

**ITEM 10**  
**PROPOSED PARAMETERS AND GUIDELINES**  
**AND**  
**STATEMENT OF DECISION**

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, Co-Claimants

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**EXECUTIVE SUMMARY**

The following is the proposed statement of decision for this matter prepared pursuant to section 1188.1 of the Commission on State Mandates' (Commission) regulations. As of January 1, 2011, Commission hearings on the adoption of proposed parameters and guidelines are conducted under article 7 of the Commission's regulations.<sup>1</sup> Article 7 hearings are quasi-judicial hearings. The Commission is required to adopt a decision that is correct as a matter of law and based on substantial evidence in the record.<sup>2</sup> Oral or written testimony is offered under oath or affirmation in article 7 hearings.<sup>3</sup>

**Summary of the Mandate**

The test claim statutes and regulations address the requirements imposed on school districts and community college districts when they contract for goods, services, and public works projects. These requirements include: (1) the requirement to specify the classification of a contractor's license in the bid proposal; (2) required contract clauses for public works involving digging trenches or other excavations; (3) the requirement to verify a bidder's license status; and

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<sup>1</sup> California Code of Regulations, Title 2, section 1187.

<sup>2</sup> Government Code section 17559(b); California Code of Regulations, Title 2, 1187.5.

<sup>3</sup> *Ibid.*

(4) community college district's engaging in activities to promote minority, women, and disabled business enterprise participation in public contracts.

Because the activities alleged to be required by the test claim statutes and regulations are dependent on whether school districts and community college districts are required to acquire goods or services, undertake public projects, and contract for those goods, services, or public projects, the Commission's statement of decision on the test claim addressed: (1) what goods and services and public projects school districts and community college districts are required to acquire or undertake; (2) whether the districts are required to contract for those required goods, services, and public projects; (3) whether the test claim statutes impose state-mandated new programs or higher levels of service; and (4) whether the test claim statutes and regulations impose costs mandated by the state within the meaning of Government Code section 17514 and 17556.

The Commission concluded: (1) school districts and community college districts are required by the state to repair and maintain school property, but all other decisions regarding the purchase of goods and services and the undertaking of public works projects are discretionary decisions made by the school district or community college district; and (2) school districts and community college districts are required by state law to contract for non-emergency repair or maintenance services or repair and maintenance public works projects subject to specific limitations based on the cost of the repair and maintenance and the hours needed to complete the repair and maintenance. The Commission found that the public contracting related activities identified on pages 75 through 80 of the Commission's statement of decision on the test claim impose a reimbursable state-mandated program in the above circumstances.

Following the Commission's adoption of the statement of decision on the test claim, the claimants requested to use the expedited parameters and guidelines process, whereby Commission staff drafts the parameters and guidelines based upon the test claim statement of decision. On June 8, 2012 the Commission staff issued draft expedited parameters and guidelines. The reimbursable activities included in the expedited proposed parameters and guidelines are limited to those approved in the Commission's statement of decision on the test claim.

On June 20, 2012, the claimants filed comments proposing non-substantive clarifying changes to the draft expedited parameters and guidelines intended to more clearly identify the reimbursable activities, the scope of these activities, and the claimants to which the activities apply.

On July 16, 2012, the Department of Finance filed comments requesting that Section IV. Reimbursable Activities of the parameters and guidelines be clarified to exclude school district projects that received funding through the School Facilities Program (SFP) from reimbursement under this test claim.

The State Controller's Office has not filed comments on the draft expedited parameters and guidelines.

The expedited proposed parameters and guidelines adopt a portion of Finance's proposal and some of the non-substantive changes proposed by the claimants.

## **Staff Recommendation**

Staff recommends that the Commission:

- Adopt the attached proposed parameters and guidelines and statement of decision; and
- Authorize staff to make any non-substantive, technical corrections to the parameters and guidelines and statement of decision following the hearing.

BEFORE THE  
COMMISSION ON STATE MANDATES  
STATE OF CALIFORNIA

IN RE PARAMETERS AND GUIDELINES  
FOR:

Public Contract Code Sections 3300, 7104, 20103.5, 20104, 20104.2, 20104.50, and 22300, as amended by 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, as amended by Statutes 1990, Chapter 321

California Code of Regulations, Title 5, Sections 59504, 59505, 59506, and 59509, as added or amended by Register 1994, Number 6

Period of reimbursement beginning:  
July 1, 2001

Case No.: 02-TC-35

*Public Contracts (K-14)*

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

*(Proposed for Adoption: September 28, 2012)*

**STATEMENT OF DECISION**

The Commission on State Mandates (Commission) adopted the attached parameters and guidelines and this statement of decision during a regularly scheduled hearing on September 28, 2012. [Witness list will be included in the final statement of 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 section 17500 *et seq.*, and related case law.

The Commission adopted the parameters and guidelines and statement of decision by a vote of [Vote count will be included in the final statement of decision].

**I. Summary of the Mandate**

The *Public Contracts (K-14)* (02-TC-35) test claim addresses the requirements imposed on school districts and community college districts when they contract for goods, services, and public works projects. These requirements include: (1) the requirement to specify the classification of a contractor's license in the bid proposal; (2) required contract clauses for public works involving digging trenches or other excavations; (3) the requirement to verify a bidder's

license status; and (4) community college district's engaging in activities to promote minority, women, and disabled business enterprise participation in public contracts.

Because the provisions of the test claim statutes and regulations are only applicable to school districts and community college districts that enter into contracts for public works projects, or for the purchase or acquisition of goods and services, the Commission analyzed whether the *state* requires school districts or community college districts to engage in any public works projects or to purchase goods or services, and whether they are required by the state to contract out for those projects, goods, or services. Only when the state requires school districts to engage in these triggering activities are the downstream public contracting requirements mandated by the state and eligible for reimbursement.<sup>4</sup>

On May 25, 2012, the Commission adopted the statement of decision on the test claim finding that county offices of education are not eligible claimants on the ground that the activities are triggered by the discretionary local decision of the county. The Commission further found that some of the alleged public contracting activities are reimbursable for K-12 school districts and community college districts, 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 *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; and
  - 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 *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; and
  - 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.

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<sup>4</sup> *San Diego Unified School Dist.*, *supra*, 33 Cal.4<sup>th</sup> at p. 880; *Department of Finance v. Commission on State Mandates (Kern High School Dist.)* (2003) 30 Cal.4<sup>th</sup> 727, 751.

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; and
  - 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
    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; and
  - 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 school district or community college district that is subject to the UPCCAA, when a project is not an emergency as set forth in Public Contract Code section 22035, and
  - 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.

In these limited circumstances, the Commission found that the test claim statutes and regulations impose a partially reimbursable state-mandated program on school districts and community college districts within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514. Specifically, the Commission approved this test claim for the reimbursable activities associated with state-mandated public contracting for school districts and community college districts identified on pages 75-80 of the Commission's statement of decision on the test claim and included in the parameters and guidelines.

Additionally, the Commission found that any funds received and applied to the reimbursable activities by a school district or community college district from the following grant and fee programs be identified as potential offsetting revenue in the parameters and guidelines:

- Funds received by K-12 school districts from the State School Facilities Program modernization grants<sup>5</sup> for non-routine repairs and maintenance.
- Funds received by K-12 school districts from the State School Deferred Maintenance Program.<sup>6</sup>
- Fee revenue received by K-12 school districts pursuant to Education Code section 17620 that can be used for the repair and maintenance projects subject to the reimbursable activities in this test claim.
- Funds received from the Community Colleges Deferred Maintenance and Special Repair Program<sup>7</sup> by a community college district for repairs and maintenance that are unusual and nonrecurring work to restore a facility to a safe and continually usable condition for which it was intended.

## **II. Procedural History**

Following the Commission's adoption of the statement of decision on the test claim, the claimants requested to use the expedited parameters and guidelines process, whereby Commission staff drafts the parameters and guidelines based upon the test claim statement of decision, pursuant to California Code of Regulations, title 2, section 1183.12. Commission staff issued draft expedited parameters and guidelines on June 8, 2012. The reimbursable activities included in the draft expedited parameters and guidelines are limited to those approved in the statement of decision on the test claim adopted by the Commission on May 25, 2012.

On June 20, 2012, the claimants filed comments on the draft expedited parameters and guidelines. The claimants propose non-substantive clarifying changes intended to more clearly identify the reimbursable activities, the scope of these activities, and the claimants to which the activities apply.

On July 16, 2012, the Department of Finance (Finance) filed comments on the draft expedited parameters and guidelines, requesting that Section IV. Reimbursable Activities of the parameters and guidelines be clarified to exclude school district projects that are subject to Education Code section 17070.75, which sets forth some of the conditions of participating in the School Facilities Program (SFP), from claiming reimbursement under this test claim. Finance asserts that projects for new construction proposed by school districts and community college districts are discretionary and that building under the SFP is discretionary. In addition, Finance states that Education Code section 17070.75 requires any district electing to participate in the voluntary SFP be required to make all necessary repairs, renewals, and replacements to ensure that a project is at all times maintained in good repair, working order, and condition, the cost of which shall be borne by the school district. Thus, Finance argues that projects receiving funding through the SFP should be excluded from claiming reimbursement.

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<sup>5</sup> Education Code section 17074.10-17074.30.

<sup>6</sup> Education Code section 17582-17588.

<sup>7</sup> Education Code section 84660.

The State Controller's Office did not file comments on the draft expedited parameters and guidelines.

### III. Commission Findings

The Commission reviewed the comments filed by the claimants and Finance on the draft expedited parameters and guidelines. The Commission agrees with some of the non-substantive clarifying changes proposed by the claimants, and partially agrees with Finance's proposal.

Non-substantive, technical changes are made for purposes of clarification, consistency, and conformity to the Commission's statement of decision on the test claim and statutory language. The following analysis addresses some of the non-substantive changes, and all of the substantive changes made by the Commission in the following sections of the parameters and guidelines: (1) Section II. Eligible Claimants; (2) Section IV. Reimbursable Activities; and (3) Section VII. Offsetting Revenues and Reimbursements.

#### Section II. Eligible Claimants

The Commission makes the following changes, indicated by strikeout and underline, to Section II. Eligible Claimants of the expedited proposed parameters and guidelines:

Any "school district" as defined in Government Code section 17519, ~~including~~ excluding county offices of education ~~and community college districts~~, is eligible to claim reimbursement.

The Commission's regulations require parameters and guidelines to include a description of the claimants eligible to file for reimbursement.<sup>8</sup> The Commission's statement of decision on the test claim found that the test claim statutes and regulations impose reimbursable state-mandated activities on *only* K-12 school districts and community college districts, and expressly excluded county offices of education.<sup>9</sup> As a result, Section II. Eligible Claimants is amended to exclude county offices of education in order to be consistent with the Commission's statement of decision on the test claim.

#### Section IV. Reimbursable Activities

The activities included in the parameters and guidelines set forth the reimbursable activities and closely track the statutory language from which the activities are derived. As a result, the Commission has not made the non-substantive amendments to increase the use of italics, renumber the activities, or use captions as proposed by the claimants. However, the Commission makes the following clarifying changes indicated by the underlined language to the 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:

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<sup>8</sup> California Code of Regulations, title 5, section 1183.1(a)(2) (Register 2005, No. 36).

<sup>9</sup> Exhibit A, statement of decision on the *Public Contracts (K-14)* test claim, pgs. 13-14.



1. For *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>10</sup> and
    - 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 *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>11</sup> and
    - 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.
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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>12</sup> and
    - 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

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<sup>10</sup> “Project” as used in relation to the School Facilities Program (SFP) includes the acquisition of school sites, construction of new facilities, and modernization of existing school facilities.

<sup>11</sup> *Ibid.*

<sup>12</sup> *Ibid.*

- c. for contracts entered into after January 1, 2012, the project cost will exceed \$45,000.

These clarifying changes to the reimbursable activities are necessary for consistency with the Commission's statement of decision on the test claim and statutory language.<sup>13</sup>

The Commission's statement of decision on the test claim found that the reimbursable activities, which address public contracting, are triggered only for non-emergency repair or maintenance to school facilities and property by K-12 school districts and community college districts when the repair and maintenance must be let to contract. In some instances, non-emergency repair or maintenance projects to school facilities and property that must be let to contract fall within the allowable uses of grant funds provided through the SFP (i.e. modernization grant funds provided pursuant to Education Code section 17074.10 et seq.) for which a K-12 school district can apply. As a result, the Commission found that modernization funds received by a K-12 school district through the SFP that are used for the public contracting requirements imposed by the reimbursable public contracting activities must be identified as offsetting revenue. However, the statement of decision on the test claim did not specifically address the effect of a school district's participation in the SFP on the requirement to engage in subsequent repairs and maintenance to a project originally funded through the SFP that could then trigger the reimbursable activities.

Finance argues that K-12 school districts agree to make all necessary repairs, renewals, and repairs to projects funded through the SFP pursuant to Education Code section 17070.75. That statute sets forth some of the conditions of receiving the SFP grant funds. As a result, Finance proposes that K-12 school district projects originally funded through Education Code section 17070.75 should be excluded from claiming reimbursement under this test claim.<sup>14</sup> The Commission partially agrees with Finance's proposal.

Generally, the SFP provides grant funding for school districts to acquire school sites, construct new school facilities, or modernize existing school facilities. K-12 school districts seeking to acquire school sites, construct new school facilities, or modernize existing facilities can voluntarily participate in the SFP grant programs for these purposes. Education Code section 17070.75 sets forth some of the general conditions for receiving the SFP grant funds.<sup>15</sup> Education Code section 17070.75 provides in relevant part:

The [State Allocation Board] shall require the school district to make all necessary repairs, renewals, and replacements to ensure that a project is at all

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<sup>13</sup> California Code of Regulations, title 5, section 1183.12, authorizes the clarification of the reimbursable activities.

<sup>14</sup> Exhibit C, Finance's comments on expedited proposed parameters and guidelines, dated July 16, 2012.

<sup>15</sup> A test claim on the requirements imposed as a condition of participating in the SFP program was filed and denied by the Commission on March 24, 2011. (*School Facilities Funding Requirements*, 02-TC-30, 02-TC-43, 09-TC-01.)

times maintained in good repair, working order, and condition. All costs incurred for this purpose shall be borne by the school district.<sup>16</sup>

As discussed in the statement of decision on the test claim, the contracting process and its associated costs are a necessary consequence of engaging in some repairs and maintenance projects. Thus, districts that receive the SFP funds for a project have accepted as a condition of receiving those funds the requirement to repair and maintain the project initially funded through the SFP and to bear the costs of any subsequent repair and maintenance to the project, including contracting costs. As a result, K-12 school districts that have received funding under the SFP (Ed. Code, § 17070.10 et seq.) for a project (e.g. site acquisition, construction of new facilities, or modernization) are *ineligible* to claim reimbursement for the reimbursable activities found in this test claim that are triggered by *subsequent* repair and maintenance to that site or facility which has been funded through the SFP.

However, if a school district seeks grant funding under the SFP for a non-emergency repair and maintenance project that triggers the reimbursable public contracting activities, and the project has not been previously funded through the SFP, the K-12 school district would be eligible to claim reimbursement under this test claim for that project. As noted above, in some instances, non-emergency repair or maintenance projects to school facilities and property that must be let to contact fall within the allowable uses of grant funds provided through the SFP (i.e. modernization grant funds provided pursuant to Education Code section 17074.10 et seq.). Also, modernization grant funding under the SFP is generally provided on a state and local match basis.<sup>17</sup> If a district is unable to meet its match and can meet certain financial hardship provisions, the district may be eligible for up to 100 percent of the local share of the project cost.<sup>18</sup> In cases where grant funding is not 100 percent, a school district is not required to spend the grant funds for the purposes of the public contracting activities found to be reimbursable in the test claim. The Commission found in the statement of decision on the test claim that if a school district received *and applied* modernization grant funds to the reimbursable activities, the funds would be deducted as offsetting revenue.

Thus, *all* projects funded through the SFP should *not* be excluded from reimbursement under this test claim as proposed by Finance. Instead, only *subsequent* repair and maintenance to the SFP funded projects should be excluded from reimbursement. Pursuant to the above discussion, the clarifying changes are consistent with the statement of decision on the test claim and necessary for consistency with the statement of decision on the test claim and the statutory language surrounding the SFP.

The Commission also amends the activity mandated by Public Contract Code section 20104(c), as proposed by the claimants. Specifically, the reimbursable activity is amended as indicated by the following underlined language:

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<sup>16</sup> Education Code section 17070.75(a).

<sup>17</sup> Education Code sections 17074.15 and 17074.16.

<sup>18</sup> Education Code section 17075.10 et seq., and California Code of Regulations, title 5, section 1859.80 et seq.

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>19</sup>

The inclusion of the underlined language above is necessary to make the activity consistent with the findings made in the Commission’s statement of decision on the test claim.<sup>20</sup> Although the body of the analysis in the Commission’s statement of decision on the test claim finds that the activity as amended above constitutes a reimbursable state-mandated new program or higher level of service, the content of what is to be “[s]et forth in the plans or specifications” was inadvertently left out in the summary of the activity throughout the decision. Thus, the parameters and guidelines clarify this activity consistent with the statement of decision and the test claim statute.

In addition, the parameters and guidelines identify the activity mandated by Public Contract Code section 20104.2(d) as follows:

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).)

The addition of the words “and engage in” is made for purposes of clarification of the mandated activity and is consistent with the Commission’s statement of decision on the test claim. Public Contract Code section 20104.2 sets forth a pre-litigation resolution process for claims filed by a contractor. “Claims” include a separate demand by the contractor for: (1) a time extension; (2) a 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 (3) an amount the payment of which is disputed by the school district or community college district. By establishing a pre-litigation resolution process, and more specifically, by requiring districts to schedule a meet and confer conference “for the settlement of the dispute,” the Legislature intended that districts take action

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<sup>19</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.

<sup>20</sup> Exhibit A, statement of decision on the *Public Contracts (K-14)* test claim, pgs. 45-46.

to attempt to resolve disputes. As a result, the above activity clarifies that a district is not simply mandated to “schedule” the meet and confer conference, but must also engage in the conference.

Section VII. Offsetting Revenues and Reimbursements

Section VII. Offsetting Revenues and Reimbursement of the parameters and guidelines states the following:

Any offsets the claimant experiences in the same program as a result of the same statutes or executive orders found to contain the mandate shall be deducted from the costs claimed. The Commission finds that any funds received and applied to the reimbursable activities by a school district or community college district from the following grant and fee programs shall be deducted as offsetting revenue:

- Funds received by K-12 school districts from the State School Facilities Program modernization grants<sup>21</sup> for non-routine repairs and maintenance. If a K-12 school district has received financial hardship assistance of 100 percent of the project, pursuant to Education Code section 17075.10 et seq., and California Code of Regulations, title 5, section 1859.80 et seq., the modernization grant shall completely offset the reimbursable costs under this test claim for that project.
- Funds received by K-12 school districts from the State School Deferred Maintenance Program.<sup>22</sup>
- Fee revenue received by K-12 schools district pursuant to Education Code section 17620 that can be used for the repair and maintenance projects subject to the reimbursable activities in this test claim.
- Funds received from the Community Colleges Deferred Maintenance and Special Repair Program<sup>23</sup> by a community college district for repairs and maintenance that are unusual and nonrecurring work to restore a facility to a safe and continually usable condition for which it was intended.

In addition, reimbursement for this mandate from any source, including but not limited to, service fees collected, federal funds, and other state funds, shall be identified and deducted from this claim.

In the statement of decision on the test claim, the Commission found that funds received from the above sources and used for purposes of the reimbursable activities constitute offsetting revenue.<sup>24</sup> In addition, the Commission found that a K-12 school district that has received financial hardship assistance of 100 percent of the project, pursuant to Education Code section 17075.10 et seq., and California Code of Regulations, title 5, section 1859.80 et seq., would not

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<sup>21</sup> Education Code section 17074.10-17074.30.

<sup>22</sup> Education Code section 17582-17588.

<sup>23</sup> Education Code section 84660.

<sup>24</sup> Exhibit A, statement of decision on the *Public Contracts (K-14)* test claim, pgs. 69-75.

have any reimbursable costs.<sup>25</sup> Thus the above language is consistent with the Commission's findings in the statement of decision on the test claim, and is included in Section VII. Offsetting Revenues and Reimbursement to more clearly identify the specific sources of offsetting revenue.

#### **IV. Conclusion**

The Commission adopts the parameters and guidelines and this statement of decision for *Public Contracts (K-14)*, 02-TC-35, with a period of reimbursement beginning July 1, 2001.

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<sup>25</sup> *Id.* at p. 72.

## **PROPOSED PARAMETERS AND GUIDELINES**

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, ch. 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

### **I. SUMMARY OF THE MANDATE**

This test claim addresses public contract requirements imposed on school districts 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 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. The Commission approved this test claim for the reimbursable activities found under Section IV. Reimbursable Activities.

### **II. ELIGIBLE CLAIMANTS**

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

### **III. PERIOD OF 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. Clovis Unified School District and Santa Monica Community College District filed the test claim on June 24, 2003, establishing eligibility for reimbursement for the 2001-2002 fiscal year. Therefore, costs incurred for this mandate are eligible for reimbursement on or after July 1, 2001.

Reimbursement for state-mandated costs may be claimed as follows:

1. Actual costs for one fiscal year shall be included in each claim.
2. Pursuant to Government Code section 17561(d)(1)(A), all claims for reimbursement of initial fiscal year costs shall be submitted to the State Controller within 120 days of the issuance date for the claiming instructions.

3. Pursuant to Government Code section 17560(a), a school district may, by February 15 following the fiscal year in which costs were incurred, file an annual reimbursement claim that details the costs actually incurred for that fiscal year.
4. If revised claiming instructions are issued by the Controller pursuant to Government Code section 17558(c), between November 15 and February 15, a school district filing an annual reimbursement claim shall have 120 days following the issuance date of the revised claiming instructions to file a claim. (Government Code section 17560(b).)
5. If the total costs for a given fiscal year do not exceed \$1,000, no reimbursement shall be allowed except as otherwise allowed by Government Code section 17564(a).
6. There shall be no reimbursement for any period in which the Legislature has suspended the operation of a mandate pursuant to state law.

#### **IV. REIMBURSABLE ACTIVITIES**

To be eligible for mandated cost reimbursement for any fiscal year, only actual costs may be claimed. Actual costs are those costs actually incurred to implement the mandated activities. Actual costs must be traceable to and supported by source documents that show the validity of such costs, when they were incurred, and their relationship to the reimbursable activities. A source document is a document created at or near the same time the actual cost was incurred for the event or activity in question. Source documents may include, but are not limited to, employee time records or time logs, sign-in sheets, invoices, and receipts.

Evidence corroborating the source documents may include, but is not limited to, worksheets, cost allocation reports (system generated), purchase orders, contracts, agendas, and declarations. Declarations must include a certification or declaration stating, "I certify (or declare) under penalty of perjury under the laws of the State of California that the foregoing is true and correct," and must further comply with the requirements of Code of Civil Procedure section 2015.5. Evidence corroborating the source documents may include data relevant to the reimbursable activities otherwise in compliance with local, state, and federal government requirements. However, corroborating documents cannot be substituted for source documents.

The claimant is only allowed to claim and be reimbursed for increased costs for reimbursable activities identified below. Increased cost is limited to the cost of an activity that the claimant is required to incur as a result of the mandate.

Claimants may use time studies to support salary and benefit costs when an activity is task-repetitive. Activities that require varying levels of efforts are not appropriate for time studies. Claimants wishing to use time studies to support salary and benefit costs are required to comply with the State Controller's Time-Study Guidelines before a time study is conducted. Time study usage is subject to the review and audit conducted by the State Controller's Office.

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>1</sup> and

- 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>2</sup> and
  - 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; and
  - 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
    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; and
  - a. for repair and maintenance public projects that exceed \$15,000; unless

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<sup>1</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>2</sup> *Ibid.*

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>3</sup> and
- 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.
    - (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.

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<sup>3</sup> *Ibid.*

- (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>4</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).)
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

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<sup>4</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.

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 systemwide 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.)

## **V. CLAIM PREPARATION AND SUBMISSION**

Each of the following cost elements must be identified for each reimbursable activity identified in Section IV. Reimbursable Activities, of this document. Each claimed reimbursable cost must be supported by source documentation as described in Section IV. Additionally, each reimbursement claim must be filed in a timely manner.

### **A. Direct Cost Reporting**

Direct costs are those costs incurred specifically for the reimbursable activities. The following direct costs are eligible for reimbursement.

#### **1. Salaries and Benefits**

Report each employee implementing the reimbursable activities by name, job classification, and productive hourly rate (total wages and related benefits divided by productive hours). Describe the specific reimbursable activities performed and the hours devoted to each reimbursable activity performed.

#### **2. Materials and Supplies**

Report the cost of materials and supplies that have been consumed or expended for the purpose of the reimbursable activities. Purchases shall be claimed at the actual price after deducting discounts, rebates, and allowances received by the claimant. Supplies that are withdrawn from inventory shall be charged on an appropriate and recognized method of costing, consistently applied.

#### **3. Contracted Services**

Report the name of the contractor and services performed to implement the reimbursable activities. Attach a copy of the contract to the claim. 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 dates when services were performed and itemize all costs for those services.

#### 4. Fixed Assets

Report the purchase price paid for fixed assets (including computers) necessary to implement the reimbursable activities. The purchase price includes taxes, delivery costs, and installation costs. If the fixed asset is also used for purposes other than the reimbursable activities, only the pro-rata portion of the purchase price used to implement the reimbursable activities can be claimed.

#### 5. Travel

Report the name of the employee traveling for the purpose of the reimbursable activities. Include the date of travel, destination, the specific reimbursable activity requiring travel, and related travel expenses reimbursed to the employee in compliance with the rules of the local jurisdiction. Report employee travel time according to the rules of cost element A.1., Salaries and Benefits, for each applicable reimbursable activity.

### B. Indirect Cost Rates

Indirect costs are costs that have been incurred for common or joint purposes. These costs benefit more than one cost objective and cannot be readily identified with a particular final cost objective without effort disproportionate to the results achieved. After direct costs have been determined and assigned to other activities, as appropriate, indirect costs are those remaining to be allocated to benefited cost objectives. A cost may not be allocated as an indirect cost if any other cost incurred for the same purpose, in like circumstances, has been claimed as a direct cost.

Indirect costs may include: (a) the indirect costs originating in each department or agency of the governmental unit carrying out state mandated programs; and (b) the costs of central governmental services distributed through the central service cost allocation plan and not otherwise treated as direct costs.

School districts must use the California Department of Education approved indirect cost rate for the year that funds are expended.

Community colleges have the option of using: (1) a federally approved rate, utilizing the cost accounting principles from the Office of Management and Budget Circular A-21, "Cost Principles of Educational Institutions"; (2) the rate calculated on State Controller's Form FAM-29C; or (3) a 7% indirect cost rate.

## **VI. RECORD RETENTION**

Pursuant to Government Code section 17558.5(a), a reimbursement claim for actual costs filed by a local agency or school district pursuant to this chapter<sup>5</sup> is subject to the initiation of an audit by the Controller no later than three years after the date that the actual reimbursement claim is filed or last amended, whichever is later. However, if no funds are appropriated or no payment is made to a claimant for the program for the fiscal year for which the claim is filed, the time for the Controller to initiate an audit shall commence to run from the date of initial payment of the claim. In any case, an audit shall be completed not later than two years after the date that the audit is commenced. All documents used to support the reimbursable activities, as described in Section IV., must be retained during the period subject to audit. If an audit has been initiated by

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<sup>5</sup> This refers to Title 2, division 4, part 7, chapter 4 of the Government Code.

the Controller during the period subject to audit, the retention period is extended until the ultimate resolution of any audit findings.

## **VII. OFFSETTING REVENUES AND REIMBURSEMENTS**

Any offsets the claimant experiences in the same program as a result of the same statutes or executive orders found to contain the mandate shall be deducted from the costs claimed. The Commission finds that any funds received and applied to the reimbursable activities by a school district or community college district from the following grant and fee programs shall be deducted as offsetting revenue:

- Funds received by K-12 school districts from the State School Facilities Program modernization grants<sup>6</sup> for non-routine repairs and maintenance. If a K-12 school district has received financial hardship assistance of 100 percent of the project, pursuant to Education Code section 17075.10 et seq., and California Code of Regulations, title 5, section 1859.80 et seq., the modernization grant shall completely offset the reimbursable costs under this test claim for that project.
- Funds received by K-12 school districts from the State School Deferred Maintenance Program.<sup>7</sup>
- Fee revenue received by K-12 schools district pursuant to Education Code section 17620 that can be used for the repair and maintenance projects subject to the reimbursable activities in this test claim.
- Funds received from the Community Colleges Deferred Maintenance and Special Repair Program<sup>8</sup> by a community college district for repairs and maintenance that are unusual and nonrecurring work to restore a facility to a safe and continually usable condition for which it was intended.

In addition, reimbursement for this mandate from any source, including but not limited to, service fees collected, federal funds, and other state funds, shall be identified and deducted from this claim.

## **VIII. STATE CONTROLLER'S CLAIMING INSTRUCTIONS**

Pursuant to Government Code section 17558(b), the Controller shall issue claiming instructions for each mandate that requires state reimbursement not later than 90 days after receiving the adopted parameters and guidelines from the Commission, to assist local agencies and school districts in claiming costs to be reimbursed. The claiming instructions shall be derived from the test claim decision and the parameters and guidelines adopted by the Commission.

Pursuant to Government Code section 17561(d)(1), issuance of the claiming instructions shall constitute a notice of the right of the local agencies and school districts to file reimbursement claims, based upon parameters and guidelines adopted by the Commission.

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<sup>6</sup> Education Code section 17074.10-17074.30.

<sup>7</sup> Education Code section 17582-17588.

<sup>8</sup> Education Code section 84660.

## **IX. REMEDIES BEFORE THE COMMISSION**

Upon request of a local agency or school district, the Commission shall review the claiming instructions issued by the State Controller or any other authorized state agency for reimbursement of mandated costs pursuant to Government Code section 17571. If the Commission determines that the claiming instructions do not conform to the parameters and guidelines, the Commission shall direct the Controller to modify the claiming instructions and the Controller shall modify the claiming instructions to conform to the parameters and guidelines as directed by the Commission.

In addition, requests may be made to amend parameters and guidelines pursuant to Government Code section 17557(d), and California Code of Regulations, title 2, section 1183.2.

## **X. LEGAL AND FACTUAL BASIS FOR THE PARAMETERS AND GUIDELINES**

The statements of decision adopted for the test claim and parameters and guidelines are legally binding on all parties and provide the legal and factual basis for the parameters and guidelines. The support for the legal and factual findings is found in the administrative record. The administrative record is on file with the Commission.