ramirez, City Council Member	
Jacqueline Wong-Hernandez, Representative of the State Controller	

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.⁸¹ 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.⁸²

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.⁸³ 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.⁸⁴ 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 2.⁸⁵

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.⁸⁶ 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 percent to 47.7 percent.⁸⁷ Under Government Code section 17551(d), the Commission only has jurisdiction over audit reductions, but not adjustments that increase allowable costs.

⁸¹ Exhibit A, IRC, pages 517, 519 (Final Audit Report). These figures include some uncontested audit findings.

⁸² Exhibit A, IRC, page 506 (Parameters and Guidelines). Penal Code section 13730.

⁸³ Exhibit A, IRC, page 528 (Final Audit Report).

⁸⁴ Exhibit A, IRC, page 528 (Final Audit Report).

⁸⁵ Exhibit A, IRC, pages 4-5, 6.

⁸⁶ Exhibit A, IRC, page 5; Exhibit B, Controller’s Comments on the IRC, page 342.

⁸⁷ Exhibit A, IRC, page 542 (Final Audit Report).

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 2011-2012.⁸⁸ 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.⁸⁹ 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.⁹⁰ 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 2006-2007.⁹¹

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.”⁹² The claimant argues it has provided 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 cases,” for the two cities of Encinitas and San Marcos (the claimant);⁹³ 2002, 2007, and 2008 reports prepared by the San Diego Association of Governments (SANDAG), on “Crime in the San Diego Region;”⁹⁴ 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.⁹⁵

⁸⁸ Exhibit A, IRC, page 529 (Final Audit Report); Exhibit B, Controller’s Comments on the IRC, pages 344-375 (ARJIS reports of domestic violence-related calls for assistance for fiscal years 2007-2008 through 2011-2012).

⁸⁹ Exhibit B, Controller’s Comments on the IRC, pages 344-375 (ARJIS reports of domestic violence-related calls for assistance for fiscal years 2007-2008 through 2011-2012).

⁹⁰ Exhibit A, IRC, page 529 (Final Audit Report).

⁹¹ Exhibit A, IRC, page 529 (Final Audit Report).

⁹² Exhibit A, IRC, page 4.

⁹³ Exhibit A, IRC, pages 27-39.

⁹⁴ Exhibit A, IRC, pages 40-290 (SANDAG reports).

⁹⁵ Exhibit A, IRC, pages 4, 292-310 (DOJ reports and “Criminal Statistics Reporting Requirements” March 2000).

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).⁹⁶ 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.⁹⁷ 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.”⁹⁸ The data presented by the claimant provides summaries of all crime, but does not verify the number of written reports for domestic violence calls for assistance. 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.⁹⁹ 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.¹⁰⁰ 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.¹⁰¹ The

⁹⁶ Exhibit A, IRC, page 503 (Parameters and Guidelines).

⁹⁷ *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.

⁹⁸ Exhibit B, Controller’s Comments on the IRC, page 20; Exhibit A, IRC, page 529 (Final Audit Report).

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

¹⁰⁰ Exhibit A, IRC, pages 316-468 (SDSO Contracts). Exhibit B, Controller’s Comments on the IRC, page 23.

¹⁰¹ Exhibit A, IRC, page 532 (Final Audit Report); Exhibit B, Controller’s Comments on the IRC, pages 20-23, 377-398.

Controller also found that the claimant used an inconsistent number of annual contract hours to compute the claimed hourly rates for these years.¹⁰²

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.”¹⁰³ 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.¹⁰⁴ 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 segregated for each peace officer classification that performed the reimbursable activities and confirmed they were accurate.¹⁰⁵ 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.¹⁰⁶ 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.¹⁰⁷ 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

¹⁰² Exhibit A, IRC, pages 532-533 (Final Audit Report). Exhibit B, Controller’s Comments on the IRC, pages 20-21, 377.

¹⁰³ Exhibit A, IRC, page 503 (Parameters and Guidelines).

¹⁰⁴ Exhibit A, IRC, page 506 (Parameters and Guidelines).

¹⁰⁵ Exhibit B, Controller’s Comments on the IRC, page 21.

¹⁰⁶ Exhibit A, IRC, page 533 (Final Audit Report). 1,743 productive hours is in the SDSO contract for 2008-2008 through 2011-2012; Exhibit A, IRC, page 452 (SDSO contract), Exhibit B, Controller’s Comments on the IRC, page 406 (SDSO contract).

¹⁰⁷ Exhibit A, IRC, pages 507-508 (Parameters and Guidelines).

annually.¹⁰⁸ 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 1.¹⁰⁹ 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.¹¹⁰ The other sergeant positions not included in the indirect cost pool, as requested by the claimant, remained classified as direct contract costs.¹¹¹ The Commission 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.¹¹² 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, this IRC is denied.

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.¹¹³
- 01/26/2012 The claimant signed its fiscal year 2010-2011 reimbursement claim.¹¹⁴
- 02/05/2013 The claimant filed its fiscal year 2011-2012 reimbursement claim.¹¹⁵
- 05/23/2017 The Controller issued the Draft Audit Report.¹¹⁶

¹⁰⁸ Exhibit A, IRC, page 542 (Final Audit Report).

¹⁰⁹ Exhibit A, IRC, page 541 (Final Audit Report).

¹¹⁰ Exhibit A, IRC, pages 541-542 (Final Audit Report). Exhibit B, Controller’s Comments on the IRC, pages 28, 411 (Calculation of Allowable Indirect Cost Rates).

¹¹¹ Exhibit B, Controller’s Comments on the IRC, page 427 (Controller’s email of April 17, 2017).

¹¹² *American Bd. of Cosmetic Surgery, Inc. v. Medical Bd. of California* (2008) 162 Cal.App.4th 534, 547-548.

¹¹³ Exhibit B, Controller’s Comments on the IRC, pages 136-186. Exhibit A, IRC, page 620-670 (Annual Reimbursement Claims).

¹¹⁴ Exhibit B, Controller’s Comments on the IRC, page 195 (2010-2011 Reimbursement Claim).

¹¹⁵ Exhibit B, Controller’s Comments on the IRC, page 202 (2011-2012 Reimbursement Claim).

¹¹⁶ Exhibit B, Controller’s Comments on the IRC, page 39 (Final Audit Report).

- 06/01/2017 The claimant submitted comments on the Draft Audit Report.¹¹⁷
- 06/30/2017 The Controller issued the Final Audit Report.¹¹⁸
- 08/22/2017 The claimant filed the IRC.¹¹⁹
- 01/22/2018 The Controller filed comments on the IRC.¹²⁰
- 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.
- 09/04/2020 Commission staff issued the Draft Proposed Decision.¹²¹

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.¹²²

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, 2001.¹²³ 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.”¹²⁴

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.¹²⁵ The amendment does not affect this IRC.

¹¹⁷ Exhibit B, Controller’s Comments on the IRC, pages 64-134 (Claimant’s comments on the Draft Audit Report).

¹¹⁸ Exhibit A, IRC, page 517 (Final Audit Report).

¹¹⁹ Exhibit A, IRC.

¹²⁰ Exhibit B, Controller’s Comments on the IRC.

¹²¹ Exhibit C, Draft Proposed Decision.

¹²² Penal Code section 13730(a), Exhibit A, IRC, pages 501-502 (Parameters and Guidelines).

¹²³ Exhibit A, IRC, pages 501-502 (Parameters and Guidelines).

¹²⁴ Exhibit A, IRC, page 503 (Parameters and Guidelines).

¹²⁵ Exhibit B, Controller’s Comments on the IRC, pages 317, 321 (Parameters and Guidelines, amended January 24, 2014). The amended Parameters and Guidelines clarify that:

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 2012-2013.¹²⁶

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.¹²⁷ 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.¹²⁸

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.¹²⁹ 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.¹³⁰ The claimant disputes only the reductions in

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).

¹²⁶ 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).

¹²⁷ Exhibit A, IRC, pages 517, 519 (Final Audit Report).

¹²⁸ Exhibit A, IRC, page 528 (Final Audit Report).

¹²⁹ Exhibit A, IRC, page 528 (Final Audit Report).

¹³⁰ Exhibit A, IRC, page 528 (Final Audit Report).

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 2006-2007.¹³¹

- 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 years 2007-2008 through 2011-2012.¹³² 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.¹³³ 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. The Controller determined that discrepancy was immaterial. Thus, the Controller used the verified incident counts to compute allowable costs for fiscal years 2007-2008 through

¹³¹ Exhibit A, IRC, pages 4-5, 6.

¹³² Exhibit A, IRC, page 529 (Final Audit Report); Exhibit B, Controller's Comments on the IRC, 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 X, Arjis – <http://www.arjis.org/SitePages/WhatIsARJIS.aspx>, (accessed on September 3, 2020).

¹³³ Exhibit B, Controller's Comments on the IRC, pages 344-375 (ARJIS reports of domestic violence-related calls for assistance for fiscal years 2007-2008 through 2011-2012).

2011-2012.¹³⁴ 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.”¹³⁵

For fiscal years 2001-2002 through 2006-2007, the claimant identified 1,990 incidents of domestic violence-related calls supported with written reports.¹³⁶ However, unlike fiscal years 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.”¹³⁷ 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 2006-2007.¹³⁸

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.¹³⁹ 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.¹⁴⁰ The SDSO provided “segregated contract salary and benefit amounts,” which the Controller used to calculate allowable rates for fiscal years 2001-2002 through 2006-2007.¹⁴¹ 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

¹³⁴ Exhibit A, IRC, page 529 (Final Audit Report); Exhibit B, Controller’s Comments on the IRC, page 20.

¹³⁵ Exhibit A, IRC, page 529 (Final Audit Report).

¹³⁶ Exhibit A, IRC, 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 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.

¹³⁷ Exhibit A, IRC, page 529 (Final Audit Report).

¹³⁸ Exhibit A, IRC, page 529 (Final Audit Report).

¹³⁹ Exhibit A, IRC, page 6.

¹⁴⁰ Exhibit A, IRC, page 532 (Final Audit Report); Exhibit B, Controller’s Comments on the IRC, pages 20-23, 377-398.

¹⁴¹ Exhibit A, IRC, page 532 (Final Audit Report); Exhibit B, Controller’s Comments on the IRC, pages 377-398.

in the later undisputed years.¹⁴² 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 2006-2007.¹⁴³

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.”¹⁴⁴

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.¹⁴⁵ 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 2011-2012.¹⁴⁶

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.¹⁴⁷

¹⁴² Exhibit A, IRC, pages 532-533 (Final Audit Report). Controller’s Comments on the IRC, pages 20-21, 377.

¹⁴³ Exhibit A, 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).

¹⁴⁴ Exhibit A, IRC, page 541 (Final Audit Report).

¹⁴⁵ Exhibit A, IRC, pages 541-542 (Final Audit Report).

¹⁴⁶ Exhibit A, IRC, page 542 (Final Audit Report).

¹⁴⁷ Exhibit A, IRC, page 542 (Final Audit Report).

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.¹⁴⁸ The 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."¹⁴⁹ 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.¹⁵⁰ 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."¹⁵¹ 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.¹⁵² The claimant argues that these are "'actual' and 'contemporaneous' statistics."¹⁵³

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."¹⁵⁴ The claimant emphasizes that the Controller's audit of the data for fiscal 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."¹⁵⁵

¹⁴⁸ See Exhibit A, IRC, page 506 (Parameters and Guidelines).

¹⁴⁹ Exhibit A, IRC, page 4.

¹⁵⁰ Exhibit A, IRC, page 4.

¹⁵¹ Exhibit A, IRC, page 4.

¹⁵² Exhibit A, IRC, pages 4, 27-39 (ARJIS reports), 40-290 (SANDAG reports), 292-310 (DOJ reports and "Criminal Statistics Reporting Requirements" March 2000).

¹⁵³ Exhibit A, IRC, page 4.

¹⁵⁴ Exhibit A, IRC, page 4.

¹⁵⁵ Exhibit A, IRC, page 5.

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."¹⁵⁶ 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."¹⁵⁷ 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.¹⁵⁸ 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."¹⁵⁹ 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 A-87."¹⁶⁰

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.¹⁶¹ The Controller deconstructed the contract services costs, as discussed above, in order to isolate the actual hourly rates applicable to the mandated activities. Then, the Controller 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 2011-2012.¹⁶² 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."¹⁶³ 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"¹⁶⁴ The Controller's calculated indirect

¹⁵⁶ Exhibit A, IRC, page 6.

¹⁵⁷ Exhibit A, IRC, page 6.

¹⁵⁸ Exhibit A, IRC, page 6.

¹⁵⁹ Exhibit A, IRC, page 6.

¹⁶⁰ Exhibit A, IRC, page 6.

¹⁶¹ Exhibit A, IRC, pages 541-542 (Final Audit Report).

¹⁶² Exhibit A, IRC, pages 542 (Final Audit Report).

¹⁶³ Exhibit A, IRC, page 7. Emphasis in original.

¹⁶⁴ Exhibit A, IRC, pages 7, 542 (Final Audit Report).

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.¹⁶⁵ 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.”¹⁶⁶

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 applicable indirect costs.¹⁶⁷ Specifically, the claimant states that the “SCO allowed only one sergeant...in their computation of ICRP rates.”¹⁶⁸ 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.¹⁶⁹

Finally, the claimant 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.”¹⁷⁰ 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.”¹⁷¹

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.¹⁷² 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.”¹⁷³ 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

¹⁶⁵ Exhibit A, IRC, page 7.

¹⁶⁶ Exhibit A, IRC, page 8.

¹⁶⁷ Exhibit A, IRC, page 8.

¹⁶⁸ Exhibit A, IRC, page 8.

¹⁶⁹ Exhibit A, IRC, page 8.

¹⁷⁰ Exhibit A, IRC, page 8.

¹⁷¹ Exhibit A, IRC, page 8.

¹⁷² Exhibit B, Controller’s Comments on the IRC, page 16.

¹⁷³ Exhibit B, Controller’s Comments on the IRC, page 17.

the earlier part of the audit period.¹⁷⁴ 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 2006-07.¹⁷⁵

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.”¹⁷⁶ 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.¹⁷⁷

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.¹⁷⁸

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.¹⁷⁹

The Parameters and Guidelines allow “only the pro rata portion of the services used to implement the reimbursable activities be claimed.”¹⁸⁰ The Controller found that for 2001-2002 through 2006-2007, the claimant “co-mingled multiple classifications and overhead costs into

¹⁷⁴ Exhibit B, Controller's Comments on the IRC, page 17.

¹⁷⁵ Exhibit B, Controller's Comments on the IRC, page 20.

¹⁷⁶ Exhibit B, Controller's Comments on the IRC, page 19.

¹⁷⁷ Exhibit B, Controller's Comments on the IRC, page 19.

¹⁷⁸ Exhibit B, Controller's Comments on the IRC, page 20.

¹⁷⁹ Exhibit B, Controller's Comments on the IRC, page 20.

¹⁸⁰ Exhibit B, Controller's Comments on the IRC, page 20.

one rate [for salaries and benefits].”¹⁸¹ 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.¹⁸² 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.¹⁸³ 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.”¹⁸⁴ 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.”¹⁸⁵

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.¹⁸⁶ 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.¹⁸⁷

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.¹⁸⁸ 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.¹⁸⁹

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.”¹⁹⁰ The “contract overhead line items” included, for example, supplies, vehicles,

¹⁸¹ Exhibit B, Controller’s Comments on the IRC, page 21.

¹⁸² Exhibit B, Controller’s Comments on the IRC, page 21.

¹⁸³ Exhibit B, Controller’s Comments on the IRC, page 21.

¹⁸⁴ Exhibit B, Controller’s Comments on the IRC, page 23.

¹⁸⁵ Exhibit B, Controller’s Comments on the IRC, page 23.

¹⁸⁶ Exhibit B, Controller’s Comments on the IRC, page 24.

¹⁸⁷ Exhibit B, Controller’s Comments on the IRC, page 24.

¹⁸⁸ Exhibit B, Controller’s Comments on the IRC, page 23.

¹⁸⁹ Exhibit B, Controller’s Comments on the IRC, pages 24-25.

¹⁹⁰ Exhibit B, Controller’s Comments on the IRC, page 24.

workspace, and other similar items.¹⁹¹ 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.¹⁹² 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.” The Controller, however, maintains that it “accounted for all appropriate contracted overhead costs that benefited the implementation of the entire contract.”¹⁹³ 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

¹⁹¹ Exhibit B, Controller’s Comments on the IRC, page 24.

¹⁹² Exhibit B, Controller’s Comments on the IRC, page 27.

¹⁹³ Exhibit B, Controller’s Comments on the IRC, page 28.

demonstrates that allowable indirect cost rates increased from the initial finding presented at the status meeting (Tab 23).¹⁹⁴

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."¹⁹⁵ 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.¹⁹⁶ 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.¹⁹⁷

The Controller maintains that its audit adjustments are correct and should be upheld by the Commission.

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.¹⁹⁸ 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

¹⁹⁴ Exhibit B, Controller's Comments on the IRC, page 29.

¹⁹⁵ Exhibit B, Controller's Comments on the IRC, page 27.

¹⁹⁶ Exhibit B, Controller's Comments on the IRC, pages 27-28.

¹⁹⁷ Exhibit B, Controller's Comments on the IRC, page 408 (Summary of Indirect Costs).

¹⁹⁸ *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.”¹⁹⁹

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.²⁰⁰ 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.’ ”²⁰¹

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.²⁰² 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.²⁰³

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 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

¹⁹⁹ *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.

²⁰⁰ *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.

²⁰¹ *American Bd. of Cosmetic Surgery, Inc. v. Medical Bd. of California* (2008) 162 Cal.App.4th 534, 547-548.

²⁰² *Gilbert v. City of Sunnyvale* (2005) 130 Cal.App.4th 1264, 1274-1275.

²⁰³ 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

Commission alleging that the Controller's reduction was incorrect.²⁰⁴ 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,²⁰⁵ and thereby complies with the notice requirements in Government Code section 17558.5(c). The claimant filed the IRC on August 22, 2017.²⁰⁶ 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.²⁰⁷ 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 274.²⁰⁸ 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.²⁰⁹ 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.²¹⁰

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.

²⁰⁴ Government Code sections 17551(d), 17558.7; California Code of Regulations, title 2, sections 1185.1, 1185.9.

²⁰⁵ Exhibit A, IRC, page 517 (Final Audit Report, Cover Letter).

²⁰⁶ Exhibit A, IRC, page 1.

²⁰⁷ Exhibit A, IRC, page 5.

²⁰⁸ Exhibit A, IRC, page 5; Exhibit B, Controller's Comments on the IRC, page 342.

²⁰⁹ Exhibit A, IRC, pages 7-8.

²¹⁰ Exhibit A, IRC, page 542 (Final Audit Report).

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.”²¹¹ 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 incidents 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.²¹² The claimant and the Controller identify the following number of incident reports claimed and the number allowed for these fiscal years:²¹³

	<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.”²¹⁴ 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 [sic].²¹⁵

The “summary reports” that the claimant references are faxed reports from the SDSO, appearing to answer a query from the claimant representative regarding the annual incident count for

²¹¹ Exhibit B, Controller’s Comments on the IRC, page 342.

²¹² Exhibit A, IRC, pages 5, 529 (Final Audit Report).

²¹³ Exhibit A, IRC, page 5; Exhibit B, Controller’s Comments on the IRC, page 342.

²¹⁴ Exhibit A, IRC, page 4.

²¹⁵ Exhibit A, IRC, page 4.

several different offenses, including “the number of domestic violence calls for services and cases,” for two different cities: Encinitas and San Marcos (the claimant).²¹⁶ Specifically, for fiscal years 2002-2003 and 2003-2004, the claimant provides a single-page fax and cover page, with a handwritten annual incident count for “the number of domestic violence calls for service and cases” for the City of San Marcos at 360 and 394, respectively.²¹⁷ 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.”²¹⁸

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.”²¹⁹

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.”²²⁰ The first are 2002, 2007, and 2008 reports prepared by the San Diego Association of Governments (SANDAG), on “Crime in the San Diego Region.”²²¹ 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.²²² 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.”²²³

The claimant also provided California 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.²²⁴

²¹⁶ Exhibit A, IRC, pages 27-39.

²¹⁷ Exhibit A, IRC, pages 31-33.

²¹⁸ Exhibit A, IRC, pages 34-39; 5.

²¹⁹ Exhibit A, IRC, page 4.

²²⁰ Exhibit A, IRC, page 4.

²²¹ Exhibit A, IRC, pages 40-290 (SANDAG reports).

²²² Exhibit A, IRC, page 4, 537 (Final Audit Report).

²²³ Exhibit A, IRC, page 537 (Final Audit Report); 615 (emails from Brent Jordan, Sr and Lieutenant Schaller).

²²⁴ Exhibit A, IRC, pages 4, 292-310 (DOJ reports and “Criminal Statistics Reporting Requirements” March 2000).

In response to the IRC, the Controller considered the claimant's documentation, which corroborates the numbers 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.²²⁵ 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.²²⁶

The Controller further explains that since the claimed incident counts for fiscal years 2007-2008 through 2011-2012 contained errors, the Controller concluded that it was likely that the claimed incident counts for fiscal years 2002-2003 through 2006-2007 also contained errors.²²⁷ 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.²²⁸ 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.²²⁹

²²⁵ Exhibit B, Controller's Comments on the IRC, page 19.

²²⁶ Exhibit B, Controller's Comments on the IRC, page 19.

²²⁷ Exhibit A, IRC, pages 529, 536 (Final Audit Report). Exhibit B, Controller's Comments on the IRC, pages 17, 20.

²²⁸ Exhibit B, Controller's Comments on the IRC, pages 20, 342, 343-349.

²²⁹ Exhibit B, Controller's Comments on the IRC, page 20.

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), 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 compliance with local, state, and federal government requirements. However, corroborating documents cannot be substituted for source documents.²³⁰

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.²³¹ 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.²³² Provisions that impose new, additional, or different liabilities based on past conduct are unlawfully retroactive.²³³

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. 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

²³⁰ Exhibit A, IRC, page 503 (Parameters and Guidelines).

²³¹ *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.

²³² *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.

²³³ *City of Modesto v. National Med, Inc.* (2005) 128 Cal.App.4th 518, 527.

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 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. 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.²³⁹ 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.²⁴⁰

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 ARJIS data for FY 2007-08 through FY 2011-12 and applied this average to compute costs for the unsupported years.²⁴¹ The claimant has not shown that the Controller's computation or application of this average to the earlier unsupported years is incorrect, or arbitrary or capricious.

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.²⁴² 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

²³⁹ Exhibit B, Controller's Comments on the IRC, page 19.

²⁴⁰ 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, page 4.

²⁴¹ Exhibit B, Controller's Comments on the IRC, page 20. Emphasis added.

²⁴² Exhibit A, IRC, pages 316-468 (SDSO Contracts). Exhibit B, Controller's Comments on the IRC, page 23.

“unit” rate.²⁴³ 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.²⁴⁴ The SDSO provided “segregated contract salary and benefit amounts,” which the Controller used to calculate allowable rates for fiscal years 2001-2002 through 2006-2007.²⁴⁵ 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.²⁴⁶ Since the Controller was able to get segregated contract salary and benefit amounts, the Controller adjusted annual productive hours to 1,743 hours, as noted in the contract for the later undisputed years.²⁴⁷ 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 2006-2007.²⁴⁸

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.”²⁴⁹

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.

²⁴³ Exhibit A, IRC, page 6.

²⁴⁴ Exhibit A, IRC, page 532 (Final Audit Report); Exhibit B, Controller’s Comments on the IRC, pages 20-23, 377-398.

²⁴⁵ Exhibit A, IRC, page 532 (Final Audit Report); Exhibit B, Controller’s Comments on the IRC, pages 377-398.

²⁴⁶ Exhibit A, IRC, pages 532-533 (Final Audit Report). Exhibit B, Controller’s Comments on the IRC, pages 20-21, 377.

²⁴⁷ Exhibit A, IRC, pages 532-533 (Final Audit Report). Exhibit B, Controller’s Comments on the IRC, pages 20-21, 377.

²⁴⁸ Exhibit A, 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).

²⁴⁹ Exhibit B, Controller’s Comments on the IRC, 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.²⁵⁰

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.²⁵¹

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 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."²⁵² 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

²⁵⁰ Exhibit A, IRC, page 6.

²⁵¹ Exhibit B, Controller's Comments on the IRC, page 23.

²⁵² Exhibit A, IRC, page 503 (Parameters and Guidelines).

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.²⁵³

The Parameters and Guidelines are regulatory in nature, and are binding on the parties.²⁵⁴

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.²⁵⁵ 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.²⁵⁶ The claimant does not dispute the facts and submitted its SDSO contracts that support the Controller’s conclusions.²⁵⁷ For example, the contract for general law enforcement and traffic services from July 1, 1996 to June 30, 2001, states:²⁵⁸

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 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 1.²⁵⁹

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

²⁵³ Exhibit A, IRC, page 506 (Parameters and Guidelines). Emphasis added.

²⁵⁴ *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.

²⁵⁵ Exhibit B, Controller’s Comments on the IRC, pages 23, 380-398 (Attachment B to the contracts between the claimant and SDSO for fiscal years 2001-2002 through 2006-2007).

²⁵⁶ Exhibit A, IRC, page 532 (Final Audit Report).

²⁵⁷ Exhibit A, IRC, pages 316-468 (SDSO Contracts).

²⁵⁸ See Exhibit A, IRC, page 324 (Contract for Law Enforcement Services).

²⁵⁹ Exhibit A, IRC, pages 319-320 (Contract for Law Enforcement Services).

(or 3,102.5 hours per patrol unit), in addition to traffic services and custom (special purpose officer) services.²⁶⁰ Thus, the annual contract hourly rate claimed was \$106.17 ($\$329,387 \div 3,102.5 = \106.17).²⁶¹

The contract for general law enforcement and traffic services from July 1, 2002 to June 30, 2007, similarly states:²⁶²

- 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 1.²⁶³

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 3,102.5 hours per patrol unit), in addition to traffic services and custom (special purpose officer) services.²⁶⁴ Thus, the annual contract hourly rate claimed was \$114.50 ($\$355,249 \div 3,102.5 = \114.50).²⁶⁵

These contracts show the claimed hourly contract unit rates include costs for all 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.”²⁶⁶ Accordingly, the Controller’s

²⁶⁰ Exhibit A, IRC, 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, page 377 (Controller’s calculation of hourly contract rates).

²⁶¹ This comports with the Controller’s calculation of the claimed hourly rate in Exhibit B, Controller’s Comments on the IRC, page 21.

²⁶² See Exhibit A, IRC, pages 364-385 (Contract for Law Enforcement Services).

²⁶³ See Exhibit A, IRC, pages 368-369 (Contract for Law Enforcement Services).

²⁶⁴ Exhibit A, IRC, page 383 (Contract Attachment B).

²⁶⁵ This comports with the controller’s calculation of the claimed hourly rate in the Audit Report, Exhibit A, IRC, page 533 (Final Audit Report).

²⁶⁶ Exhibit A, IRC, page 503 (Parameters and Guidelines).

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.²⁶⁷ For example, for fiscal year 2001-2002, the Controller obtained annual salary and benefit information for a Patrol Deputy (\$82,510),²⁶⁸ and divided it by the annual productive hours (1,743),²⁶⁹ calculating the 2001-2002 hourly rate for a Patrol Deputy at \$47.34.²⁷⁰ 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.²⁷¹ This recalculation complies with 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.²⁷² 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.²⁷³ The Controller used 1,743 productive hours to calculate hourly contract rates for all fiscal years,²⁷⁴ which is the number of productive hours noted in the SDSO contract for the later undisputed years.²⁷⁵

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,

²⁶⁷ Exhibit B, Controller's Comments on the IRC, page 21.

²⁶⁸ Exhibit B, Controller's Comments on the IRC, page 382 (SDSO FY 01/02 CLEP Costing).

²⁶⁹ Exhibit A, IRC, page 452 (SDSO Contract). Exhibit B, Controller's Comments on the IRC, page 406 (SDSO Contract).

²⁷⁰ Exhibit A, IRC, page 533 (Final Audit Report). Exhibit B, Controller's Comments on the IRC, page 21.

²⁷¹ Exhibit A, IRC, page 533-534 (Final Audit Report).

²⁷² Exhibit A, IRC, page 532 (Final Audit Report). Exhibit B, Controller's Comments on the IRC, pages 20-21, 377.

²⁷³ Exhibit B, Controller's Comments on the IRC, pages 20-21, 377.

²⁷⁴ Exhibit A, IRC, page 533 (Final Audit Report).

²⁷⁵ Exhibit A, IRC, page 452 (SDSO Contract for 2007-2008 through 2011-2012). Exhibit B, Controller's Comments on the IRC, page 406 (SDSO Contract for 2007-2008 through 2011-2012).

the choice made, and the purposes of the enabling statute.”²⁷⁶ The Commission must not reweigh the evidence, or substitute its judgment for the judgment of the Controller.²⁷⁷ 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.²⁷⁸

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 2011-2012.²⁷⁹

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 indirect “labor costs.” In addition, the claimant applied the indirect cost rates to unallowable contract services costs identified in Finding 1.²⁸⁰

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.²⁸¹ 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

²⁷⁶ *American Bd. of Cosmetic Surgery, Inc. v. Medical Bd. of California* (2008) 162 Cal.App.4th 534, 547-548.

²⁷⁷ *American Bd. of Cosmetic Surgery, Inc. v. Medical Bd. of California* (2008) 162 Cal.App.4th 534, 547-548.

²⁷⁸ Exhibit A, IRC, pages 507-508 (Parameters and Guidelines).

²⁷⁹ Exhibit A, IRC, page 542 (Final Audit Report).

²⁸⁰ Exhibit A, IRC, page 541 (Final Audit Report).

²⁸¹ Exhibit A, IRC, page 542 (Final Audit Report).

claimed.²⁸² The Controller then applied the audited rates (45.9 to 50.4 percent) to the total allowable contract services costs.²⁸³ This resulted in a reduction of \$89,257 in fiscal years 2007-2008 through 2011-2012.²⁸⁴

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."²⁸⁵ 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.'"²⁸⁶ 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 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

²⁸² Exhibit A, IRC, pages 541-542 (Final Audit Report). Exhibit B, Controller's Comments on the IRC, pages 28, 411 (Calculation of Allowable Indirect Cost Rates).

²⁸³ Exhibit A, IRC, page 543 (Final Audit Report).

²⁸⁴ Exhibit A, IRC, page 543 (Final Audit Report). The \$89,257 adjustment was reduced by the understated indirect costs allowed in fiscal years 2001-2001 through 2006-2007, resulting in a net reduction of indirect costs during the audit period of \$31,485. (Exhibit A, IRC, page 542 (Final Audit Report).)

²⁸⁵ Exhibit A, IRC, page 8.

²⁸⁶ Exhibit A, IRC, page 8.

duties. The City would be happy to provide other support if told what would satisfy the SCO.²⁸⁷

Since the claimant only challenges the Controller's methodology for recalculating indirect costs (by including the costs 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."²⁸⁸ The Commission does not reweigh the evidence, or substitute its judgment for the judgment of the Controller.²⁸⁹

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

First, 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 listed in the contract should be considered direct contract costs.²⁹⁰ However, the Controller reviewed the contracts between the claimant and the SDSO, and for fiscal years 2007-2008 through 2011-2012, the SDSO contract 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.²⁹¹

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

²⁸⁷ Exhibit A, IRC, page 8.

²⁸⁸ *American Bd. of Cosmetic Surgery, Inc. v. Medical Bd. of California* (2008) 162 Cal.App.4th 534, 547-548.

²⁸⁹ *American Bd. of Cosmetic Surgery, Inc. v. Medical Bd. of California* (2008) 162 Cal.App.4th 534, 547-548.

²⁹⁰ Exhibit B, Controller's Comments on the IRC, page 29.

²⁹¹ Exhibit B, Controller's Comments on the IRC, pages 29, 423 (Controller's Notes for April 10, 2016 Status Meeting.)

contract-wide overhead rate that can be applied to claim costs for various mandated programs.²⁹²

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.²⁹³

The Controller’s Office responded by 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 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. . . .²⁹⁴

On May 8, 2017, the Controller’s Office emailed the claimant indicating that the Controller “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.”²⁹⁵ 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

²⁹² Exhibit B, Controller’s Comments on the IRC, page 427.

²⁹³ Exhibit B, Controller’s Comments on the IRC, pages 431-432.

²⁹⁴ Exhibit B, Controller’s Comments on the IRC, page 431.

²⁹⁵ Exhibit B, Controller’s Comments on the IRC, pages 29, 430.

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 Conference Handout demonstrates that allowable indirect cost rates increased from the initial finding presented at the status meeting (Tab 23).²⁹⁶

Based on this record, the Commission finds that 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.²⁹⁷ 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.

²⁹⁶ Exhibit B, Controller's Comments on the IRC, pages 29, 412-451 (Controller's correspondence with the claimant). Exhibit A, IRC, page 543 (Final Audit Report).

²⁹⁷ Exhibit B, Controller's Comments on the IRC, page 427 (Controller's email of April 17, 2017).

V. Conclusion

Based on the forgoing, the Commission denies this IRC.

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 September 4, 2020, I served the:

- **Draft Proposed Decision, Schedule for Comments, and Notice of Hearing issued September 4, 2020**

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 September 4, 2020 at Sacramento, California.



Jill L. Magee
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814
(916) 323-3562

COMMISSION ON STATE MANDATES

Mailing List

Last Updated: 8/4/20

Claim Number: 17-0240-I-01

Matter: Crime Statistics Reports for the Department of Justice

Claimant: City of San Marcos

TO ALL PARTIES, INTERESTED PARTIES, AND INTERESTED PERSONS:

Each commission mailing list is continuously updated as requests are received to include or remove any party or person on the mailing list. A current mailing list is provided with commission correspondence, and a copy of the current mailing list is available upon request at any time. Except as provided otherwise by commission rule, when a party or interested party files any written material with the commission concerning a claim, it shall simultaneously serve a copy of the written material on the parties and interested parties to the claim identified on the mailing list provided by the commission. (Cal. Code Regs., tit. 2, § 1181.3.)

Socorro Aquino, *State Controller's Office*

Division of Audits, 3301 C Street, Suite 700, Sacramento, CA 95816

Phone: (916) 322-7522

SAquino@sco.ca.gov

Allan Burdick,

7525 Myrtle Vista Avenue, Sacramento, CA 95831

Phone: (916) 203-3608

allanburdick@gmail.com

Evelyn Calderon-Yee, Bureau Chief, *State Controller's Office*

Local Government Programs and Services Division, Bureau of Payments, 3301 C Street, Suite 740,

Sacramento, CA 95816

Phone: (916) 324-5919

ECalderonYee@sco.ca.gov

Gwendolyn Carlos, *State Controller's Office*

Local Government Programs and Services Division, Bureau of Payments, 3301 C Street, Suite 740,

Sacramento, CA 95816

Phone: (916) 323-0706

gcarlos@sco.ca.gov

Annette Chinn, *Cost Recovery Systems, Inc.*

Claimant Representative

705-2 East Bidwell Street, #294, Folsom, CA 95630

Phone: (916) 939-7901

achinnrcrs@aol.com

Eric Feller, *Commission on State Mandates*

980 9th Street, Suite 300, Sacramento, CA 95814

Phone: (916) 323-3562
eric.feller@csm.ca.gov

Donna Ferebee, *Department of Finance*
915 L Street, Suite 1280, Sacramento, CA 95814
Phone: (916) 445-3274
donna.ferebee@dof.ca.gov

Lisa Fowler, Finance Director, *City of San Marcos*
Claimant Contact
1 Civic Center Drive, San Marcos, CA 92069
Phone: (760) 744-1050
lfowler@san-marcos.net

Susan Geanacou, *Department of Finance*
915 L Street, Suite 1280, Sacramento, CA 95814
Phone: (916) 445-3274
susan.geanacou@dof.ca.gov

Dillon Gibbons, Legislative Representative, *California Special Districts Association*
1112 I Street Bridge, Suite 200, Sacramento, CA 95814
Phone: (916) 442-7887
dillong@csda.net

Heather Halsey, Executive Director, *Commission on State Mandates*
980 9th Street, Suite 300, Sacramento, CA 95814
Phone: (916) 323-3562
heather.halsey@csm.ca.gov

Chris Hill, Principal Program Budget Analyst, *Department of Finance*
Local Government Unit, 915 L Street, Sacramento, CA 95814
Phone: (916) 445-3274
Chris.Hill@dof.ca.gov

Lisa Kurokawa, Bureau Chief for Audits, *State Controller's Office*
Compliance Audits Bureau, 3301 C Street, Suite 700, Sacramento, CA 95816
Phone: (916) 327-3138
lkurokawa@sco.ca.gov

Erika Li, Program Budget Manager, *Department of Finance*
915 L Street, 10th Floor, Sacramento, CA 95814
Phone: (916) 445-3274
erika.li@dof.ca.gov

Jill Magee, Program Analyst, *Commission on State Mandates*
980 9th Street, Suite 300, Sacramento, CA 95814
Phone: (916) 323-3562
Jill.Magee@csm.ca.gov

Jane McPherson, Financial Services Director, *City of Oceanside*
300 North Coast Highway, Oceanside, CA 92054
Phone: (760) 435-3055
JmcPherson@oceansideca.org

Lourdes Morales, Senior Fiscal and Policy Analyst, *Legislative Analyst's Office*
925 L Street, Suite 1000, Sacramento, CA 95814
Phone: (916) 319-8320
Lourdes.Morales@LAO.CA.GOV

Debra Morton, Manager, Local Reimbursements Section, *State Controller's Office*
Local Government Programs and Services Division, Bureau of Payments, 3301 C Street, Suite 740,
Sacramento, CA 95816
Phone: (916) 324-0256
DMorton@sco.ca.gov

Michelle Nguyen, *Department of Finance*
Education Unit, 915 L Street, Sacramento, CA 95814
Phone: (916) 445-0328
Michelle.Nguyen@dof.ca.gov

Andy Nichols, *Nichols Consulting*
1857 44th Street, Sacramento, CA 95819
Phone: (916) 455-3939
andy@nichols-consulting.com

Arthur Palkowitz, *Artiano Shinoff*
2488 Historic Decatur Road, Suite 200, San Diego, CA 92106
Phone: (619) 232-3122
apalkowitz@as7law.com

Keith Petersen, *SixTen & Associates*
P.O. Box 340430, Sacramento, CA 95834-0430
Phone: (916) 419-7093
kbsixten@aol.com

Johnnie Pina, Legislative Policy Analyst, *League of Cities*
1400 K Street, Suite 400, Sacramento, CA 95814
Phone: (916) 658-8214
jpina@cacities.org

Jai Prasad, *County of San Bernardino*
Office of Auditor-Controller, 222 West Hospitality Lane, 4th Floor, San Bernardino, CA 92415-0018
Phone: (909) 386-8854
jai.prasad@atc.sbcounty.gov

Carla Shelton, *Commission on State Mandates*
980 9th Street, Suite 300, Sacramento, CA 95814
Phone: (916) 323-3562
carla.shelton@csm.ca.gov

Camille Shelton, Chief Legal Counsel, *Commission on State Mandates*
980 9th Street, Suite 300, Sacramento, CA 95814
Phone: (916) 323-3562
camille.shelton@csm.ca.gov

Natalie Sidarous, Chief, *State Controller's Office*
Local Government Programs and Services Division, 3301 C Street, Suite 740, Sacramento, CA
95816
Phone: 916-445-8717
NSidarous@sco.ca.gov

Michelle Skaggs Lawrence, City Manager, *City of Oceanside*
300 North Coast Highway, Oceanside, CA 92054
Phone: (760) 435-3055
citymanager@oceansideca.org

Jim Spano, Chief, Division of Audits, *State Controller's Office*

3301 C Street, Suite 715A, Sacramento, CA 95816
Phone: (916) 324-1696
jspano@sco.ca.gov

Dennis Speciale, *State Controller's Office*

Division of Accounting and Reporting, 3301 C Street, Suite 700, Sacramento, CA 95816
Phone: (916) 324-0254
DSpeciale@sco.ca.gov

Brittany Thompson, Budget Analyst, *Department of Finance*

Local Government Unit, 915 L Street, Sacramento, CA 95814
Phone: (916) 445-3274
Brittany.Thompson@dof.ca.gov