



July 23, 2018

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

Ms. Jill Kanemasu
Division of Accounting and Reporting
State Controller's Office
3301 C Street, Suite 700
Sacramento, CA 95816

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

Re: Draft Proposed Decision, Schedule for Comments, and Notice of Hearing

Interagency Child Abuse and Neglect Reports (ICAN), 17-0022-I-01

Penal Code Sections 11165.9, 11166, 11166.2, 11166.9¹, 11168 (formerly 11161.7), 11169, 11170, and 11174.34 (formerly 11166.9) as added or amended by Statutes 1977, Chapter 958 (AB 1058); Statutes 1980, Chapter 1071 (SB 781); Statutes 1981, Chapter 435 (AB 518); Statutes 1982, Chapter 162 (AB 2303); Statutes 1982, Chapter 905 (SB 1848); Statutes 1984, Chapter 1423 (SB 1899); Statutes 1984, Chapter 1613 (AB 2709); Statutes 1985, Chapter 1598 (AB 505); Statutes 1986, Chapter 1289 (AB 1981); Statutes 1986, Chapter 1496 (AB 3608); Statutes 1987, Chapter 82 (AB 80); Statutes 1987, Chapter 531 (AB 1632); Statutes 1987, Chapter 1459 (SB 1219); Statutes 1988, Chapter 269 (AB 3022); Statutes 1988, Chapter 1497 (SB 2457); Statutes 1988, Chapter 1580 (AB 4585); Statutes 1989, Chapter 153 (AB 627); Statutes 1990, Chapter 650 (SB 2423); Statutes 1990, Chapter 1330 (SB 2788); Statutes 1990, Chapter 1363 (AB 3532); Statutes 1990, Chapter 1603 (SB 2669); Statutes 1992, Chapter 163 (AB 2641); Statutes 1992, Chapter 459 (SB 1695); Statutes 1992, Chapter 1338 (SB 1184); Statutes 1993, Chapter 219 (AB 1500); Statutes 1993, Chapter 510 (SB 665); Statutes 1996, Chapter 1080 (AB 295); Statutes 1996, Chapter 1081 (AB 3554); Statutes 1997, Chapter 842 (SB 644); Statutes 1997, Chapter 843 (AB 753); Statutes 1997, Chapter 844 (AB 1065); Statutes 1999, Chapter 475 (SB 654); Statutes 1999, Chapter 1012 (SB 525); and Statutes 2000, Chapter 916 (AB 1241); California Code of Regulations, Title 11, Section 903 (Register 98, Number 29)²; "Child Abuse Investigation Report" Form SS 8583 (Rev. 3/91)
Fiscal Years: 1999-2000, 2000-2001, 2001-2002, 2002-2003, 2003-2004, 2004-2005, 2005-2006, 2006-2007, 2007-2008, 2008-2009, 2009-2010, 2010-2011, 2011-2012, and 2012-2013

City of Palmdale, Claimant

Dear Ms. Chinn and Ms. Kanemasu:

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

¹ Since renumbered as Penal Code section 11174.34 (Stats. 2004, ch. 842 (SB 1313)).

² The substantive requirements of section 903 are now found at section 902, pursuant to amendments effected by Register 2010, Number 2.

Ms. Chinn and Ms. Kanemasu

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Written Comments

Written comments may be filed on the Draft Proposed Decision by **August 13, 2018**. 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.³

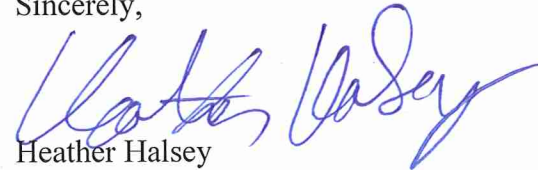
You are advised that comments filed with the Commission on State Mandates (Commission) are required to be simultaneously served on the other interested parties on the mailing list, and to be accompanied by a proof of service. However, this requirement may also be satisfied by electronically filing your documents. Refer to http://www.csm.ca.gov/dropbox_procedures.php on the Commission's website for electronic filing instructions. (Cal. Code Regs., tit. 2, § 1181.3.)

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, September 28, 2018**, at 10:00 a.m., State Capitol, Room 447, Sacramento, California. The Proposed Decision will be issued on or about September 24, 2018. Please let us know in advance if you or a representative of your agency will testify at the hearing, and if other witnesses will appear. If you would like to request postponement of the hearing, please refer to section 1187.9(b) of the Commission's regulations.

Sincerely,



Heather Halsey
Executive Director

³ 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.

ITEM ____
INCORRECT REDUCTION CLAIM
DRAFT PROPOSED DECISION

Penal Code Sections 11165.9, 11166, 11166.2, 11166.9¹, 11168 (formerly 11161.7), 11169, 11170, and 11174.34 (formerly 11166.9) as added or amended by Statutes 1977, Chapter 958; Statutes 1980, Chapter 1071; Statutes 1981, Chapter 435; Statutes 1982, Chapters 162 and 905; Statutes 1984, Chapters 1423 and 1613; Statutes 1985, Chapter 1598; Statutes 1986, Chapters 1289 and 1496; Statutes 1987, Chapters 82, 531, and 1459; Statutes 1988, Chapters 269, 1497, and 1580; Statutes 1989, Chapter 153; Statutes 1990, Chapters 650, 1330, 1363, and 1603; Statutes 1992, Chapters 163, 459, and 1338; Statutes 1993, Chapters 219 and 510; Statutes 1996, Chapters 1080 and 1081; Statutes 1997, Chapters 842, 843, and 844; Statutes 1999, Chapters 475 and 1012; and Statutes 2000, Chapter 916

California Code of Regulations, Title 11, Section 903 (Register 98, Number 29)

“Child Abuse Investigation Report” Form SS 8583 (Rev. 3/91)

Interagency Child Abuse and Neglect Investigation Reports (ICAN)

Fiscal Years 1999-2000 through 2012-2013

17-0022-I-01

City of Palmdale, Claimant

EXECUTIVE SUMMARY

Overview

This Incorrect Reduction Claim (IRC) addresses reductions made by the State Controller’s Office (Controller) to reimbursement claims filed by the City of Palmdale (claimant) for costs incurred during fiscal years 1999-2000 through 2012-2013 (audit period) for the *Interagency Child Abuse and Neglect Investigation Reports (ICAN)* program.

The initial claiming period for this mandated program spans fiscal years 1999-2000 through 2012-2013, and therefore the Controller permitted the claimant to use a time study to support its claims, due to the likely difficulty of obtaining source documentation for the early part of the reimbursement period. The Controller reduced the claims for all fiscal years, finding that the time study used to calculate reimbursement for costs of investigating reports of suspected child abuse included within its sample one case that included unallowable activities. With that case removed, the Controller adjusted the average time increment resulting from the time study from 3.66 hours to 2.65 hours per case. The claimant objected to that adjustment and proposed

¹ Renumbered at Penal Code section 11174.34 (Stats. 2004, ch. 842 (SB 1313)).

additional activities and time be included in the time study, but the Controller rejected those proposals.

The Controller also reduced indirect costs claimed, because the claimant did not claim in accordance with the Parameters and Guidelines. Specifically, the claimant calculated indirect costs using a ten percent default rate applied to its contract costs, while the Parameters and Guidelines only provide for the default rate to be applied to direct labor costs, excluding fringe benefits. Because the claimant contracts with the County of Los Angeles for all law enforcement services, including this mandated program, it has no direct labor costs and the Controller found the ten percent default rate is unavailable. Therefore, the Controller disallowed all indirect costs.

Staff recommends the Commission deny this IRC, finding that reductions related to the claimant's time study, and disallowance of indirect costs, as claimed, for all fiscal years were correct as a matter of law and not arbitrary, capricious, or entirely lacking in evidentiary support.

Procedural History

On December 6, 2007, the Commission adopted the Test Claim Decision.² On December 12, 2013, the Commission adopted the Parameters and Guidelines.³ On April 28, 2014 the Controller issued claiming instructions for the initial claiming period.⁴ On July 3, 2014, the City of Palmdale filed its initial reimbursement claim.⁵ On December 19, 2014 the Controller notified the claimant of an audit.⁶ On July 15, 2015 the claimant filed amended claims for fiscal years 1999-2000 through 2012-2013.⁷ On March 30, 2016 the Controller issued a draft audit report.⁸ On April 11, 2016, the claimant filed comments on the draft audit report.⁹ On May 19, 2016, the Controller issued the Final Audit Report.¹⁰ The claimant filed the IRC on November 7, 2017.¹¹ The Controller filed comments on the IRC on February 22, 2018.¹² The

² Exhibit X, Test Claim Decision, *Interagency Child Abuse and Neglect Investigation Reports*, 00-TC-22.

³ Exhibit A, IRC, page 233 [Parameters and Guidelines].

⁴ Exhibit A, IRC, page 229 [Controller's Claiming Instructions, Cover Letter].

⁵ Exhibit B, Controller's Comments on the IRC, page 30.

⁶ Exhibit B, Controller's Comments on the IRC, page 6.

⁷ Exhibit A, IRC, pages 299-380 [Claim Documentation, Amended Claim Forms].

⁸ Exhibit A, IRC, page 265 [Controller's Final Audit Report, page 4].

⁹ Exhibit A, IRC, page 292 [Claimant's Comments on the Draft Audit Report].

¹⁰ Exhibit A, IRC, page 259 [Controller's Final Audit Report, Cover Letter].

¹¹ Exhibit A, IRC.

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

claimant filed late rebuttal comments on May 7, 2018.¹³ Commission staff issued the Draft Proposed Decision on July 23, 2018.¹⁴

Commission Responsibilities

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

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

The Commission must review questions of law, including interpretation of parameters and guidelines, de novo, without consideration of legal conclusions made by the Controller in the context of an audit. The Commission is vested with exclusive authority to adjudicate disputes over the existence of state-mandated programs within the meaning of article XIII B, section 6 of the California Constitution.¹⁵ 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."¹⁶

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.¹⁷

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.¹⁸ 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

¹³ Exhibit C, Claimant's Late Rebuttal Comments.

¹⁴ Exhibit D, Draft Proposed Decision.

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

¹⁶ *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.

¹⁷ *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.

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

Commission’s ultimate findings of fact must be supported by substantial evidence in the record.¹⁹

Claims

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

Subject	Description	Staff Recommendation
Was the IRC timely filed?	Section 1185.1 of the Commission’s regulations required IRCs to be filed no later than three years after the Controller’s final audit report, or other notice of adjustment that complies with Government Code section 17558.5(c).	<i>The IRC was timely filed.</i> The Controller’s Final Audit Report was issued May 19, 2016, and the IRC was filed November 7, 2017, less than three years from the date of the Controller’s Final Audit Report.
Does the Commission have jurisdiction over the claimant’s assertion that certain preliminary investigative activities that were not specifically claimed or disallowed should be subject to reimbursement?	The claimant argued for additional activities and time to augment the results of the time study, and filed amended reimbursement claims, alleging that certain preliminary investigative activities, such as making phone calls to schedule interviews, were not accounted for in the time study. ²⁰ The revised time study documentation supporting the amended claims, however, does not specifically identify additional time for preliminary investigative activities. In addition, as indicated in the Final Audit	<i>No, the Commission does not have jurisdiction over this issue because it is not the subject of a reduction.</i> These activities were neither specifically claimed nor specifically disallowed, they are not the subject of a reduction and the Commission does not have jurisdiction over these issues raised in the IRC because its jurisdiction is limited to a claim by a local government that “the Controller has incorrectly <i>reduced</i> payments to the local agency.” ²¹ There can be no <i>reduction</i> of a cost that was never the subject of a reimbursement claim.

¹⁹ 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.

²⁰ See Exhibit A, IRC, pages 3 [IRC Narrative]; 285 [Final Audit Report, page 24].

²¹ Government Code section 17551(d), emphasis added.

	<p>Report, the only reductions taken by the Controller related to the exclusion of the one investigation that went beyond the scope of the mandate, and the rejection of the additional report writing time claimed.</p>	
<p>Were the Controller’s reductions to the claimant’s time study and amended claims correct as matter of law, and not arbitrary, capricious, or entirely lacking in evidentiary support?</p>	<p>The Controller determined that one of the fourteen investigations sampled for the time study included unallowable activities, and excluded it from the average time increment calculation for that reason. The Controller also rejected an additional thirty minutes of report writing time that the claimant submitted in its amended claims, finding that the activities and time requested were already included in the time study.</p>	<p><i>The reduction was correct as a matter of law, and not arbitrary, capricious, or entirely lacking in evidentiary support.</i></p> <p>The evidence in the record supports the Controller’s determination that one investigation included unallowable activities and the Controller therefore correctly excluded that investigation from the time study sample. The Controller then found that the additional activities and time proposed by the claimant were already included in the time study, and the claimant has not provided substantial evidence in the record to rebut that determination; therefore the Controller’s adjustment to the time study and the resulting reduction is correct and not arbitrary.</p>
<p>Was the Controller’s reduction of indirect costs, as claimed, correct as matter of law, and not arbitrary, capricious, or entirely lacking in evidentiary support?</p>	<p>The Controller disallowed all indirect costs, as claimed, because the claimant contracts for all law enforcement services within the city, and the Parameters and Guidelines do not permit claiming indirect costs using a ten percent flat rate applied to contract costs.</p>	<p><i>The reduction was correct as a matter of law, and not arbitrary, capricious, or entirely lacking in evidentiary support.</i></p> <p>The claimant has the burden to establish its actual costs, both direct and indirect, and indirect costs must be claimed in accordance with</p>

		the Parameters and Guidelines and claiming instructions. The claimant failed to comply with the Parameters and Guidelines, and therefore the Controller’s reduction was correct as a matter of law and not arbitrary, capricious, or entirely lacking in evidentiary support.
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Staff Analysis

A. The Claimant Timely Filed this IRC Within Three Years from the Date Claimant First Received from the Controller a Final State Audit Report, Letter, or Other Written Notice of Adjustment to a Reimbursement Claim, Which Complies with Government Code Section 17558.5(c).

To be timely filed, an IRC must be filed with the Commission no later than three years “following the date a claimant first receives from the Office of State Controller a final state audit report, letter, or other written notice of adjustment to a reimbursement claim, which complies with Government Code section 17558.5(c) by 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.”²² Here, the final audit report is dated May 19, 2016.²³ The IRC was filed with the Commission on November 7, 2017.²⁴ Less than three years having elapsed between the issuance of the Final Audit Report and the filing of the IRC, this IRC was filed within the period prescribed in Code of Regulations, title 2, section 1185.1(c).

B. The Commission Does Not Have Jurisdiction over the Claimant’s Assertion in Response to the Audit that Certain Preliminary Investigative Activities that Were Not Specifically Claimed or Disallowed in the Initial or Amended Reimbursement Claims Should Be Subject to Reimbursement Because These Activities and Costs Are Not the Subject of a Reduction.

The claimant argued for additional activities and time to augment the results of the time study, and filed amended reimbursement claims, alleging that certain preliminary investigative activities, such as making phone calls to schedule interviews, were not accounted for in the time study.²⁵

²² California Code of Regulations, title 2, section 1185.1(c) (Register 2016, No. 38).

²³ Exhibit A, IRC, page 259 [Controller’s Final Audit Report].

²⁴ Exhibit A, IRC, page 1.

²⁵ Exhibit A, IRC, pages 3 [IRC Narrative]; 285 [Final Audit Report, p. 24].

The revised time study documentation supporting the amended claims, however, does not specifically identify additional time for preliminary investigative activities. In addition, the evidence in the record does not show that at any point these preliminary activities were ever specifically claimed, or specifically disallowed, either in the original time study and reimbursement claims, or in the amended reimbursement claims filed July 15, 2015. As indicated in the Final Audit Report, the only reductions taken by the Controller related to the exclusion of the one investigation that went beyond the scope of the mandate, and the rejection of the additional report writing time claimed.

Pursuant to Government Code section 17551, the Commission only has jurisdiction over reductions taken in the context of an audit. Therefore the Commission does not have jurisdiction to consider these issues in the context of an IRC.

C. The Controller’s Reduction in Finding 2, Which Resulted from an Adjustment to the Average Time Increment in Claimant’s Time Study, Is Correct as a Matter of Law and Not Arbitrary, Capricious, or Entirely Lacking in Evidentiary Support.

The initial claiming period for this mandated program spans fiscal years 1999-2000 through 2012-2013, and therefore the Controller permitted the claimant to use a time study to support its claims, due to the likely difficulty of obtaining source documentation for the early part of the reimbursement period. The first of two time studies conducted by the claimant was not contemporaneous, and was therefore rejected, but the Controller accepted the claimant’s second time study, except that it included an investigation “with unallowable hours that accounted for activities following the determination of a substantiated status of child abuse.”²⁶ The claimant filed amended claims, dated July 15, 2015, which included the one investigation that the Controller had determined was unallowable, as well as an additional thirty minutes of report writing time for eleven of the fourteen investigations, which the claimant asserted had been inadvertently omitted.²⁷ The claimant had also argued, during audit fieldwork, that the average time increment should be increased to reflect certain preliminary investigative activities,²⁸ but the amended claims failed to identify additional time that should be added to the time study to account for those activities.

The Controller rejected the request for additional report writing time, concluding that report writing was already accounted for in the average time increment, and excluded the unallowable investigation from the time study sample, resulting in a 2.65 hour average time increment. Thus, the reductions at issue relating to the time study include:

- Exclusion from the time study sample of an investigation that included unallowable activities conducted subsequent to the determination that the report of suspected child abuse was substantiated; and
- Rejection of the claimant’s proposed additional time for report writing.

²⁶ Exhibit A, IRC, page 284 [Final Audit Report, p. 23].

²⁷ Exhibit A, IRC, pages 299-380 [Amended Claim Forms]; Exhibit B, Controller’s Comments on the IRC, page 169 [Additional Time Added to Time Study #2].

²⁸ Exhibit A, IRC, page 285 [Final Audit Report, p. 24].

1. The Controller's reduction of costs based on the exclusion of one investigation from the claimant's time study that included activities that are beyond the scope of the mandate is correct as a matter of law, and not arbitrary, capricious, or entirely lacking in evidentiary support.

The Controller reduced reimbursement based on excluding from the claimant's time study a single investigation that included unallowable activities occurring subsequent to the determination whether the case was substantiated, inconclusive, or unfounded. The Controller concluded "[t]he average time per case, using the second time study results (less the unallowable hours of one case), totaled 2.65 hours."²⁹ The Controller conducted a time *survey* with the deputies, which yielded a range of 2.29 to 2.71 hours.³⁰ Since the 2.65 hours resulting from the time study fell within that range, the Controller determined that the time study result was reasonable, and accepted the 2.65-hour average time increment.³¹

The claimant argues that even though that investigation was an outlier in terms of the time spent by deputies performing the mandate, it should be included in the time study sample because it reflects the fact that some cases require more time and resources than others.³²

Staff finds that the reduction of costs based on the exclusion of one investigation from the claimant's time study is correct as a matter of law, and not arbitrary, capricious, or entirely lacking in evidentiary support.

The Commission's Decision adopting the Parameters and Guidelines reasoned that the requirement to investigate reports of suspected child abuse or neglect derives from the reporting requirement to DOJ; it is not a reimbursable state mandate to investigate reports of child abuse or neglect for purposes of prosecuting crimes.³³ The Decision also analyzed at length the idea that the express goal of the Child Abuse and Neglect Reporting Act (CANRA) is to protect children from abuse or neglect, not to investigate and prosecute criminal child abuse, sexual assault, neglect, or other crimes.³⁴ The Parameters and Guidelines therefore include an express disclaimer that reimbursement is not required for: "Investigative activities undertaken subsequent to the determination whether a report of suspected child abuse is substantiated, inconclusive, or unfounded...including the collection of physical evidence, the referral to a child abuse investigator, and the conduct of follow-up interviews."³⁵

²⁹ Exhibit A, IRC, page 284 [Final Audit Report, p. 23].

³⁰ Exhibit A, IRC, page 284 [Final Audit Report, p. 23].

³¹ Exhibit A, IRC, page 284 [Final Audit Report, p. 23].

³² Exhibit C, Claimant's Late Rebuttal Comments, page 34 [email discussion between the claimant's representatives and the Controller's audit staff].

³³ Exhibit X, Statement of Decision and Parameters and Guidelines, *Interagency Child Abuse and Neglect Investigation Reports*, 00-TC-22, page 25.

³⁴ Exhibit X, Statement of Decision and Parameters and Guidelines, *Interagency Child Abuse and Neglect Investigation Reports*, 00-TC-22, page 34.

³⁵ Exhibit A, IRC, page 241 [Parameters and Guidelines, p. 9].

Here, the Controller determined that one of the fourteen investigations sampled for the time study included activities occurring after the determination the report of child abuse was not unfounded.³⁶ The evidence in the record shows that this determination was based on conversations with the deputies at the Palmdale station.³⁷ Following those discussions, the Controller correctly determined that any further investigation subsequent to that determination is beyond the scope of the mandate, in accordance with the Parameters and Guidelines. Therefore, the Controller excluded that investigation from the sample used for the time study, and recalculated the average time increment based on the other thirteen investigations sampled.³⁸

Then, as noted above, the Controller verified the reasonableness of the time study results after removing that case from the sample, by conducting a time survey, and the 2.65-hour average time increment fell squarely within the results of the time survey.³⁹ The claimant's argument that the 660 minute case should have been included in the sample because "[t]hese types of more involved cases do occur and their lengthier investigation time should also be factored into the average time per case,"⁴⁰ ignores the fact that the case was not excluded because of its length, but because it exceeded the scope of the mandate, based on discussions with the officers performing the mandate. The claimant continues to challenge that conclusion, but provides no evidence to rebut it.

Accordingly, the Controller's exclusion of one sample investigation that included unallowable activities from the time study is correct as a matter of law, and not arbitrary, capricious, or entirely lacking in evidentiary support.

2. The Controller's rejection of additional report writing time proposed in the claimant's amended claims is correct as a matter of law and not arbitrary, capricious, or entirely lacking in evidentiary support.

As noted above, audit fieldwork revealed a single investigation within the time study that included unallowable activities and time, and the Controller determined that that investigation should be removed from the time study. In response, the claimant argued for additional activities and time to augment the results of the time study, and filed amended reimbursement claims, based on a 3.66-hour average time increment per investigation.⁴¹ The 3.66 hours included not only the investigation that the Controller had determined to remove, but also an additional thirty minutes of report writing time for eleven of the fourteen investigations in which the claimant

³⁶ Exhibit A, IRC, page 284 [Final Audit Report, p. 23].

³⁷ Exhibit C, Claimant's Late Rebuttal Comments, page 38 [email discussion between the claimant's representatives and the Controller's audit staff].

³⁸ Exhibit A, IRC, page 284 [Final Audit Report, p. 23].

³⁹ Exhibit A, IRC, page 284 [Final Audit Report, p. 23].

⁴⁰ Exhibit C, Claimant's Late Rebuttal Comments, page 34 [email discussion between the claimant's representatives and the Controller's audit staff].

⁴¹ Exhibit A, IRC, pages 299-380 [Amended Claim Forms]; Exhibit B, Controller's Comments on the IRC, page 169 [Additional Time Added to Time Study #2].

asserted that report writing had been inadvertently omitted from the time study.⁴² The Controller rejected the additional time for report writing, and in the Final Audit Report determined a 2.65-hour average time increment allowable from the claimant's time study.⁴³

Staff finds that the Controller's rejection of the claimant's proposed additional time for report writing was not arbitrary, capricious, or entirely lacking in evidentiary support.

The parties do not dispute whether report writing is a reimbursable component of the investigation; the dispute is whether report writing was adequately reflected and accounted for in the time study. The Controller states that preparing a written report was one of the four activities clearly and expressly identified in the time study documentation.⁴⁴ The time study summary documentation also states: "NOTE that this year ALL activities – ranging from investigation, report writing and review and approval were included in ONE time entry."⁴⁵ And finally, the Controller maintains that the time survey verified the reasonableness of the 2.65-hour average time increment, which does not include the additional thirty minutes for report writing sought by the claimant.⁴⁶

The claimant has not filed any evidence, as required by Government Code section 17559 and section 1187.5 of the Commission's regulations, to support the assertion that report writing was inadvertently omitted from the time study. To support its assertions, the claimant included in its late rebuttal comments a document with the handwritten caption: "2013 TIME STUDY."⁴⁷ This document contains fourteen handwritten entries with dates, case numbers, and total investigative time, and notations of activities: some entries show "1, 2, 4," and others show "1, 2, 3, 4."⁴⁸ The claimant suggests that the absence of activity "3" in those entries means that report writing was not reflected in the total time.⁴⁹ The claimant also relies on the document labeled "Time Survey Questionnaire," which contains separate estimates for the time needed to prepare a report for an unfounded investigation (15-20 minutes) and a substantiated or inconclusive investigation (45-50 minutes). A handwritten comment next to those entries states "avg = 37 mins."⁵⁰

⁴² Exhibit C, Claimant's Late Rebuttal Comments, pages 12-21 [Amended Time Study Documentation].

⁴³ Exhibit A, IRC, page 284 [Final Audit Report, p. 23].

⁴⁴ Exhibit A, IRC, pages 284-285 [Final Audit Report, pp. 23-24].

⁴⁵ Exhibit B, Controller's Comments on the IRC, page 161 [Claimant's Time Study #2].

⁴⁶ Exhibit A, IRC, page 284 [Final Audit Report, p. 23].

⁴⁷ Exhibit C, Claimant's Late Rebuttal Comments, pages 12-21 [Amended Time Study Documentation].

⁴⁸ Exhibit C, Claimant's Late Rebuttal Comments, page 12 [Amended Time Study Documentation].

⁴⁹ Exhibit C, Claimant's Late Rebuttal Comments, page 14 [Amended Time Study Documentation].

⁵⁰ Exhibit C, Claimant's Late Rebuttal Comments, pages 16-21 [Amended Time Study Documentation].

But none of these documents (even collectively) constitutes substantial evidence to support a Commission finding that the Controller's determination was arbitrary, capricious, or entirely lacking in evidentiary support. Rather, the claimant's assertions and filed documents are all hearsay evidence. The Evidence Code defines hearsay as "evidence of a[n out of court] statement that was made other than by a witness while testifying at the hearing and that is offered to prove the truth of the matter stated."⁵¹ Neither the handwritten documents that purport to be "time logs," nor the computer-generated recitation of the same information, is signed, or dated, or authenticated by a declaration sworn under penalty of perjury by persons who are authorized and competent to do so and based upon the declarant's personal knowledge, information, or belief.⁵² In addition, there is nothing in the record to show how or when those documents were generated, or by whom. On that basis, the documents in question are clearly inadmissible hearsay. Although the Commission's regulations do not universally bar the admission of hearsay, such evidence "shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions."⁵³ Thus, none of the documents relied on by the claimant constitute substantial evidence to rebut the Controller's findings.

Based on the foregoing, staff finds that the Controller's rejection of the claimant's proposed additional time for report writing was not arbitrary, capricious, or entirely lacking in evidentiary support.

D. The Controller's Reduction of Indirect Costs Is Correct as a Matter of Law, and Not Arbitrary, Capricious, or Entirely Lacking in Evidentiary Support.

The indirect cost rate claiming methods described in the Parameters and Guidelines provide claimants the option of either claiming ten percent of direct labor costs, excluding fringe benefits, or developing an indirect cost rate proposal if indirect costs exceed the ten percent rate.

The original reimbursement claims listed the direct costs of the mandate as salaries and benefits, and sought indirect costs using a ten percent flat rate applied to direct salaries and benefits, in accordance with the Parameters and Guidelines. But the Controller reclassified those costs as contract services, because none of the claimant's city employees perform the requirements of the mandate; all law enforcement services for the claimant are provided under contract with the County of Los Angeles. After reclassifying the direct costs as contract services, the Controller denied all indirect costs because the ten percent flat rate is not applicable to contract services under the Parameters and Guidelines. The claimant disputes this reduction, asserting that it is entitled to all costs mandated by the state and that it has additional overhead costs within the contract and outside the contract that far exceed the ten percent flat rate.

The claimant did not follow the Parameters and Guidelines and, thus, the Controller's reduction is correct as a matter of law. In addition, the claimant has not provided substantial evidence in the record to support an indirect cost rate proposal.

⁵¹ Evidence Code section 1200.

⁵² Exhibit C, Claimant's Late Rebuttal Comments, pages 12-21 [Amended Time Study Documentation]. See also, Evidence Code section 1271. Note that under the Commission's regulations a declaration under penalty of perjury may substitute for sworn testimony.

⁵³ California Code of Regulations, title 2, section 1187.5.

Accordingly, the Controller's reduction is correct as a matter of law.

Conclusion

Based on the forgoing analysis, staff finds that:

- The IRC was timely filed;
- The Controller's rejection of additional preliminary investigative activities proposed for inclusion in the time study does not constitute a reduction, and the Commission therefore does not have jurisdiction over this determination; and
- The Controller's reduction based on excluding from the time study an investigation that included unallowable activities, and adjusting the average time increment resulting from the time study was correct as a matter of law, and not arbitrary, capricious, or entirely lacking in evidentiary support;
- The Controller's rejection of the claimant's proposed additional time for report writing was not arbitrary, capricious, or entirely lacking in evidentiary support;
- The Controller's disallowance of indirect costs claimed based on the ten percent flat rate is 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.

BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

IN RE INCORRECT REDUCTION CLAIM

Penal Code Sections 11165.9, 11166, 11166.2, 11166.9⁵⁴, 11168 (formerly 11161.7), 11169, 11170, and 11174.34 (formerly 11166.9) as added or amended by Statutes 1977, Chapter 958; Statutes 1980, Chapter 1071; Statutes 1981, Chapter 435; Statutes 1982, Chapters 162 and 905; Statutes 1984, Chapters 1423 and 1613; Statutes 1985, Chapter 1598; Statutes 1986, Chapters 1289 and 1496; Statutes 1987, Chapters 82, 531, and 1459; Statutes 1988, Chapters 269, 1497, and 1580; Statutes 1989, Chapter 153; Statutes 1990, Chapters 650, 1330, 1363, and 1603; Statutes 1992, Chapters 163, 459, and 1338; Statutes 1993, Chapters 219 and 510; Statutes 1996, Chapters 1080 and 1081; Statutes 1997, Chapters 842, 843, and 844; Statutes 1999, Chapters 475 and 1012; and Statutes 2000, Chapter 916
California Code of Regulations, Title 11, Section 903 (Register 98, Number 29)
“Child Abuse Investigation Report” Form SS 8583 (Rev. 3/91)

Fiscal Years 1999-2000 through 2012-2013

Filed on November 7, 2017

City of Palmdale, Claimant

Case No.: 17-0022-I-01

Interagency Child Abuse and Neglect Investigation Reports (ICAN)

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

(Adopted September 28, 2018)

DECISION

The Commission in State Mandates (Commission) heard and decided this Incorrect Reduction Claim (IRC) during a regularly scheduled hearing on September 28, 2018. [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.

⁵⁴ Renumbered at Penal Code section 11174.34 (Stats. 2004, ch. 842 (SB 1313)).

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	
Ken Alex, Director of the Office of Planning and Research	
Richard Chivaro, Representative of the State Controller	
Mark Hariri, Representative of the State Treasurer, Vice Chairperson	
Sarah Olsen, Public Member	
Carmen Ramirez, City Council Member	
Jacqueline Wong-Hernandez, Representative of the Director of the Department of Finance, Chairperson	

Summary of the Findings

This IRC addresses reductions made by the State Controller’s Office (Controller) to reimbursement claims filed by the City of Palmdale (claimant) for costs incurred during fiscal years 1999-2000 through 2012-2013 (audit period) for the *Interagency Child Abuse and Neglect Investigation Reports (ICAN)* program. The claimant disputes reductions totaling \$2,552,314 for the audit period.

The Commission denies this IRC, finding that reductions related to the claimant’s time study, and disallowance of indirect costs, as claimed, for all fiscal years were correct as a matter of law and not arbitrary, capricious, or entirely lacking in evidentiary support.

Specifically, the Controller adjusted the results of the claimant’s time study for the investigation and reporting to DOJ mandate component, based on excluding one investigation from the sample that included unallowable activities after the case was determined to be substantiated, and rejecting an additional thirty minutes report writing time that claimant alleged in its amended claims. In addition, the Controller disallowed all indirect costs claimed, based on the claimant’s failure to comply with the Parameters and Guidelines and claiming instructions. The Commission finds these reductions to be correct as a matter of law, and not arbitrary, capricious, or entirely lacking in evidentiary support.

The claimant also asserted a number of preliminary investigative activities that should be subject to reimbursement, and argued they were not, but should have been, accounted for in the time study. But because these activities were neither specifically claimed nor specifically disallowed, they are not the subject of a reduction and the Commission does not have jurisdiction over these issues.

COMMISSION FINDINGS

I. Chronology

12/06/2007 The Commission adopted the Test Claim Decision.

12/16/2013	The Commission adopted the Parameters and Guidelines.
04/28/2014	The Controller issued claiming instructions for the initial claiming period, fiscal years 1999-2000 through 2012-2013, to be filed by July 15, 2014. ⁵⁵
07/03/2014	The claimant filed its initial reimbursement claim. ⁵⁶
12/19/2014	The Controller notified the claimant of the audit. ⁵⁷
07/15/2015	The claimant filed amended claims for fiscal years 1999-2000 through 2012-2013. ⁵⁸
03/30/2016	The Controller issued the Draft Audit Report. ⁵⁹
04/11/2016	The claimant filed comments on the Draft Audit Report. ⁶⁰
05/19/2016	The Controller issued the Final Audit Report. ⁶¹
11/07/2017	The claimant filed the IRC. ⁶²
02/22/2018	The Controller filed comments on the IRC. ⁶³
05/07/2018	The claimant filed late rebuttal comments. ⁶⁴
07/23/2018	Commission staff issued the Draft Proposed Decision. ⁶⁵

II. Background

A. The *Interagency Child Abuse and Neglect Investigation Reports (ICAN) Program*

The *Interagency Child Abuse and Neglect Investigation Reports (ICAN)* program addresses statutory amendments to California's mandatory child abuse reporting laws. A child abuse reporting law was first added to the Penal Code in 1963, and initially required medical professionals to report suspected child abuse to local law enforcement or child welfare authorities. The law was regularly expanded to include more professions required to report

⁵⁵ Exhibit A, IRC, page 229 [Controller's Claiming Instructions, Cover Letter].

⁵⁶ Exhibit B, Controller's Comments on the IRC, page 30.

⁵⁷ Exhibit B, Controller's Comments on the IRC, page 6.

⁵⁸ Exhibit A, IRC, pages 299-380 [Claim Documentation, Amended Claim Forms].

⁵⁹ Exhibit A, IRC, page 265 [Controller's Final Audit Report, page 4].

⁶⁰ Exhibit A, IRC, page 292 [Claimant's Comments on the Draft Audit Report].

⁶¹ Exhibit A, IRC, page 259 [Controller's Final Audit Report, Cover Letter].

⁶² Exhibit A, IRC, page 1.

⁶³ Exhibit B, Controller's Comments on the IRC, page 1.

⁶⁴ Exhibit C, Claimant's Late Rebuttal Comments, page 1.

⁶⁵ Exhibit D, Draft Proposed Decision.

suspected child abuse (now termed “mandated reporters”), and in 1980, California reenacted and amended the law, entitling it the “Child Abuse and Neglect Reporting Act,” or CANRA.

As part of this program, the Department of Justice (DOJ) maintains a Child Abuse Centralized Index, which, since 1965, maintains reports of child abuse statewide. A number of changes to the law have occurred, particularly with a reenactment in 1980, and substantive amendments in 1997 and 2000. The act, as amended, provides for reporting of suspected child abuse or neglect by certain individuals, identified by their profession as having frequent contact with children. The act provides rules and procedures for local agencies, including law enforcement, receiving such reports. The act provides for cross-reporting among law enforcement and other child protective agencies, and to licensing agencies and district attorneys’ offices. The act requires reporting to the DOJ when a report of suspected child abuse is “not unfounded.” The act requires an active investigation before a report can be forwarded to the DOJ. As of January 1, 2012, the act no longer requires law enforcement agencies to report to the DOJ, and now requires reporting only of “substantiated” reports by other agencies.⁶⁶ The act imposes additional cross-reporting and recordkeeping duties in the event of a child’s death from abuse or neglect. The act requires agencies and the DOJ to keep records of investigations for a minimum of 10 years, and to notify suspected child abusers that they have been listed in the Child Abuse Central Index. The act also imposes certain due process protections owed to persons listed in the index, and provides certain other situations in which a person would be notified of his or her listing in the index.

On December 19, 2007, the Commission approved the Test Claim for cities and counties (specifically city and county police or sheriff’s departments, county welfare departments, county probation departments designated by the county to receive mandated reports, district attorneys’ offices, and county licensing agencies) to perform the following categories of reimbursable activities:

- Distribute the child abuse reporting form adopted by the Department of Justice (currently known as the “Suspected Child Abuse Report” Form SS 8572) to mandated reporters;
- Receive reports from mandated reporters of suspected child abuse; refer those reports to the correct agency when the recipient agency lacks jurisdiction; cross-report to other local agencies with concurrent jurisdiction and to the district attorneys’ offices; report to licensing agencies; and make additional reports in the case of a child’s death from abuse or neglect;
- Investigate reports of suspected child abuse to determine whether to report to the Department of Justice (DOJ);
- Notify suspected abusers of listing in the Child Abuse Central Index;
- Retain records, as specified; and

⁶⁶ See Exhibit A, IRC, page 240 [Parameters and Guidelines, p. 8 (citing amendment to Penal Code section 11169(b), enacted by Statutes 2011, chapter 468)].

- Provide due process procedures to those individuals reported to the DOJ’s Child Abuse Central Index.⁶⁷

At issue in this IRC is the scope of the investigative activities of suspected child abuse performed by the claimant’s law enforcement agency necessary to determine whether to report to DOJ and to complete the report.

As discussed at length in the Parameters and Guidelines and Test Claim Decisions, “reimbursement is not required for the full course of investigative activities performed by law enforcement agencies [when they receive a report of suspected child abuse], but only the investigative activities necessary to determine whether a report of suspected child abuse is unfounded, inconclusive, or substantiated, for purposes of preparing and submitting the Form SS 8583 to DOJ.”⁶⁸ From July 1, 1999, through December 31, 2011, child abuse reports determined by law enforcement agencies to be substantiated or inconclusive shall be reported to DOJ. Unfounded reports shall not be filed with DOJ.⁶⁹ Thus, the Commission found that the mandate only requires enough information to determine whether to file a Form SS 8583 with DOJ, or subsequent designated form, and enough information to render the Form SS 8583 a “retainable report,” under California Code of Regulations, title 11, section 903.⁷⁰ As indicated above, beginning January 1, 2012, local law enforcement agencies are no longer mandated to report to the DOJ.⁷¹

The Decision adopting the Parameters and Guidelines also reasoned that the underlying Act, CANRA, was not a mandate focused on criminal investigation and prosecution, but was focused on the protection of children and early intervention in abusive or neglectful situations, and that the investigation mandate specifically arises in the context of early reporting requirements.⁷² As such, the Decision concluded that investigative activities in connection with the criminal investigation and prosecution of abuse or neglect are not within the scope of the mandate.

⁶⁷ Exhibit X, Statement of Decision and Parameters and Guidelines, *Interagency Child Abuse and Neglect Investigation Reports*, 00-TC-22, pages 41-47.

⁶⁸ Exhibit X, Statement of Decision and Parameters and Guidelines, *Interagency Child Abuse and Neglect Investigation Reports*, 00-TC-22, page 28. See also, Exhibit X, Test Claim Statement of Decision, *Interagency Child Abuse and Neglect Investigation Reports*, 00-TC-22, page 31.

⁶⁹ See Exhibit A, IRC, page 241 [Parameters and Guidelines, p. 9 (citing Penal Code section 11169(a))].

⁷⁰ Exhibit X, Statement of Decision and Parameters and Guidelines, *Interagency Child Abuse and Neglect Investigation Reports*, 00-TC-22, page 29.

⁷¹ Exhibit A, IRC, page 240 [Parameters and Guidelines, p. 8 (citing amendment to Penal Code section 11169(b), enacted by Statutes 2011, chapter 468)].

⁷² Exhibit X, Statement of Decision and Parameters and Guidelines, *Interagency Child Abuse and Neglect Investigation Reports*, 00-TC-22, pages 34-35. See also, Exhibit X, Test Claim Decision, *Interagency Child Abuse and Neglect Investigation Reports*, 00-TC-22, page 31.

Accordingly, the Parameters and Guidelines define and specify the scope of the investigation activities necessary to satisfy the DOJ reporting requirement to include:

- Review of the initial Suspected Child Abuse Report (SCAR) Form adopted by DOJ;
- Conducting initial interviews with parents, victims, suspects, or witnesses, where applicable; and
- Making a report of the findings of those interviews, which may be reviewed by a supervisor.⁷³

The Parameters and Guidelines also make clear that reimbursement is not required for:

- Investigative activities conducted by a mandated reporter to complete the SCAR;
- In the event that the mandated reporter completing the SCAR is employed by the same agency investigating the report, reimbursement is not required if the investigation required to complete the SCAR is also sufficient to satisfy the DOJ reporting requirement; and
- Investigative activities undertaken subsequent to the determination whether the report is substantiated, inconclusive, or unfounded for purposes of preparing the report for DOJ (Form 8583), including the collection of physical evidence, the referral to a child abuse investigator, and the conduct of follow-up interviews.

Section IV. of the Parameters and Guidelines requires reimbursement for those costs actually incurred to implement the mandated activities, which must be traceable and supported by contemporaneous source documents that show the validity of such costs, when they were incurred, and their relationship to the reimbursable activities.⁷⁴ As noted, in this case the Controller allowed the use of a time study for the initial claiming period due to the likely unavailability of documentation, so the contemporaneous source document rule is not in issue in this IRC.

Section V. defines direct costs to include contract services costs, which must be claimed as follows:

Contracted Services

Report the name of the contractor and services performed to implement the reimbursable activities. If the contractor bills for time and materials, report the number of hours spent on the activities and all costs charged. If the contract is a fixed price, report the services that were performed during the period covered by the reimbursement claim. If the contract services are 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

⁷³ Exhibit A, IRC, pages 240-241 [Parameters and Guidelines, pp. 8-9].

⁷⁴ Exhibit A, IRC, page 235 [Parameters and Guidelines, p. 3].

and attorney invoices with the claim and a description of the contract scope of services.⁷⁵

And Section V. provides with regard to indirect cost claiming:

Indirect costs are costs that are incurred for a common or joint purpose, benefiting more than one program, and are not directly assignable to a particular department or program without efforts disproportionate to the result achieved. Indirect costs may include both: (1) overhead costs of the unit performing the mandate; and (2) the costs of the central government services distributed to the other departments based on a systematic and rational basis through a cost allocation plan.

Compensation for indirect costs is eligible for reimbursement utilizing the procedure provided in 2 CFR Part 225 (Office of Management and Budget (OMB) Circular A-87). Claimants have the option of using *10% of direct labor*, excluding fringe benefits, *or preparing an Indirect Cost Rate Proposal (ICRP)* if the indirect cost rate claimed exceeds 10%.

If the claimant chooses to prepare an ICRP, both the direct costs (as defined and described in 2 CFR Part 225, Appendix A and B (OMB Circular A-87 Attachments A and B) and the indirect costs shall exclude capital expenditures and unallowable costs (as defined and described in 2 CFR Part 225, Appendix A and B (OMB Circular A-87 Attachments A and B)). However, unallowable costs must be included in the direct costs if they represent activities to which indirect costs are properly allocable. The distribution base may be: (1) total direct costs (excluding capital expenditures and other distorting items, such as pass-through funds, major subcontracts, etc.); (2) direct salaries and wages; or (3) another base which results in an equitable distribution.⁷⁶

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

The reimbursement claims for fiscal years 1999-2000 through 2012-2013 totaled \$5,600,497. The Controller found that \$2,961,652 was allowable, and \$2,638,845 was unallowable.⁷⁷

The following two findings are in dispute:

1. Finding 2, Unallowable Contract Costs for Investigation and Reporting to DOJ

In Finding 2, the Controller found that the claimant reported in its reimbursement claims \$4,956,296 under the "Reporting to the California Department of Justice" component,⁷⁸ which,

⁷⁵ Exhibit A, IRC, pages 246-247 [Parameters and Guidelines, pp. 14-15].

⁷⁶ Exhibit A, IRC, page 247 [Parameters and Guidelines, p. 15 (emphasis added)].

⁷⁷ Exhibit A, IRC, pages 265; 277-284 [Controller's Final Audit Report, pp. 4; 16-22]. The claimant does not dispute the reduction of \$86,531 under the Cross-Reporting Between Departments component, or the finding that the number of investigations conducted during the audit period was overstated. The Controller identifies the remaining disputed reduction as \$1,132,337. [See Exhibit B, Controller's Comments on the IRC, page 15].

⁷⁸ Exhibit A, IRC, page 276 [Controller's Final Audit Report, p. 15].

as discussed above, includes the activities to “Complete an investigation for purposes of preparing the report;” and “Forward reports to the Department of Justice.”⁷⁹ Costs were claimed by multiplying the number of SCAR investigations performed by the estimated time increment to complete the investigation. The estimated time, as originally claimed, was based on two time studies conducted by the Los Angeles County Sheriff’s Department, Palmdale Station, the first in 2011, and the second in 2013, which recorded the amount of time needed to perform each SCAR investigation.⁸⁰ The time studies recorded time for four main activities: “initial response to begin documentation of case and to contact County Welfare;” completing an investigation; report writing; and supervisor review.⁸¹ The claimant analyzed the results of both time studies and determined that 3.67 hours were needed to perform the claimed activities under this cost component.⁸² The claimant then determined total costs claimed by multiplying total hours by the LASD contract hourly rates for the deputies who conduct the investigations and the number of investigations conducted each fiscal year.⁸³

The Controller began the audit on December 19, 2014,⁸⁴ and found that the costs claimed were unallowable “primarily because the city overstated the number of SCAR investigations and misstated the time increment per SCAR investigation for the Complete an Investigation component activity for each fiscal year.”⁸⁵ The claimant did not dispute the finding that the number of SCAR investigations was overstated.⁸⁶

With respect to the misstated time increment for investigating reports of suspected child abuse, the Controller states that “[d]uring audit fieldwork, we reviewed both time studies performed by the city.”⁸⁷ The Controller rejected the first time study because it “was not performed contemporaneously nor was it performed by the deputies who performed the allowable activities.”⁸⁸ A second time study was performed contemporaneously, by the same deputies who performed the reimbursable activities, and the Controller accepted that time study, which resulted in an average time increment of 3.27 hours.⁸⁹ However, the Controller found that the second time study included one investigation “with unallowable hours that accounted for

⁷⁹ Exhibit X, Statement of Decision and Parameters and Guidelines, *Interagency Child Abuse and Neglect Investigation Reports*, 00-TC-22, pages 87-90.

⁸⁰ See Exhibit B, Controller’s Comments on the IRC, pages 156-163.

⁸¹ Exhibit A, IRC, pages 284-285 [Controller’s Final Audit Report, pp. 23-24].

⁸² Exhibit A, IRC, page 278 [Controller’s Final Audit Report, p. 17].

⁸³ Exhibit A, IRC, page 277 [Controller’s Final Audit Report, p. 16].

⁸⁴ Exhibit B, Controller’s Comments on the IRC, page 6 (Declaration of Lisa Kurokawa, Division Chief, Division of Audits).

⁸⁵ Exhibit A, IRC, page 276 [Controller’s Final Audit Report, p. 15].

⁸⁶ Exhibit A, IRC, pages 281-283 [Controller’s Final Audit Report, pp. 20-22].

⁸⁷ Exhibit A, IRC, page 284 [Controller’s Final Audit Report, p. 23].

⁸⁸ Exhibit A, IRC, page 284 [Controller’s Final Audit Report, p. 23].

⁸⁹ Exhibit B, Controller’s Comments on the IRC, page 161.

activities following the determination of a substantiated status of child abuse.”⁹⁰ The Controller discussed the case with a detective, and “[i]t appeared that ineligible activities performed after SVU was contacted were included in the time, which lead to the decision to remove the case from the average time calculation.”⁹¹ Therefore, the Controller accepted the second time study results, “less the one case that included the unallowable time.”⁹² The Controller concluded “[t]he average time per case, using the second time study results (less the unallowable hours of one case), totaled 2.65 hours.”⁹³

The claimant objected to the exclusion of the single investigation, but also asserted that the average time resulting from the second time study should be increased to add report writing time and some preliminary investigative time, such as checking records for prior reports of abuse or neglect and making phone calls to schedule interviews with witnesses or suspects.⁹⁴ The claimant filed amended claims, dated July 15, 2015, which sought reimbursement based on an average time increment of 3.66 hours per investigation.⁹⁵ That figure not only included the investigation that the Controller intended to exclude from the sample, but also included an additional thirty minutes of report writing time for eleven of the fourteen investigations in which the claimant asserted that report writing had been inadvertently omitted.⁹⁶ It is not apparent from the record, however, that the claimant’s amended time increment of 3.66 hours included the other preliminary investigative time, such as checking records for prior reports of abuse or neglect and making phone calls to schedule interviews with witnesses or suspects.

The Final Audit Report, dated May 19, 2016, identifies reductions based on the amended reimbursement claims,⁹⁷ and indicates that the Controller believed the time study captured all allowable activities, and therefore the Controller rejected the additional report writing time proposed, and excluded the unallowable investigation.⁹⁸ Of the direct costs claimed, the Controller found that \$2,913,118 is allowable and \$2,043,178 is unallowable. The Controller

⁹⁰ Exhibit A, IRC, page 284 [Controller’s Final Audit Report, p. 23].

⁹¹ Exhibit C, Claimant’s Late Rebuttal Comments, page 38 [email discussion between the claimant’s representatives and the Controller’s audit staff].

⁹² Exhibit A, IRC, page 284 [Controller’s Final Audit Report, p. 23].

⁹³ Exhibit A, IRC, page 284 [Controller’s Final Audit Report, p. 23].

⁹⁴ See Exhibit C, Claimant’s Late Rebuttal Comments, page 37 [email discussion between the claimant’s representatives and the Controller’s audit staff].

⁹⁵ Exhibit A, IRC, pages 299-380 [Amended Claim Documentation]; Exhibit B, Controller’s Comments on the IRC, page 169.

⁹⁶ Exhibit A, IRC, pages 299-380 [Amended Claim Documentation]; Exhibit B, Controller’s Comments on the IRC, page 169.

⁹⁷ Exhibit A, IRC, pages 259, 266-270 [Final Audit Report, pp. 5-9].

⁹⁸ Exhibit A, IRC, pages 284-286 [Final Audit Report, pp. 23-25].

states that “[t]he portion of the finding relating to the average time increment disputed totals \$1,132,337.”⁹⁹

With respect to the additional preliminary activities asserted by the claimant (but not clearly identified in the amended claims) the Final Audit Report states as follows:

We agree that the deputies perform many additional activities necessary to complete their investigations. However, not all activities within the investigation process are allowable for reimbursement, even when they appear reasonably necessary. We believe that the preliminary investigation activities described above in items 1 and 2 go beyond the scope of the reimbursable component and therefore are unallowable.¹⁰⁰

Accordingly, the Controller reduced the amended claims by adjusting the average time increment from 3.66 hours claimed (Time Study #2 plus report writing time for eleven of fourteen investigations) to 2.65 hours (excluding the unallowable investigation and rejecting the additional report writing time requested).

The Controller further stated, “[t]o verify this time increment, we interviewed the deputies responsible for performing ICAN investigations.”¹⁰¹ The Controller conducted a time survey with the deputies, which resulted in a range of 2.29 to 2.71 hours.¹⁰² Since the 2.65-hour time increment (the claimant’s second time study less the unallowable investigation) fell within that range, the Controller determined that the time study result was reasonable, and accepted the 2.65-hour average time increment.¹⁰³

2. Finding 3, Unallowable Indirect Costs

In Finding 3, the Controller’s audit found that the City claimed unallowable indirect costs, totaling \$509,136. The Controller found that the indirect costs are unallowable because the claimant “inappropriately applied its indirect cost rate to contract service costs.”¹⁰⁴ The Parameters and Guidelines, the Controller explained, allow claimants to either use a ten percent flat rate, measured against direct salaries and benefits of a local agency’s employees, or prepare an Indirect Cost Rate Proposal.¹⁰⁵ The claimant here elected to use the ten percent flat rate, but had no direct salaries and benefits costs, because the mandated activities were conducted under

⁹⁹ Exhibit B, Controller’s Comments on the IRC, page 15.

¹⁰⁰ Exhibit A, IRC, page 285 [Controller’s Final Audit Report, p. 24].

¹⁰¹ Exhibit A, IRC, page 284 [Controller’s Final Audit Report, p. 23].

¹⁰² The time survey questionnaires are dated July 8, 2015 and July 28, 2015. (Exhibit B, Controller’s Comments on the IRC, pp. 173-179)

¹⁰³ Exhibit A, IRC, page 284 [Controller’s Final Audit Report, p. 23].

¹⁰⁴ Exhibit A, IRC, pages 286-287 [Controller’s Final Audit Report, pp. 25-26].

¹⁰⁵ Exhibit A, IRC, page 279 [Final Audit Report, p. 18].

contract with the County.¹⁰⁶ In other words, none of the claimant’s employees were involved in the mandate, and therefore the claimant had no direct salary costs.¹⁰⁷

To support this conclusion the Controller relies on the language of the Parameters and Guidelines defining indirect costs as “costs that are incurred for a common or joint purpose, benefitting more than one program, and are not directly assignable to a particular department or program without efforts disproportionate to the result achieved.”¹⁰⁸ The Parameters and Guidelines also state: “Indirect costs may include both: (1) overhead costs of the unit performing the mandate; and (2) the costs of the central government services distributed to other departments based on a systematic and rational basis through a cost allocation plan.”¹⁰⁹ And finally, the Parameters and Guidelines also limit the use of the ten percent flat rate, or default rate, to “10% of direct labor, excluding fringe benefits.”¹¹⁰ There is no mention of applying the ten percent rate to contract costs, or any other direct costs.

The claimant disputed the disallowance of indirect costs, and argued that despite the mandate being performed under contract with the County, the claimant still incurred additional overhead costs both within the contract and outside the contract.¹¹¹

The Controller’s finding was unchanged.¹¹² The Controller notes in its Final Audit Report that the claimant “incorrectly elected to use the option of claiming 10% of direct labor, excluding fringe benefits, to determine the amount of indirect costs...[h]owever, as stated above, the 10% indirect cost rate is to be applied to the amount of direct labor costs [and claimant] did not incur any payroll or direct labor costs.”¹¹³ The Controller therefore concludes that, as claimed, the indirect costs are unallowable.¹¹⁴

¹⁰⁶ Exhibit A, IRC, page 279 [Final Audit Report, p. 18].

¹⁰⁷ Exhibit A, IRC, page 287 [Final Audit Report, p. 26].

¹⁰⁸ Exhibit A, IRC, page 287 [Final Audit Report, p. 26 (quoting Parameters and Guidelines, section V.B.)].

¹⁰⁹ Exhibit A, IRC, page 287 [Final Audit Report, p. 26 (quoting Parameters and Guidelines, section V.B.)].

¹¹⁰ Exhibit A, IRC, page 288 [Final Audit Report, p. 27 (quoting Parameters and Guidelines, section V.B.)].

¹¹¹ Exhibit A, IRC, page 288-289 [Final Audit Report, pp. 27-28].

¹¹² Exhibit A, IRC, page 289 [Final Audit Report, p. 28].

¹¹³ Exhibit A, IRC, page 290 [Final Audit Report, p. 29].

¹¹⁴ Exhibit A, IRC, page 290 [Final Audit Report, p. 29].

III. Positions of the Parties

A. City of Palmdale

The total amount claimed for fiscal years 1999-2000 through 2012-2013 is \$5,600,497.¹¹⁵ The total amount reduced was \$2,638,845.¹¹⁶ The claimant requests reinstatement of \$2,552,314.¹¹⁷

The claimant alleges two incorrect reductions within the audit: first, claimant believes that the Controller's interpretation of the scope of reimbursable activities involved in investigating a report of suspected child abuse or neglect was "excessively restrictive," resulting in adjustments to the average time increment derived from the time study that reduced reimbursement for investigating child abuse and neglect; and second, the claimant asserts that the Controller incorrectly denied indirect costs claimed.

With respect to the scope of investigation-related activities, the claimant asserts that the Controller incorrectly excluded a number of minor tasks or activities the claimant included in its time study. The claimant's response to the draft audit report asserted that "the second time study did not detail each activity separately and we believe it did not include report writing time which should have added an additional hour per case for a total of 3.67 hours to complete the investigation as mandated and write the report."¹¹⁸ The claimant further stated that it offered to conduct a third time study, which the Controller declined, because, the claimant asserts, "they [the Controller's audit staff] believed that the difference in time was due to a disagreement regarding allowing activities, which would not be remedied by conducting another time study."¹¹⁹ The claimant further stated that "the SCO and the City disagree on the eligibility of certain activities the Deputy performs in the course of their preliminary investigation to determine if the case is Founded, Unfounded, or Inconclusive as mandated."¹²⁰ Specifically, the claimant requested 15 minutes per case to "review prior call history," and sometimes speak to other child welfare agencies before going to conduct interviews; 40 minutes to make phone calls to schedule interviews; and 6 minutes to inspect the home of the alleged victim.¹²¹

In its IRC narrative, the claimant identifies five investigative steps that it maintains are reimbursable:

- 1) Review preliminary documents and materials to determine if interviews are necessary. This may include checking to see if a report was already written (duplication), call CPS

¹¹⁵ Exhibit A, IRC, page 259 [Controller's Final Audit Report Cover Letter].

¹¹⁶ Exhibit A, IRC, page 259 [Controller's Final Audit Report Cover Letter].

¹¹⁷ Exhibit A, IRC, page 1. Based on the findings that are not disputed, the Controller maintains that the actual dollar amount in dispute is \$1,132,337 in direct costs and \$509,136 in indirect costs. (Exhibit B, Controller's Comments on the IRC, pp. 15; 22.)

¹¹⁸ Exhibit A, IRC, page 281 [Final Audit Report, p. 20].

¹¹⁹ Exhibit A, IRC, page 282 [Final Audit Report, p. 21].

¹²⁰ Exhibit A, IRC, page 282 [Final Audit Report, p. 21].

¹²¹ Exhibit A, IRC, pages 282-283 [Final Audit Report, pp. 21-22].

or reporting agency to obtain more details of the case, checking prior history, and other considerations.

(SCO is only allowing time to review the SCAR)

- 2) Identify involved parties
- 3) Schedule and set up interviews via phone and/or email when needed
- 4) Travel to meet with parties involved in the investigation
- 5) Inspection of home (in instances related to allegations of neglect) to determine living conditions – food, running water, safe living conditions, etc.¹²²

The claimant further argues, in its late rebuttal comments, that the total average time for investigations resulting from the time study does not accurately reflect all the required activities. The claimant asserts that report writing was not fairly reflected in the Controller’s calculation of allowable time, and that longer, outlier investigative cases should not be excluded from the time study.¹²³ Further, the claimant asserts that its investigation time study was derived primarily from officers’ on-scene time, which, according to the claimant, “is in fact a conservative estimate of actual time spent to conduct an investigation because this time wouldn’t have any additional follow up activities that may have been required such as in the instances when not all the parties were present at the time of the officer’s arrival.”¹²⁴ The claimant asserts that “[i]t is common that the deputy must attempt to contact other parties after the initial call for service.”¹²⁵

With respect to the disallowance of indirect costs, the claimant argues that the Controller incorrectly disallowed “the default 10% Indirect Cost Rate Proposal or overhead costs to the City’s claim for reimbursement allowed by the claiming instructions.”¹²⁶ The Controller determined that because the claimant implemented the mandate by contracting with the Los Angeles County Sheriff’s Office, the claimant was not claiming direct labor costs, and could not claim indirect costs related to those activities and costs.¹²⁷ Further, the Controller opined that “there is already adequate overhead included in the contracted county billed hourly rates...”¹²⁸

The claimant disagrees with the Controller’s conclusion, and asserts that it did claim direct salaries and benefits, and should be entitled to indirect costs.¹²⁹ In addition, the claimant argues that it had additional overhead costs both within its contract with the County and outside of the

¹²² Exhibit A, IRC, page 3 [As noted, the Controller agrees that inspecting the home is a reimbursable activity, but maintains that this activity is included in the time study. (Exhibit A, IRC, page 285 (Final Audit Report, p. 24))].

¹²³ Exhibit C, Claimant’s Late Rebuttal Comments, pages 1-2.

¹²⁴ Exhibit C, Claimant’s Late Rebuttal Comments, page 2.

¹²⁵ Exhibit C, Claimant’s Late Rebuttal Comments, page 2.

¹²⁶ Exhibit A, IRC, page 4.

¹²⁷ Exhibit A, IRC, page 4.

¹²⁸ Exhibit A, IRC, page 4.

¹²⁹ Exhibit A, IRC, page 288 [Final Audit Report, p. 27].

contract. In this respect the claimant characterized administrative and clerical support staff as “overhead,” and states that “[e]ach fiscal year, the City purchased additional supplemental overhead positions through the contract, including Station Clerks, Administrative and Motor Sergeants (in addition to the Sergeants who were already built into the standard billing rates).”¹³⁰ The claimant further states “[i]n some years the cities may be able to afford more direct staff and more overhead items and other years they cannot.”¹³¹ The claimant asserts that this may affect response times and service quality for the community.¹³² The claimant states, without citing specific support, that “[w]hen the actual overhead rates were calculated, they were found to range between 6%-13%.”¹³³ The claimant therefore concludes that the ten percent “default rates is [sic] a reasonable approximation of actual overhead costs incurred by the city.”¹³⁴

With respect to “overhead incurred outside of the contract,” the claimant states as follows:

In addition to the County billed overhead, the City also contributed additional funds to support the law enforcement services contract. For example, there are City wide overhead costs documented in their FY 13-14 Cost Allocation Plan (\$1,001,171) including administrative time from the City Attorney, City Manager’s Office, Finance, Human Resources, and the Public Safety Department.

Then there are additional city costs incurred to contract the Palmdale Sheriff’s Station in 2004 including the donation of 11 acres of land estimated (estimated value of \$1.3 million) as well as for city provide infrastructure improvements of (approximately \$1.01 million).

All these are valid examples of additional overhead costs not captured by the LA Sheriff’s Deputy billing rate and denied for reimbursement in the SCO audit. The city provided many examples and documents supporting that it is actually incurring overhead costs over and above that which was included in the Deputy’s standard billing rate. These types of city wide overhead items are eligible for reimbursement under the instruction and OMB A-87 and should be allowed for inclusion in our claims. (See attached examples).¹³⁵

In its late rebuttal comments, the claimant acknowledges that “most overhead was already included in the Deputies[’] hourly rates billed, however the record shows that there were additional overhead charges not included in those billed hourly rates.”¹³⁶ The claimant argues that “State Mandate statutes require the reimbursement of actual costs incurred to comply with

¹³⁰ Exhibit A, IRC, page 288 [Final Audit Report, p. 27].

¹³¹ Exhibit A, IRC, page 288 [Final Audit Report, p. 27].

¹³² Exhibit A, IRC, page 288 [Final Audit Report, p. 27].

¹³³ Exhibit A, IRC, page 288 [Final Audit Report, p. 27].

¹³⁴ Exhibit A, IRC, page 288 [Final Audit Report, p. 27].

¹³⁵ Exhibit A, IRC, page 289 [Final Audit Report, p. 28].

¹³⁶ Exhibit C, Claimant’s Late Rebuttal Comments, page 3.

the mandated program and the city believes it has shown that additional overhead costs were incurred and therefore were incorrectly reduced by the SCO.”¹³⁷

B. State Controller’s Office

The Controller urges the Commission to deny this IRC. The Controller states that of the claimant’s total reimbursement claims for \$5,600,497 for fiscal years 1999-2000 through 2012-2013, \$2,638,845 “is unallowable because the city overstated the number of suspected child abuse reports (SCARs) investigated, overstated time increments for each fiscal year, and claimed ineligible indirect costs.”¹³⁸ The Controller goes on: “The city does not dispute the portion of the audit findings related to the overstated SCAR investigations claimed for the audit period, nor the misstated \$1,013 in costs claimed within the Forward Reports to DOJ component activity in FY 2001-02.”¹³⁹ The remaining disputed reduction, according to the Controller, is limited to \$1,132,337.¹⁴⁰

The Parameters and Guidelines provide reimbursement to complete an investigation to determine whether a report of suspected child abuse or neglect is unfounded, substantiated, or inconclusive, for purposes of preparing and submitting a required form to DOJ.¹⁴¹ The Controller acknowledges that “[t]his activity includes reviewing the initial SCAR (Form SS 8572), conducting initial interviews with involved parties, and making a report of the findings of those interviews.”¹⁴² The Controller states that the Commission’s Decision on the Parameters and Guidelines “clarified multiple times...that reimbursement is limited to the activities noted.”¹⁴³ Further, the Controller notes that the claimant contracts with the Los Angeles County Sheriff’s Department to perform the law enforcement-related activities of the mandate, including investigations of suspected child abuse. Accordingly, the Controller determined that essentially all salaries and benefits claimed for the audit period should more properly be classified as contract costs.¹⁴⁴

The Controller explains that the claimant’s contract costs were claimed based on two time studies, the first of which the Controller found “inappropriate to support actual costs, as the study was not performed contemporaneously, was performed by staff who did not complete the actual investigation activities claimed, used time estimates, and used a sample of cases that were not representative of the total population of SCAR investigations.”¹⁴⁵ The second time study the

¹³⁷ Exhibit C, Claimant’s Late Rebuttal Comments, page 3.

¹³⁸ Exhibit B, Controller’s Late Comments on IRC, page 8.

¹³⁹ Exhibit B, Controller’s Late Comments on IRC, page 15.

¹⁴⁰ Exhibit B, Controller’s Late Comments on IRC, page 15.

¹⁴¹ Exhibit X, Statement of Decision and Parameters and Guidelines, *Interagency Child Abuse and Neglect Investigation Reports*, 00-TC-22, pages 25-34.

¹⁴² Exhibit B, Controller’s Comments on the IRC, page 16.

¹⁴³ Exhibit B, Controller’s Comments on the IRC, page 16.

¹⁴⁴ Exhibit B, Controller’s Comments on the IRC, page 16.

¹⁴⁵ Exhibit B, Controller’s Comments on the IRC, page 16.

Controller determined was appropriate, “with the exception of the one investigation that included activities occurring after the SCAR was determined to be a substantiated case of child abuse.”¹⁴⁶ The Controller therefore accepted and applied the second time study, with that case excised from the results. The Controller further verified the reasonableness of its results by conducting interviews and a time survey.¹⁴⁷

The claimant, during audit fieldwork, and in this IRC, has sought to augment the results of the time study, and increase the average time increment resulting from the time study, alleging that report writing time, and three preliminary investigative activities, should have been included. The Controller maintains that report writing time and time to inspect the home and living conditions of the alleged victim are included in the results of the time study, and the other activities raised are beyond the scope of the mandate.¹⁴⁸

With respect to the disallowance of indirect costs, the Controller maintains that the claimant inappropriately applied the 10 percent indirect cost rate to contract service costs.¹⁴⁹ The Controller explains that because the claimant did not incur any direct labor costs for mandated activities, indirect costs are inappropriate; rather, any overhead or indirect costs were included within the contract rates.¹⁵⁰ The fact that overhead costs were built into the contract rate was confirmed by the Los Angeles County Sheriff’s Department’s Contract Law Enforcement Bureau.¹⁵¹ The Controller further notes that the Parameters and Guidelines allow claimants the option of claiming indirect costs based on 10 percent of direct labor, excluding benefits, or, preparing an indirect cost rate proposal if the 10 percent rate does not seem sufficient.¹⁵² Here, the claimant chose to use the 10 percent rate, but had no direct labor costs.¹⁵³ The Controller states that the claimant created “sample Indirect Cost Rate Proposals” for fiscal years 2006-2007 through 2012-2013, but those sample ICRPs were submitted to demonstrate that the ten percent flat rate was reasonable, and in fact conservative; the claimant only seeks “restoration of the 10% rate and not the indirect cost rates based on the proposed ICRPs.”¹⁵⁴

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.

¹⁴⁶ Exhibit B, Controller’s Comments on the IRC, page 16.

¹⁴⁷ Exhibit B, Controller’s Comments on the IRC, page 16.

¹⁴⁸ Exhibit A, IRC, page 285 [Controller’s Final Audit Report, p. 24].

¹⁴⁹ Exhibit B, Controller’s Comments on the IRC, page 22.

¹⁵⁰ Exhibit B, Controller’s Comments on the IRC, page 22.

¹⁵¹ Exhibit B, Controller’s Comments on the IRC, page 24.

¹⁵² Exhibit B, Controller’s Comments on the IRC, page 24.

¹⁵³ Exhibit B, Controller’s Comments on the IRC, page 24.

¹⁵⁴ Exhibit B, Controller’s Comments on the IRC, page 24.

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.¹⁵⁵ 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 apply it as an "equitable remedy to cure the perceived unfairness resulting from political decisions on funding priorities."¹⁵⁶

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.¹⁵⁷ Under this standard, the courts have found that:

When reviewing the exercise of discretion, "[t]he scope of review is limited, out of deference to the agency's authority and presumed expertise: 'The court may not reweigh the evidence or substitute its judgement for that of the agency. [Citation.]'" ... "In general ... the inquiry is limited to whether the decision was arbitrary, capricious, or entirely lacking in evidentiary support..." [Citations.] When making that inquiry, the " "court must ensure that an agency has adequately considered all relevant factors, and has demonstrated a rational connection between those factors, the choice made, and the purposes of the enabling statute." [Citation.]' "¹⁵⁸

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.¹⁵⁹ In addition, sections 1185.1(f)(3) and 1185.2(d) and (e) of the Commission's regulations require that any assertions of

¹⁵⁵ *Kinlaw v. State of California* (1991) 54 Cal.3d 326, 331-334; Government Code sections 17551, 17552.

¹⁵⁶ *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.

¹⁵⁷ *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.

¹⁵⁸ *American Bd. of Cosmetic Surgery, Inc. v. Medical Bd. of California* (2008) 162 Cal.App.4th 534, 547-548.

¹⁵⁹ *Gilbert v. City of Sunnyvale* (2005) 130 Cal.App.4th 1264, 1274-1275.

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.¹⁶⁰

A. The Claimant Timely Filed this IRC Within Three Years from the Date Claimant First Received from the Controller a Final State Audit Report, Letter, or Other Written Notice of Adjustment to a Reimbursement Claim, Which Complies with Government Code Section 17558.5(c).

Government Code section 17561 provides that the state shall reimburse local government for all costs mandated by the state. However, the Controller is authorized by section 17561 to audit those claims to verify the amount of mandated costs, and reduce any claim that the Controller determines is excessive or unreasonable. Government Code section 17551 in turn provides that the Commission shall hear and decide upon a claim by a local agency or school district that the Controller has incorrectly reduced payments pursuant to section 17561. California Code of Regulations, title 2, section 1185.1 provides for the period of limitation in which an IRC must be timely filed:

All incorrect reduction claims shall be filed with the Commission no later than three years following the date a claimant first receives from the Office of State Controller a final state audit report, letter, or other written notice of adjustment to a reimbursement claim, which complies with Government Code section 17558.5(c) by 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 filing shall be returned to the claimant for lack of jurisdiction if this requirement is not met.¹⁶¹

Here, the final audit report is dated May 19, 2016.¹⁶² The IRC was filed with the Commission on November 7, 2017.¹⁶³ Less than three years having elapsed between the issuance of the audit report and the filing of the IRC, this IRC was filed within the period prescribed in Code of Regulations, title 2, section 1185.1.

B. The Commission Does Not Have Jurisdiction to Determine Whether Other Preliminary Investigative Activities Were Accounted for in the Time Study Because There Has Been No Reduction Relating to Preliminary Investigative Activities.

The claimant argued for additional activities and time to augment the results of the time study, such as making phone calls to schedule interviews that were not accounted for in the time study.¹⁶⁴ The revised time study documentation supporting the amended claims, however, does

¹⁶⁰ 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

¹⁶¹ California Code of Regulations, title 2, section 1185.1(c) (Register 2016, No. 38).

¹⁶² Exhibit A, IRC, page 259 [Controller's Final Audit Report].

¹⁶³ Exhibit A, IRC, page 1.

¹⁶⁴ Exhibit A, IRC, pages 282-285 [Final Audit Report, pp. 21-24].

not specifically identify additional time for preliminary investigative activities.¹⁶⁵ In addition, the evidence in the record does not show that at any point these preliminary activities were ever specifically claimed, or specifically disallowed, either in the original time study and reimbursement claims, or in the amended reimbursement claims filed July 15, 2015. As indicated in the Final Audit Report, the only reductions taken by the Controller related to the exclusion of the one investigation that went beyond the scope of the mandate, and the rejection of the additional report writing time claimed. Accordingly, while the claimant and the Controller have opined on the scope of reimbursement with respect to preliminary investigative activities,¹⁶⁶ there has been no reduction relating to preliminary investigative activities.

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 issues in the context of an IRC.

C. The Controller’s Reduction in Finding 2, Which Resulted from an Adjustment to the Average Time Increment in Claimant’s Time Study, Is Correct as a Matter of Law and Not Arbitrary, Capricious, or Entirely Lacking in Evidentiary Support.

As noted above, the initial claiming period for this mandated program includes fiscal years 1999-2000 through 2012-2013, and initial claims, in accordance with the claiming instructions, were required to be filed no later than July 15, 2014.¹⁶⁷ The Controller did not expect the claimant to have sufficient contemporaneous source documentation extending back to the beginning of the audit period, and therefore permitted the claimant to perform a time study.¹⁶⁸ The claimant performed two time studies, and submitted its initial reimbursement claim on or about July 3, 2014, based on an average time increment calculated from both time studies of 3.67 hours.¹⁶⁹

As indicated in the Background, the first of two time studies was not contemporaneous with the performance of the activities, and was therefore rejected, but the Controller accepted the claimant’s second time study, except that it excluded an investigation “with unallowable hours that accounted for activities following the determination of a substantiated status of child abuse.”¹⁷⁰ The Controller recalculated without the unallowable investigation, and found an

¹⁶⁵ Exhibit C, Claimant’s Late Rebuttal Comments, page 15.

¹⁶⁶ See Exhibit A, IRC, pages 285-286 [Final Audit Report, pp. 24-25].

¹⁶⁷ Exhibit A, IRC, page 229 [initial claiming instructions].

¹⁶⁸ Any attempt to enforce the contemporaneous source document rule retroactively would raise due process implications. (*Clovis Unified School Dist. v. Chiang* (2010) 188 Cal.App.4th 794, 803-807; *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.)

¹⁶⁹ Exhibit B, Controller’s Comments on the IRC, page 30; Exhibit A, IRC, page 278 [Final Audit Report, p. 17].

¹⁷⁰ Exhibit A, IRC, page 284 [Controller’s Final Audit Report, p. 23].

average time increment of 2.65 hours.¹⁷¹ The claimant filed amended claims, dated July 15, 2015, which sought reimbursement based on a 3.66 hour time increment.¹⁷² That figure was based on the second time study only, but included the one investigation that the Controller had determined was unallowable, as well as an additional thirty minutes report writing time for eleven of the fourteen investigations, which the claimant asserted had been inadvertently omitted.¹⁷³ The claimant had also argued, during audit fieldwork, that the average time increment should be increased to reflect certain preliminary investigative activities.¹⁷⁴

The Controller rejected the request for additional report writing time, concluding that report writing was already accounted for in the average time increment, and excluded the unallowable investigation from the time study sample, resulting in a 2.65 hour average time increment. Thus, the reductions at issue relating to the time study include:

- Exclusion from the time study sample of an investigation that included unallowable activities conducted subsequent to the determination that the report of suspected child abuse was substantiated; and
- Rejection of the claimant’s proposed additional time for report writing.
 1. The Controller’s reduction of costs based on the exclusion of one investigation from the claimant’s time study that included activities that are beyond the scope of the mandate is correct as a matter of law, and not arbitrary, capricious, or entirely lacking in evidentiary support.

The Controller reduced reimbursement based on excluding from the claimant’s time study a single investigation that included unallowable activities occurring subsequent to the determination whether the case was substantiated, inconclusive, or unfounded. That investigation was referred to the Los Angeles County Sheriff’s Special Victims Unit, and according to interviews with the deputies performing the mandate included further investigation after that referral to DOJ was made.¹⁷⁵ That investigation also required substantially more time than the others sampled in the time study (660 minutes, as compared to approximately 159 minutes, on average, throughout the remaining sample).¹⁷⁶ The Controller concluded “[t]he average time per case, using the second time study results (less the unallowable hours of one case), totaled 2.65 hours.”¹⁷⁷ The Controller further stated, “[t]o verify this time increment, we

¹⁷¹ Exhibit B, Controller’s Comments on IRC, page 171 [Analysis of Time Study #2].

¹⁷² Exhibit A, IRC, pages 299-380 [amended claim forms].

¹⁷³ Exhibit B, Controller’s Comments on IRC, page 169 [additional time added to time study #2]; Exhibit A, IRC, pages 299-380 [Amended Claim Forms].

¹⁷⁴ Exhibit C, Claimant’s Late Rebuttal Comments, pages 37-38 [email discussion between the claimant’s representatives and the Controller’s audit staff].

¹⁷⁵ Exhibit C, Claimant’s Late Rebuttal Comments, page 38 [email discussion between the claimant’s representatives and the Controller’s audit staff].

¹⁷⁶ Exhibit B, Controller’s Comments on the IRC, page 171.

¹⁷⁷ Exhibit A, IRC, page 284 [Controller’s Final Audit Report, p. 23].

interviewed the deputies responsible for performing ICAN investigations.”¹⁷⁸ The Controller conducted a time survey with the deputies, which resulted in a range of 2.29 to 2.71 hours. Since the 2.65 hours resulting from the time study fell within that range, the Controller determined that the time study result was reasonable, and accepted the 2.65 hour average time increment.¹⁷⁹

The claimant argues that even though that investigation was an outlier in terms of the time spent by deputies performing the mandate, it should be included in the time study sample because it reflects the fact that some cases require more time and resources than others.¹⁸⁰

[T]he longest case in [the claimant’s] 2013 [time study] should not have been removed from computation of the average time per case. These types of more involved cases do occur and their lengthier investigation time should also be factored into the average time per case. The time logs accurately reflect actual time spent by station Deputies on the preliminary investigative process to determine if the case was founded, unfounded, or inconclusive and to prepare the written report.¹⁸¹

The Commission finds that the reduction of costs based on the exclusion of one investigation from claimant’s time study is correct as a matter of law, and not arbitrary, capricious, or entirely lacking in evidentiary support.

The scope of the reimbursable activity relating to investigations of suspected child abuse or neglect looms large in the Commission’s consideration and analysis of the Parameters and Guidelines, and it remains an issue in this IRC. The Commission’s Decision adopting the Parameters and Guidelines reasoned that the requirement to investigate reports of suspected child abuse or neglect derives from the reporting requirement to DOJ; it is not a reimbursable state mandate to investigate reports of child abuse or neglect for purposes of prosecuting crimes.¹⁸² Accordingly, the Parameters and Guidelines place the “Complete an Investigation” activity under the heading, “Reporting to the Department of Justice.”¹⁸³

The Decision also analyzed at length the idea that the express goal of CANRA is to protect children from abuse or neglect, not to investigate and prosecute criminal child abuse, sexual assault, neglect, or other crimes.¹⁸⁴ And since the other agencies with similar reporting responsibilities under CANRA do not have law enforcement or criminal prosecution authority, the Parameters and Guidelines limited reimbursement for this mandate to an investigation similar

¹⁷⁸ Exhibit A, IRC, page 284 [Controller’s Final Audit Report, p. 23].

¹⁷⁹ Exhibit A, IRC, page 284 [Controller’s Final Audit Report, p. 23].

¹⁸⁰ Exhibit C, Claimant’s Late Rebuttal Comments, page 34.

¹⁸¹ Exhibit C, Claimant’s Late Rebuttal Comments, page 2.

¹⁸² Exhibit X, Statement of Decision and Parameters and Guidelines, *Interagency Child Abuse and Neglect Investigation Reports*, 00-TC-22, page 25.

¹⁸³ Exhibit A, IRC, pages 240-241 [Parameters and Guidelines, pp. 8-9].

¹⁸⁴ Exhibit X, Statement of Decision on Parameters and Guidelines, *Interagency Child Abuse and Neglect Investigation Reports*, 00-TC-22, page 34.

in scope to one conducted by another child welfare agency, and which is conducted for purposes of reporting to DOJ when suspected child abuse is substantiated or inconclusive.¹⁸⁵ The Commission made that determination, in part, because at some point an investigation of suspected child abuse conducted by a law enforcement agency turns from an investigation to determine whether a report is substantiated, inconclusive, or unfounded, to an investigation for purposes of criminal prosecution:

Therefore, because in-person interviews and writing a report of the findings are the last step taken by law enforcement before determining whether to proceed with a criminal investigation or close the investigation, and the last step that county welfare departments take before determining whether to forward the report to DOJ and possibly refer the matter to law enforcement, that degree of investigative effort must be the last step that is necessary to comply with the mandate. All further investigative activities are not reimbursable under the mandate, because, in a very practical sense, once evidence is being gathered for criminal prosecution, the determination that a report is “not unfounded” has been made, and the investigative mandate approved in the test claim statement of decision has been satisfied.¹⁸⁶

The Parameters and Guidelines also include an express disclaimer that reimbursement is not required for: “Investigative activities undertaken *subsequent to the determination* whether a report of suspected child abuse is substantiated, inconclusive, or unfounded...including the collection of physical evidence, the referral to a child abuse investigator, and the conduct of follow-up interviews.”¹⁸⁷

Here, the Controller determined that one of the fourteen investigations sampled for the time study included activities that were “subsequent to the determination” that the report of child abuse was not unfounded. In other words, referral to SVU detectives suggested that the case in question was at minimum not unfounded, and therefore a report to DOJ was required. The evidence in the record shows that this determination was based on conversations with the deputies at the Palmdale station.¹⁸⁸ Following those discussions, the Controller correctly determined that any further investigation subsequent to that determination is beyond the scope of the mandate, in accordance with the Parameters and Guidelines. Therefore, the Controller excluded that investigation from the sample used for the time study, and recalculated the average time increment based on the other 13 investigations sampled.

Then, as noted above, the Controller verified the reasonableness of the time study results after removing that case from the sample, by conducting a time survey, and the 2.65 hour average

¹⁸⁵ Exhibit X, Statement of Decision on Parameters and Guidelines, *Interagency Child Abuse and Neglect Investigation Reports*, 00-TC-22, pages 28-38.

¹⁸⁶ Exhibit X, Statement of Decision on Parameters and Guidelines, *Interagency Child Abuse and Neglect Investigation Reports*, 00-TC-22, page 38.

¹⁸⁷ Exhibit A, IRC, pages 240-241 [Parameters and Guidelines, pp. 8-9].

¹⁸⁸ Exhibit C, Claimant’s Late Rebuttal Comments, page 38 [email discussion between the claimant’s representatives and the Controller’s audit staff].

time increment fell squarely within the results of the time survey.¹⁸⁹ The claimant's argument that the 660 minute case should have been included in the sample because "[t]hese types of more involved cases do occur and their lengthier investigation time should also be factored into the average time per case,"¹⁹⁰ ignores the fact that the case was not excluded because of its length, but because it exceeded the scope of the mandate, based on discussions with the officers performing the mandate. The claimant continues to challenge that conclusion, but provides no evidence to rebut it.

Accordingly, the Controller's exclusion of one sample investigation that included unallowable activities from the time study is correct as a matter of law, and not arbitrary, capricious, or entirely lacking in evidentiary support.

2. The Controller's rejection of additional report writing time proposed in the claimant's amended claims is correct as a matter of law and not arbitrary, capricious, or entirely lacking in evidentiary support.

As noted above, audit fieldwork revealed a single investigation within the time study that included unallowable activities and time, and the Controller determined that that investigation should be removed from the time study.¹⁹¹ In response, the claimant argued for additional activities and time to augment the results of the time study, and filed amended reimbursement claims, based on a 3.66 hour average time increment per investigation.¹⁹² The 3.66 hours included not only the investigation that the Controller had determined to remove, but also an additional thirty minutes of report writing time for eleven of the fourteen investigations in which the claimant asserted that report writing had been inadvertently omitted from the time study.¹⁹³ The Controller rejected the additional time for report writing, and in the Final Audit Report determined a 2.65 hour average time increment allowable from the claimant's time study.

The Commission finds that the Controller's rejection of the claimant's proposed additional time for report writing was not arbitrary, capricious, or entirely lacking in evidentiary support.

The parties do not dispute whether report writing is a reimbursable component of the investigation; the dispute is whether report writing was adequately reflected and accounted for in the time study. The Controller states that preparing a written report was one of the four activities clearly and expressly identified in the time study documentation, and "was in fact recorded by the deputies in a number of investigations within the time study."¹⁹⁴ The Final Audit Report states the following:

¹⁸⁹ Exhibit A, IRC, page 284 [Final Audit Report, p. 23].

¹⁹⁰ Exhibit C, Claimant's Late Rebuttal Comments, page 2.

¹⁹¹ Exhibit C, Claimant's Late Rebuttal Comments, pages 34-38 [email discussion between the claimant's representatives and the Controller's audit staff].

¹⁹² Exhibit C, Claimant's Late Rebuttal Comments, page 15.

¹⁹³ Exhibit A, IRC, pages 299-380 [Amended Claim Documentation]; Exhibit B, Controller's Comments on the IRC, page 169.

¹⁹⁴ Exhibit A, IRC, page 285 [Final Audit Report, p. 24].

The second time study recorded time spent performing four activities. It did not separately identify the time for each activity. The time study noted total hours per case and listed which activities were performed for each case. For each investigation included in the time study, the deputies would mark which of the following four activities were performed:

1. Initial response to begin documentation of case and to contact County Welfare.
2. Complete an investigation to determine whether a report is unfounded, substantiated, or inconclusive.
3. Prepare a written report for every case investigated of known or suspected child abuse.
4. Review and approval of report.¹⁹⁵

Accordingly, preparing a written report for every case was one of four activities recorded in the claimant's time study. The time study summary documentation also states: "NOTE that this year ALL activities – ranging from investigation, report writing and review and approval were included in ONE time entry."¹⁹⁶ And finally, the Controller maintains that the time *survey* verified the reasonableness of the 2.65 hour average time increment, which does not include the additional thirty minutes for report writing sought by the claimant.¹⁹⁷ Thus, the Controller did not add 30 minutes to the average time increment.

The claimant has not filed any evidence, as required by Government Code section 17559 and section 1187.5 of the Commission's regulations, to support the assertion that report writing was inadvertently omitted from the time study. Government Code section 17559 requires that all findings of the Commission be based on substantial evidence in the record. And section 1187.5 of the Commission's regulations requires that all written representations of fact 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." 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 objection in civil actions.¹⁹⁸

Here, to support its assertions, the claimant included in its rebuttal comments a document with the handwritten caption: "2013 TIME STUDY." This document contains fourteen handwritten entries with dates, case numbers, and total investigative time, and notations of activities: some entries show "1, 2, 4," and others show "1, 2, 3, 4."¹⁹⁹ The claimant suggests that the absence of activity "3" in those entries means that report writing was not reflected in the total time.²⁰⁰

¹⁹⁵ Exhibit A, IRC, page 284-285 [Final Audit Report, pp. 23-24].

¹⁹⁶ Exhibit C, Claimant's Late Rebuttal Comments, page 15.

¹⁹⁷ Exhibit A, IRC, page 284 [Final Audit Report, p. 23].

¹⁹⁸ California Code of Regulations, title 2, section 1187.5(a).

¹⁹⁹ Exhibit C, Claimant's Late Rebuttal Comments, page 12.

²⁰⁰ Exhibit C, Claimant's Late Rebuttal Comments, page 14.

Another document, this one typed, and labeled “Analysis of Time Study #2” contains the same entries, and the same notations under “Activities Performed.”²⁰¹

On a cover page preceding these documents the following assertions appear:

SHOWS THAT THE 2013 TIME STUDY THE STATE USED TO DEVELOP THEIR AVERAGE TIMES (2.65 HRS/CASE) DID NOT INCLUDE/ACCOUNT FOR REPORT WRITING FOR ABOUT 80% OF THE CASES.

BECAUSE REPORT WRITING TIME WAS NOT FACTORED IN PROPERLY, TOTAL ALLOWABLE TIME DETERMINED BY THE SCO FOR THIS COMPONENT WAS UNDERSTATED.

LATER SCO TIME SURVEY QUESTIONNAIRE [sic] RESULTS ALSO SHOW THAT REPORT WRITING TIME WAS UNDERSTATED. BASED ON THE QUESTIONNAIRE, [sic] AVERAGE TIME PER CASE SHOULD HAVE BEEN 36 MINUTES PER INVESTIGATION²⁰²

The claimant also relies on the document labeled “Time Survey Questionnaire,” which contains separate estimates for the time needed to prepare a report for an unfounded investigation (15-20 minutes) and a substantiated or inconclusive investigation (45-50 minutes).²⁰³ A handwritten comment next to those entries states “avg = 37 mins.”²⁰⁴ On the basis of these items, the claimant requested an additional 30 minutes of report writing time, on the theory that for eleven of the fourteen investigations sampled, report writing (activity #3) is not reflected in the handwritten time logs.

But none of these documents (even collectively) constitutes substantial evidence to support a Commission finding that the Controller’s determination was arbitrary, capricious, or entirely lacking in evidentiary support. Rather, the claimant’s assertions and filed documents are all hearsay evidence. The Evidence Code defines hearsay as “evidence of a[n out of court] statement that was made other than by a witness while testifying at the hearing and that is offered to prove the truth of the matter stated.”²⁰⁵ Documentary evidence offered as proof of a factual issue is almost always hearsay, and is not admissible as direct evidence unless it complies with one of the many exceptions in the Evidence Code. Business records and official records are two such exceptions to the hearsay rule, but in both cases the writing must be made at or near the time of the act, condition, or event; and the sources of information and method and time of preparation must be such as to indicate trustworthiness.²⁰⁶ More importantly, official records must be created by and within the scope of duty of a public employee (these documents contain

²⁰¹ Exhibit C, Claimant’s Late Rebuttal Comments, page 14.

²⁰² Exhibit C, Claimant’s Late Rebuttal Comments, page 11.

²⁰³ Exhibit C, Claimant’s Late Rebuttal Comments, page 18.

²⁰⁴ Exhibit C, Claimant’s Late Rebuttal Comments, page 18.

²⁰⁵ Evidence Code section 1200.

²⁰⁶ Evidence Code sections 1271; 1280

no indication of their origin),²⁰⁷ while business records must be authenticated by the testimony of a “custodian or other qualified witness.”²⁰⁸ And, under the Commission’s regulations, 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 objection in civil actions.²⁰⁹

Here, neither the handwritten documents that purport to be “time logs,” nor the computer-generated recitation of the same information, is signed, or dated, or authenticated by a declaration sworn under penalty of perjury by persons who are authorized and competent to do so and based upon the declarant’s personal knowledge, information, or belief.²¹⁰ In addition, there is nothing in the record to show how or when those documents were generated, or by whom. On that basis, the documents in question are clearly inadmissible hearsay. Although the Commission’s regulations do not universally bar the admission of hearsay, such evidence “shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions.”²¹¹ Thus, none of the documents relied on by the claimant constitute substantial evidence to rebut the Controller’s findings nor can they, collectively or by themselves, support a finding of the Commission.

Based on the foregoing, the Commission finds that the Controller’s rejection of the claimant’s proposed additional time for report writing was not arbitrary, capricious, or entirely lacking in evidentiary support.

D. The Controller’s Reduction of Indirect Costs Is Correct as a Matter of Law.

The final reduction at issue in this IRC relates to the disallowance of indirect costs during the audit period. The Parameters and Guidelines allow claimants to use either a ten percent indirect cost rate based on direct labor costs, excluding benefits, or prepare an Indirect Cost Rate Proposal. In this case, the claimant claimed the ten percent indirect cost rate for each fiscal year and applied it to contract services costs that were incorrectly claimed as direct labor costs. The claimant did not incur any direct labor costs in any fiscal year of the audit period. The claimant contracts with the Los Angeles County Sheriff’s Department to perform all law enforcement activities, including the reimbursable activities here. Therefore, the Controller found that the claimant did not incur any direct labor costs for this program, and that the claimant’s methodology to classify and compute costs as indirect based on labor costs is not appropriate. The Controller also found that the claimant’s contracted rates included overhead costs.²¹²

²⁰⁷ Evidence Code section 1280.

²⁰⁸ Evidence Code section 1271. Note that under the Commission’s regulations a declaration under penalty of perjury may substitute for sworn testimony.

²⁰⁹ California Code of Regulations, title 2, section 1187.5(a).

²¹⁰ Exhibit C, Claimant’s Late Rebuttal Comments, pages 12-18.

²¹¹ California Code of Regulations, title 2, section 1187.5.

²¹² Exhibit B, Controller’s Comments on the IRC, page 22.

The claimant replies that it is entitled to fair compensation of all direct and indirect actual costs related to the mandated program.²¹³ In addition, the claimant asserts that the hourly rates of the deputies do not include all overhead, such as additional administrative and support positions, and facility costs.²¹⁴ The claimant further explains:

In the Los Angeles County Sheriff Contract, most overhead charges are included in the cost of each Deputy in the contract rate. This overhead includes services such as dispatch, special unit services (homicide, sexual crimes, forensics, etc.), equipment, and other overhead positions such as a base level of administrative and clerical support.

In addition to this base amount of overhead built into the sworn staff rates, each city has the option of purchasing additional supplemental overhead positions to their contract if they require and can afford additional support (such as clerical) or administrative staff (dedicated Lieutenants, and extra Sergeants or Watch Deputies). Each fiscal year, the City purchased additional supplemental overhead positions through the contract. (See Appendix B)

In some years the cities may be able to afford more direct staff and more overhead items and in other years they cannot. In the lean years, response times and customer service may decline due to limited fiscal resources. When the actual overhead rates were calculated, they were found to range between 12%-15%. (See Appendix B)²¹⁵

The claimant further asserts that it incurred “approximately \$1 million in City Staff Costs related to the management and oversight of the Sheriff’s Contract/Public Safety program (or 5% of total Law Enforcement Contract with the County).”²¹⁶ And finally, the claimant asserts that the donation of 11 acres of land, and “infrastructure improvements associated with the construction of the Palmdale Sheriff’s Station in 2004” constitute reimbursable indirect costs outside the contract.²¹⁷

The Commission finds that the Controller’s reduction is correct as a matter of law.

The Parameters and Guidelines state that when claiming indirect costs claimants have the option of using *10% of direct labor, excluding fringe benefits, or preparing an Indirect Cost Rate Proposal (ICRP)* if the indirect cost rate claimed exceeds 10%, as follows:

Indirect costs are costs that are incurred for a common or joint purpose, benefiting more than one program, and are not directly assignable to a particular department or program without efforts disproportionate to the result achieved. Indirect costs may include both: (1) overhead costs of the unit performing the mandate; and (2)

²¹³ Exhibit A, IRC, page 5.

²¹⁴ Exhibit A, IRC, page 5.

²¹⁵ Exhibit A, IRC, page 6.

²¹⁶ Exhibit A, IRC, page 6.

²¹⁷ Exhibit A, IRC, page 6.

the costs of the central government services distributed to the other departments based on a systematic and rational basis through a cost allocation plan.

Compensation for indirect costs is eligible for reimbursement utilizing the procedure provided in 2 CFR Part 225 (Office of Management and Budget (OMB) Circular A-87). Claimants have the option of using *10% of direct labor*, excluding fringe benefits, *or preparing an Indirect Cost Rate Proposal (ICRP)* if the indirect cost rate claimed exceeds 10%.

If the claimant chooses to prepare an ICRP, both the direct costs (as defined and described in 2 CFR Part 225, Appendix A and B (OMB Circular A-87 Attachments A and B) and the indirect costs shall exclude capital expenditures and unallowable costs (as defined and described in 2 CFR Part 225, Appendix A and B (OMB Circular A-87 Attachments A and B)). However, unallowable costs must be included in the direct costs if they represent activities to which indirect costs are properly allocable. The distribution base may be: (1) total direct costs (excluding capital expenditures and other distorting items, such as pass-through funds, major subcontracts, etc.); (2) direct salaries and wages; or (3) another base which results in an equitable distribution.²¹⁸

The claimant here filed its initial reimbursement claims as direct salary costs for the deputies and sergeants conducting the mandate. The Controller reclassified those costs, because the claimant does not perform the mandate directly, but instead contracts with the County of Los Angeles for all law enforcement services.²¹⁹ The Final Audit Report states (and the claimant concedes) that “[n]one of the city staff members performed any of the reimbursable activities under this program.”²²⁰ However, because the claimant sought indirect costs using the ten percent flat rate applied to those contract costs,²²¹ which is not consistent with the Parameters and Guidelines, the Controller also disallowed all indirect costs.

The claimant argues that it is entitled to its indirect costs, and puts forward several examples of alleged indirect costs that it claims justify the ten percent flat rate as a conservative estimate of its reimbursable costs incurred, but there is no evidence in the record that the claimant in fact attempted to develop an indirect cost rate proposal, consistently with the Parameters and Guidelines. The Controller explains:

As support, the city created sample Indirect Cost Rate Proposals (ICRPs) for FY 2006-07 through FY 2012-13...The city provided its ICRPs to show additional overhead costs that it asserts should be reimbursable. However, the city is asking for the restoration of the 10% rate claimed and not the indirect cost rates based on the proposed ICRPs.²²²

²¹⁸ Exhibit A, IRC, page 247 [Parameters and Guidelines, p. 15 (emphasis added)].

²¹⁹ Exhibit A, IRC, page 287 [Final Audit Report, p. 26].

²²⁰ Exhibit A, IRC, page 271 [Final Audit Report, p. 10].

²²¹ Exhibit A, IRC, page 287 [Final Audit Report, p. 26].

²²² Exhibit B, Controller’s Comments on the IRC, page 25.

The Controller also describes a number of other issues within the sample ICRPs, but as noted the claimant is not relying on the sample ICRPs to support reimbursement.²²³

The Parameters and Guidelines do not allow the claimant to use an indirect cost rate of 10 percent based on contract costs. The ten percent rate is allowed when the claimant uses its own employees to perform the mandated activities. Therefore, the remaining option for the claimant would have been to develop an indirect cost rate proposal. There is no evidence that the claimant did so here.

Accordingly, the Commission finds that the Controller's reduction of indirect costs, as claimed, is correct as a matter of law.

V. Conclusion

Based on the forgoing analysis, the Commission denies this IRC.

²²³ Exhibit B, Controller's Comments on the IRC, pages 25-27.

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 July 23, 2018, I served the:

- **Draft Proposed Decision, Schedule for Comments, and Notice of Hearing issued July 23, 2018**

Interagency Child Abuse and Neglect Reports (ICAN), 17-0022-I-01

Penal Code Sections 11165.9, 11166, 11166.2, 11166.9¹, 11168 (formerly 11161.7), 11169, 11170, and 11174.34 (formerly 11166.9) as added or amended by Statutes 1977, Chapter 958 (AB 1058); Statutes 1980, Chapter 1071 (SB 781); Statutes 1981, Chapter 435 (AB 518); Statutes 1982, Chapter 162 (AB 2303); Statutes 1982, Chapter 905 (SB 1848); Statutes 1984, Chapter 1423 (SB 1899); Statutes 1984, Chapter 1613 (AB 2709); Statutes 1985, Chapter 1598 (AB 505); Statutes 1986, Chapter 1289 (AB 1981); Statutes 1986, Chapter 1496 (AB 3608); Statutes 1987, Chapter 82 (AB 80); Statutes 1987, Chapter 531 (AB 1632); Statutes 1987, Chapter 1459 (SB 1219); Statutes 1988, Chapter 269 (AB 3022); Statutes 1988, Chapter 1497 (SB 2457); Statutes 1988, Chapter 1580 (AB 4585); Statutes 1989, Chapter 153 (AB 627); Statutes 1990, Chapter 650 (SB 2423); Statutes 1990, Chapter 1330 (SB 2788); Statutes 1990, Chapter 1363 (AB 3532); Statutes 1990, Chapter 1603 (SB 2669); Statutes 1992, Chapter 163 (AB 2641); Statutes 1992, Chapter 459 (SB 1695); Statutes 1992, Chapter 1338 (SB 1184); Statutes 1993, Chapter 219 (AB 1500); Statutes 1993, Chapter 510 (SB 665); Statutes 1996, Chapter 1080 (AB 295); Statutes 1996, Chapter 1081 (AB 3554); Statutes 1997, Chapter 842 (SB 644); Statutes 1997, Chapter 843 (AB 753); Statutes 1997, Chapter 844 (AB 1065); Statutes 1999, Chapter 475 (SB 654); Statutes 1999, Chapter 1012 (SB 525); and Statutes 2000, Chapter 916 (AB 1241); California Code of Regulations, Title 11, Section 903 (Register 98, Number 29)²; "Child Abuse Investigation Report" Form SS 8583 (Rev. 3/91)
Fiscal Years: 1999-2000, 2000-2001, 2001-2002, 2002-2003, 2003-2004, 2004-2005, 2005-2006, 2006-2007, 2007-2008, 2008-2009, 2009-2010, 2010-2011, 2011-2012, and 2012-2013

City of Palmdale, 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.

¹ Since renumbered as Penal Code section 11174.34 (Stats. 2004, ch. 842 (SB 1313)).

² The substantive requirements of section 903 are now found at section 902, pursuant to amendments effected by Register 2010, Number 2.

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 July 23, 2018 at Sacramento, California.



Jill L. Magee
Commission on State Mandates
980 Ninth Street, Suite 300
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COMMISSION ON STATE MANDATES

Mailing List

Last Updated: 5/15/18

Claim Number: 17-0022-I-01

Matter: Interagency Child Abuse and Neglect Investigation Reports (ICAN)

Claimant: City of Palmdale

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.)

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