

**COMMISSION ON STATE MANDATES**

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July 9, 2013, 2013

Mr. Art Palkowitz  
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Mr. Keith Petersen  
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Ms. Jill Kanemasu  
State Controller's Office  
Division of Accounting and  
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3301 C Street, Suite 700  
Sacramento, CA 95816

*And Interested Parties and Affected State Agencies (See Mailing List)*

**RE: Final Staff Analysis, Proposed Statewide Cost Estimate, and Notice of Hearing  
Public Contracts (K-14), 02-TC-35  
Public Contract Code Sections 2000, et al.  
Statutes 1976, Chapter 921; et al.  
Clovis Unified School District and  
Santa Monica Community College District, Co-Claimants**

Dear Mr. Palkowitz and Mr. Petersen:

The final staff analysis and proposed statewide cost estimate for the above-named matter are enclosed.

**Hearing**

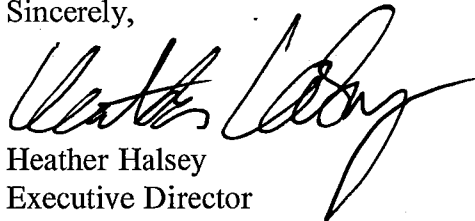
This matter is set for hearing on **Friday July 26, 2013**, at 10:00 a.m., in the State Capitol, Room 447, Sacramento, California. This matter is proposed for the Consent Calendar. Please let us know in advance if you object to this item being on consent and therefore you or a representative of your 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 1183.01(c)(2) of the Commission's regulations.

**Special Accommodations**

For any special accommodations such as a sign language interpreter, an assistive listening device, materials in an alternative format, or any other accommodations, please contact the Commission Office at least five to seven *working* days prior to the meeting.

Please contact Kerry Ortman at (916) 323-3562 if you have any questions.

Sincerely,



Heather Halsey  
Executive Director

**Item 10**  
**Final Staff Analysis**  
**Proposed Statewide Cost Estimate**  
**\$362,253**

**(Approximately \$32,932 Annually)**

Public Contract Code Sections 3300, 7104, 20103.5, 20104, 20104.2, 20104.50, and 22300

Statutes 1985, Chapter 1073; Statutes 1988, Chapter 1408; Statutes 1989, Chapter 330;  
Statutes 1990, Chapter 1414; Statutes 1992, Chapter. 799; and Statutes 1994, Chapter 726.

Business and Professions Code Section 7028.15

Statutes 1990, Chapter 321

California Code of Regulations, Title 5, Sections 59504, 59505, 59506, and 59509

Register 1994, Number 6

*Public Contracts (K-14)*  
02-TC-35

Clovis Unified School District and Santa Monica Community College District, Claimants

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**STAFF ANALYSIS**

**Background and Summary of the Mandate**

This test claim, filed on June 24, 2003, addresses public contract requirements imposed on school districts, county offices of education, and community college districts when they contract for goods, services, and public works projects. On May 25, 2012, the Commission on State Mandates (Commission) adopted a statement of decision<sup>1</sup> finding that some of the test claim statutes and regulations impose a reimbursable state-mandated program upon school districts and community college districts, in specified circumstances, within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514. Parameters and guidelines were adopted on September 28, 2012.<sup>2</sup>

Eligible claimants were required to file initial reimbursement claims (for costs incurred between July 1, 2001, and June 30, 2012) with the State Controller's Office (SCO) by May 3, 2013. Reimbursement claims for fiscal year 2012-2013 are due by February 18, 2014.

Eligible Claimants and Period of Reimbursement

Any "school district" as defined in Government Code section 17519, *excluding* county offices of education, is eligible to claim reimbursement.

Government Code section 17557(e) states that a test claim shall be submitted on or before June 30 following a given fiscal year to establish eligibility for that fiscal year. The test claim was filed on

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<sup>1</sup> Exhibit A.

<sup>2</sup> Exhibit B.

June 24, 2003, establishing eligibility for reimbursement for the 2001-2002 fiscal year. Therefore, the costs incurred for compliance with the mandated activities are reimbursable on or after July 1, 2001.

### **Reimbursable Activities**

For each eligible claimant that incurs increased costs, the following activities are reimbursable, but only when those activities are triggered by repair or maintenance to school facilities and property, pursuant to Education Code sections 17002, 17565, 17593, and 81601, and when the repair and maintenance must be let to contract under the following circumstances:

1. For *K-12 school districts*, when repairs and maintenance do not constitute a public project as defined by Public Contract Code section 22002(c), and the repairs and maintenance are not an emergency as set forth in Public Contract Code section 20113 or made to a project previously funded by the School Facilities Program (Ed. Code, § 17070.10 et seq.);<sup>3</sup>
  - a. for repairs, and maintenance as defined by Public Contract Code section 20115, that exceed \$50,000; unless
    1. the district has an average daily attendance of less than 35,000, and the total number of hours on the job does not exceed 350 hours; or
    2. the district has an average daily attendance of 35,000 or greater, and the total number of hours on the job does not exceed 750 hours, or the material cost does not exceed \$21,000.
2. For *K-12 school districts*, when repairs and maintenance constitute a public project as defined by Public Contract Code section 22002(c), and the project is not an emergency as set forth in Public Contract Code section 20113 or repair and maintenance made to a project previously funded by the School Facilities Program (Ed. Code, § 17070.10 et seq.);<sup>4</sup>
  - a. for repair and maintenance public projects that exceed \$15,000; unless
    1. the district has an average daily attendance of less than 35,000, and the total number of hours on the job does not exceed 350 hours; or
    2. the district has an average daily attendance of 35,000 or greater, and the total number of hours on the job does not exceed 750 hours, or the material cost does not exceed \$21,000.
3. For *community college districts*, when repairs and maintenance do not constitute a public project as defined by Public Contract Code section 22002(c), and the repairs and maintenance are not an emergency as set forth in Public Contract Code section 20654;
  - a. for repairs, and maintenance as defined by Public Contract Code section 20656, that exceed \$50,000; unless
    1. the district has full-time equivalent students of fewer than 15,000, and the total number of hours on the job does not exceed 350 hours; or

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<sup>3</sup> “Project” as used in relation to the School Facilities Program includes the acquisition of school sites, construction of new facilities, and modernization of existing school facilities.

<sup>4</sup> *Ibid.*

2. the district has full-time equivalent students of 15,000 or more, and the total number of hours on the job does not exceed 750 hours, or the material cost does not exceed \$21,000.
4. For *community college districts*, when repairs and maintenance constitute a public project as defined by Public Contract Code section 22002(c), and the project is not an emergency as set forth in Public Contract Code section 20654;
  - a. for repair and maintenance public projects that exceed \$15,000; unless
    1. the district has full-time equivalent students of fewer than 15,000, and the total number of hours on the job does not exceed 350 hours; or
    2. the district has full-time equivalent students of 15,000 or more, and the total number of hours on the job does not exceed 750 hours, or the material cost does not exceed \$21,000.
5. For any K-12 school district or community college district that is subject to the Uniform Public Construction Cost Accounting Act (Pub. Contract Code, § 22000 et seq.), when a project is not an emergency as set forth in Public Contract Code section 22035 or repair and maintenance made to a *K-12 school district* project previously funded by the School Facilities Program (Ed. Code, § 17070.10 et seq.);<sup>5</sup>
  - a. for contracts entered into between July 1, 2001 and January 1, 2007, the project cost will exceed \$25,000;
  - b. for contracts entered into between January 1, 2007 and January 1, 2012, the project cost will exceed \$30,000; or
  - c. for contracts entered into after January 1, 2012, the project cost will exceed \$45,000.

Under the circumstances specified above, the following activities are reimbursable:

For K-12 School Districts and Community College Districts

1. Specify the classification of the contractor's license, which a contractor shall possess at the time a contract for repair or maintenance is awarded, in any plans prepared for a repair or maintenance public project and in any notice inviting bids required pursuant to the Public Contract Code. (Pub. Contract Code, § 3300(a) (Stats. 1985, ch. 1073).)
2. Include in any public works contract for repair and maintenance, which involves digging trenches or other excavations that extend deeper than four feet below the surface, a clause that provides the following:
  - (a) That the contractor shall promptly, and before the following conditions are disturbed, notify the local public entity, in writing, of any:
    - (1) Material that the contractor believes may be material that is hazardous waste, as defined in Section 25117 of the Health and Safety Code, that is required to be removed to a Class I, Class II, or Class III disposal site in accordance with provisions of existing law.

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<sup>5</sup> *Ibid.*

- (2) Subsurface or latent physical conditions at the site differing from those indicated by information about the site made available to bidders prior to the deadline for submitting bids.
  - (3) Unknown physical conditions at the site of any unusual nature, different materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the contract.
- (b) That the local public entity shall promptly investigate the conditions, and if it finds that the conditions do materially so differ, or do involve hazardous waste, and cause a decrease or increase in the contractor's cost of, or the time required for, performance of any part of the work shall issue a change order under the procedures described in the contract.
  - (c) That, in the event that a dispute arises between the local public entity and the contractor whether the conditions materially differ, or involve hazardous waste, or cause a decrease or increase in the contractor's cost of, or time required for, performance of any part of the work, the contractor shall not be excused from any scheduled completion date provided for by the contract, but shall proceed with all work to be performed under the contract. The contractor shall retain any and all rights provided either by contract or by law which pertain to the resolution of disputes and protests between the contracting parties. (Pub. Contract Code, § 7104 (Stats. 1989, ch. 330).)
3. Set forth the provisions of Article 1.5 of Chapter 1 of Part 3 of the Public Contract Code (commencing with Pub. Contract Code, § 20104), or a summary thereof, in the plans or specifications for any public work for repair and maintenance which may give rise to a claim of \$375,000 or less which arise between a contractor and a K-12 school district or community college district, excluding those districts that elect to resolve claims pursuant to Article 7.1 (commencing with section 10240) of Chapter 1 of Part 2 of the Public Contract Code. (Pub. Contract Code, § 20104(c) (Stats. 1994, ch. 726).)<sup>6</sup>
  4. For claims of less than \$50,000 resulting from a public works contract for repair or maintenance, respond in writing to any written claim within 45 days of receipt of the claim. (Pub. Contract Code, § 20104.2(b)(1) (Stats. 1994, ch. 726).)
  5. For claims of more than \$50,000 and less than or equal to \$375,000 resulting from a public works contract for repair or maintenance, respond in writing to any written claim within 60 days of receipt of the claim. (Pub. Contract Code, § 20104.2(c)(1) (Stats. 1994, ch. 726).)

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<sup>6</sup> "Claim," as used in activities "3. – 6.," is defined by Public Contract Code section 20104(b)(2) is defined as:

[A] separate demand by the contractor for (A) a time extension, (B) payment of money or damages arising from work done by, or on behalf of, the contractor pursuant to the contract for a public work and payment of which is not otherwise expressly provided for or the claimant is not otherwise entitled to, or (C) an amount the payment of which is disputed by the local agency.

6. Upon demand by a contractor disputing a K-12 school district's or community college district's response to a claim, schedule and engage in a meet and confer conference within 30 days for settlement of the dispute. (Pub. Contract Code, § 20104.2(d) (Stats. 1994, ch. 726).)
7. Review each payment request from a contractor for repair and maintenance as soon as practicable after the receipt of the request to determine if the payment request is a proper payment request. "As soon as practicable" is limited by the seven day period in the activity mandated by Public Contract Code section 20104.50(c)(2). (Pub. Contract Code, § 20104.50(c)(1) (Stats. 1992, ch. 799).)
8. Return to the contractor for repair and maintenance any payment request determined not to be a proper payment request suitable for payment as soon as practicable, but no later than seven days after receipt of the request.  
  
A returned request shall be accompanied by a document setting forth in writing the reasons why the payment request is not proper. (Pub. Contract Code, § 20104.50(c)(2) (Stats. 1992, ch. 799).)
9. Require the provisions of Article 1.7, Chapter 1, Part 3, Division 2 of the Public Contract Code (Pub. Contract Code, § 20104.50), or a summary thereof, to be set forth in the terms of any repair and maintenance contract. (Pub. Contract Code, § 20104.50(f) (Stats. 1992, ch. 799).)
10. In any invitation for bid and in any repair and maintenance contract documents, include provisions to permit the substitution of securities for any moneys withheld by a public agency to ensure performance under a contract. This excludes invitations for bid and contract documents for projects where there will be financing provided by the Farmers Home Administration of the United States Department of Agriculture pursuant to the Consolidated Farm and Rural Development Act (7 U.S.C. Sec. 1921 et seq.), and where federal regulations or policies, or both, do not allow the substitution of securities. (Pub. Contract Code, § 22300(a) (Stats. 1988, ch. 1408).)
11. Before awarding a repair and maintenance contract to a contractor for a project that *is not* governed by Public Contract Code section 20103.5 (which addresses projects that involve federal funds), verify with the Contractors' State Licensing Board that the contractor was properly licensed when the contractor submitted the bid. (Bus. & Prof. Code, § 7028.15(e) (Stats. 1990, ch. 321).)
12. Before making the first payment for work or material to a contractor under any repair and maintenance contract for a project where federal funds are involved, verify with the Contractors' State Licensing Board that the contract was properly licensed at the time that the contract was awarded to the contractor. (Pub. Contract Code, § 20103.5 (Stats. 1990, ch. 1414).)

For Community College Districts Only

1. Undertake appropriate efforts to provide participation opportunities for minority, women, and disabled veteran business enterprises in district contracts for repair and maintenance. Appropriate efforts may include: (1) vendor and service contractor orientation programs related to participating in district contracts or in understanding and complying with the provisions of California Code of Regulations, title 5, section 59500 et seq.; (2) developing a listing of minority, women, and disabled veteran business enterprises

potentially available as contractors or suppliers; or (3) such other activities that may assist interested parties in being considered for participation in district contracts.

Appropriate activity does not include the application of the system wide goals established in California Code of Regulations, title 5, section 59500 to district contracts. (Cal. Code Regs., tit. 5, § 59504 (Register 94, No. 6).)

2. Assess the status of each of its contractors regarding whether a contractor is a certified or self-certified minority, women, and disabled veteran business enterprise subcontractor and/or supplier. (Cal. Code Regs., tit. 5, §§ 59505(d) and 59509 (Register 94, No. 6), beginning July 1, 2001 through April 13, 2006.)
3. Establish a process to collect and retain certification information by a business enterprise claiming minority, women, and disabled veteran business enterprise status. (Cal. Code Regs., tit. 5, §§ 59506(a) and 59509 (Register 94, No. 6), beginning July 1, 2001 through April 13, 2006.)
4. Each October 15, report to the Chancellor the level of participation by minority, women, and disabled veteran business enterprises in community college district contracts for repair and maintenance for the previously completed fiscal year. (Cal. Code Regs., tit. 5, § 59509 (Register 94, No. 6), beginning July 1, 2001 through March 31, 2005.)

## **Statewide Cost Estimate**

### Assumptions

Staff reviewed the reimbursement claims data submitted by 10 school districts and compiled by the SCO. The actual claims data showed that 60 initial claims were filed for fiscal years 2001-2002 through 2011-2012 for a total of \$362,253.<sup>7</sup> Based on this data, staff made the following assumptions and used the following methodology to develop a statewide cost estimate for this program.

- *The actual amount claimed for reimbursement may increase and exceed the statewide cost estimate.*
  - There are approximately 985 K-12 school districts and 72 community college districts in California. Of those, only 10 K-12 school districts filed initial reimbursement claims totaling \$362,253 for this program for fiscal years 2001-2002 through 2011-2012. If other eligible claimants file late or amended initial claims, the amount of reimbursement claims may exceed the statewide cost estimate. Late initial claims for this program for fiscal years 2001-2002 through 2011-2012 may be filed until May 3, 2014.
- *It is possible that there will be few claims filed on this program.*

Reimbursement is required only when school districts and community college districts are required to contract for non-emergency repairs or maintenance to school facilities and property which has not received prior funding under the School Facilities Program. Even then, reimbursement is only required in limited situations based on the cost of the repair and maintenance and the hours needed to complete the repair and maintenance.

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<sup>7</sup> Claims data reported as of May 17, 2013.

- *If school districts choose to participate in K-12 Mandated Programs Block Grant funding the number of claims filed for actual costs could be lower.*
- *The total amount of reimbursement for this program may be lower than the statewide cost estimate because the SCO may reduce any reimbursement claim for this program.*

The SCO may conduct audits and reduce any claims it deems to be excessive or unreasonable. Because the mandate is very limited (in terms of both the triggering events for the mandate and the scope of the reimbursable activities) it is likely that some claims will be reduced through the audit process.

### Methodology

#### *Fiscal Years 2001-2002 through 2011-2012*

The statewide cost estimate for fiscal years 2001-2002 through 2011-2012 was developed by totaling the 69 reimbursement claims filed with the SCO for these years, for a total of \$362,253. This averages to \$32,932 annually in costs for the state over this eleven-year period. Following is a breakdown of estimated total costs per fiscal year:

<b>Fiscal Year</b>	<b>Number of Claims Filed with SCO</b>	<b>Estimated Cost</b>
2001-2002	5	\$19,123
2002-2003	5	\$35,450
2003-2004	5	\$25,928
2004-2005	6	\$34,552
2005-2006	6	\$43,853
2006-2007	7	\$51,925
2007-2008	8	\$52,155
2008-2009	8	\$33,394
2009-2010	6	\$17,399
2010-2011	4	\$17,779
2011-2012	9	\$30,695
<b>TOTAL</b>	<b>69</b>	<b>\$362,253</b>

### **Comments on Draft Staff Analysis and Proposed Statewide Cost Estimate**

On June 10, 2013, Commission staff issued the draft staff analysis and proposed statewide cost estimate<sup>8</sup> for comments. The SCO contacted Commission staff via telephone to point out that the claiming period in the draft staff analysis incorrectly stated that the initial reimbursement claims were for costs incurred between July 1, 2001 and June 30, 2011. The initial claims were actually for costs incurred between July 1, 2001 and June 30, 2012. Commission staff has made this correction. No other comments were received on the draft.

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<sup>8</sup> Exhibit C.



**Staff Recommendation**

Staff recommends the Commission adopt the proposed statewide cost estimate of **\$362,253** for the first 11 years of costs incurred in complying with the *Public Contracts (K-14)* program and an on-going cost estimate of approximately \$32,932 in annual costs.