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November 26, 2014

RECEIVED
November 26, 2014
*Commission on
State Mandates*

Heather Halsey, Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814

Dear Ms. Halsey:

RE: CSM 09-4425-I-17 and CSM 10-4425-I-18
Sierra Joint Community College District
Collective Bargaining
Fiscal Years 2002-03, 2003-04, 2004-05, and 2005-06
Original and Revised Incorrect Reduction Claims

I have received the Commission Draft Proposed Decision (DPD) dated November 14, 2014, for the above-referenced incorrect reduction claim, to which I respond on behalf of the District.

PART A. STATUTE OF LIMITATIONS APPLICABLE TO AUDITS OF ANNUAL REIMBURSEMENT CLAIMS

Claim Action Dates

January 15, 2004	FY 2002-03 annual claim filed by the District
January 10, 2005	FY 2003-04 annual claim filed by the District
January 17, 2006	FY 2004-05 annual claim filed by the District
October 30, 2006	First payment on FY 2002-03
December 21, 2006	FY 2005-06 annual claim filed by the District
April 3, 2007	Audit entrance conference letter date
April 17, 2007	Audit entrance conference conducted
April 17, 2009	Original final audit report issued
August 25, 2010	Revised audit report issued

1. Audit Initiation

The District asserted that the three-year statute of limitations to commence an audit for the FY 2002-03 annual claim expired before the audit commenced. The FY 2002-03 annual claim was filed by the District on January 15, 2004, and is subject to the 2002 version of Government Code Section 17558.5,¹ which states that a claim is subject to the initiation of an audit no later than three years after the date the claim is filed, or if no funds are appropriated or no payment is made to a claimant, the time for the Controller to initiate an audit shall commence to run from the date of initial payment of the claim. The record indicates that the first payment was made on October 30, 2006, thus starting the three-year clock from that date to commence the audit. The audit was commenced before October 30, 2009, therefore there is no further dispute on this issue.

2. Audit Completion

A. Original Audit

It is uncontested here that an audit is complete only when the final audit report is issued. The District asserts that the annual reimbursement claims for FY 2003-04, FY 2004-05, and FY 2005-06, that are subject to the 2004 version of Section 17558.5²,

¹ Statutes of 2002, Chapter 1128, Section 14.5, operative January 1, 2003, amended Section 17558.5 to state:

“(a) A reimbursement claim for actual costs filed by a local agency or school district pursuant to this chapter is subject to the initiation of an audit by the Controller no later than three years after the end of the calendar year in which 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 made filed, the time for the Controller to initiate an audit shall commence to run from the date of initial payment of the claim.”

² Statutes of 2004, Chapter 890, Section 18, operative January 1, 2005 amended Section 17558.5 to state:

“(a) A reimbursement claim for actual costs filed by a local agency or school district pursuant to this chapter 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

which adds the requirement that an audit must be completed within two years of its commencement, were not timely completed. The Commission concludes (DPD, 17) that original audit report dated April 17, 2009, was issued exactly two years after the entrance conference conducted on April 17, 2007, as measured by Code of Civil Procedure, section 12. However, the audit commenced on April 3, 2007, or perhaps a few days earlier for the initial phone contact, based on the date of the entrance conference letter (Attachment A).

The Commission has not determined as a matter of law whether the date of the first telephone contact to the district, entrance conference letter, or entrance conference date commences the audit and thus the two-year clock to complete the audit. The Controller considers the audit commencement date to be the date of first contact made by Controller to the claimant. Jim Spano, Bureau Chief, Mandated Cost Audit Bureau, State Controller's Office, in an e-mail (see Attachment B) dated November 22, 2011, to Nancy Patton, Assistant Executive Director of the Commission at that time, stated the following:

At the same meeting, Commission staff asked what we believe constitutes the initiation of an audit pursuant to Government Code section 17558.5. We consider the event that initiates an audit pursuant to Government Code section 17558.5 to be the date of the initial contact by the SCO to the auditee (generally a telephone contact) to inform them and put them on notice of the SCO's intention to perform the audit. In addition, we consider this same date as the event that commences the two-year period to complete an audit pursuant to Government Code section 17558.5. (Emphasis added).

The Controller's April 3, 2007, entrance conference letter indicates that the first contact with the district was at least as early as that date. The original final audit report is dated April 17, 2009, which is more than two years after the first contact date, thus past the statute of limitations to complete the audit.

B. Revised Audit

The Commission (DPD, 17) concludes that the revised audit report was not timely completed, to which the District concurs. The District also agrees that the Commission can take official notice of the revised audit findings.

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."

PART B. DISALLOWANCE OF STAFF TIME

The audit reports eliminated \$14,489 in direct costs and \$4,938 in related indirect costs as unallowable salary and benefit costs for three reasons: (1) inaccurate productive hourly rates; (2) unsupported hours; and, (3) ineligible costs. The \$4,468 disallowance in unsupported costs for FY 2002-03 is not disputed. The \$3,077 disallowance in ineligible costs for FY 2002-03 is not disputed. The Commission reinstated (DPD, 18) the remaining disallowance of \$6,944, so there are no further issues in dispute.

PART C. APPLICATION OF AN INDIRECT COST RATE

The audit reports determined that the District understated indirect costs because the District did not obtain federal approval for the indirect cost rate used for FY 2002-03 and FY 2003-04, and did not correctly compute the FAM-29 C indirect cost rate for FY 2004-05 and FY 2005-06. The understated amount in the original audit report finding was \$94,818. The revised audit report increases the understated amount by \$8,214 to \$103,032. The District still disputes the audit findings for FY 2002-03 and FY 2003-04 because neither capital costs nor depreciation expenses are allowed by Controller policy. However, the Commission makes no finding on this issue because it asserts its jurisdiction is limited to reductions and not audit amounts that increase the claim, which is a separate issue, which follows.

PART D. LIMITATION OF ALLOWED AUDITED COSTS

The District asserts that the Controller's failure to increase the reimbursable mandate costs beyond those which were claimed was an incorrect reduction of total reimbursable costs and an underpayment of reimbursable amounts.

The revised audit report deducts from its findings of "total program costs" the amounts of \$20,662 for FY 2003-04, \$23,853 for FY 2004-05, and \$54,244 for FY 2005-06, as "less allowable costs that exceed cost claimed." The stated basis for this limitation on allowable costs is Government Code Section 17561[(d)(3)], cited in footnote 2 on page 6 of the audit report that states, "that the State will not reimburse any claim more than one year after the filing deadline." The State did not pay these claims in full or part within one year of the filing deadline, and rarely does so, so that citation does not appear relevant. Section 17561 (and Section 17568 for late claims) pertains to the timely filing of an annual claim in order to be eligible for payment, not to the contents of the claim itself.

There is no Government Code section cited that prohibits the Controller from reimbursement of *audited* costs in excess of claimed costs. Government Code Section 17561(d)(2), as amended by Statutes of 2002, Chapter 1124, effective September 30, 2002, states:

"[T]he Controller (A) may audit the records of any local agency or school district to verify the actual amount of the mandated costs . . . and (C) shall adjust the payment to correct for any underpayments or overpayments which occurred in previous fiscal years."

The use of the word "shall" makes the adjustment of *both* underpayments and overpayments mandatory. Thus, the Controller does not have the discretion to unilaterally determine that it will deny reimbursement for audit adjustments in favor of the State and simply ignore audit adjustments in favor of the claimants. The Controller, therefore, has the obligation to pay claimants any unclaimed allowable mandate cost discovered as the result of an audit.

The Commission does not decide this issue because it denies jurisdiction of the fiscal year 2003-2004 through 2005-2006 claims. The Commission concluded (DPD, 20), that the "plain language" of section 17551, which directs the Commission to hear incorrect reduction claims, applies only to claims that are reduced, and therefore has no jurisdiction for fiscal years 2003-2004 through 2005-2006. More specifically (DPD, 20), "[w]ithout a reduction alleged, the claim is not an IRC, by definition, and the Commission does not have jurisdiction over the claim."

CERTIFICATION

By my signature below, I hereby declare, under penalty of perjury under the laws of the State of California, that the information in this submission is true and complete to the best of my own knowledge or information or belief, and that any attached documents are true and correct copies of documents received from or sent by the District or state agency which originated the document.

Executed on November 26, 2014, at Sacramento, California, by



Keith B. Petersen, President
SixTen & Associates

Attachments:

- A. Controller's (Suzanne Goodwin) April 3, 2007, entrance conference letter
- B. Controller's (Jim Spano) November 22, 2011, e-mail to the Commission

Service by Commission Electronic Drop Box



JOHN CHIANG
California State Controller

April 3, 2007

Copy:
Joyce L.
Jeanne L.
Keith P.
Linda F.
Judy McC.
4-12-07

CS

Joyce Lopes, Director of Finance
Sierra Joint Community College District
5000 Rocklin Road
Rocklin, CA 95677

Dear Ms. Lopes:

This letter confirms that Curt Chiesa and Ken Howell of the State Controller's Office have scheduled an audit of Sierra Joint Community College District's legislatively mandated Collective Bargaining Program cost claims filed for fiscal years (FY) 2002-03, FY 2003-04, FY 2004-05 and FY 2005-06. *Government Code* Sections 12410, 17558.5, and 17561 provide the authority for this audit. The entrance conference is scheduled for Tuesday, April 17th, 2007, at 2 p.m. Audit fieldwork will begin after the entrance conference.

Please furnish working accommodations for and provide the necessary records to the audit staff.

If you have any questions, please call me at (916) 324-9217.

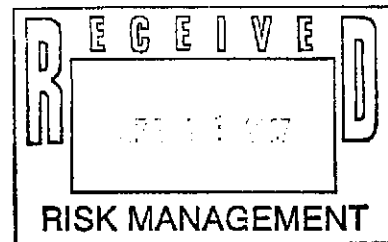
Sincerely,

SUZANNE GOODWIN
Audit Manager
Compliance Audits Bureau
Division of Audits

SG/ams

Attachment

6054



Joyce Lopes, Director of Finance

-2-

April 3, 2007

cc: Lawrence Lee, Director
Risk, Feasibility & Loss Control
Sierra Joint Community College District
Jim L. Spano, Chief
Compliance Audits Bureau
Division of Audits
State Controller's Office
Ginny Brummels, Manager
Division of Accounting and Reporting
State Controller's Office
Curt Chiesa, Auditor-in-Charge
Division of Audits
State Controller's Office
Ken Howell, Auditor
Division of Audits
State Controller's Office

Subj: **FW: Updated Listing of Outstanding HFE IRCs and Event That Initiates An Audit/Starts the Two-Year Audit Clock**
Date: 11/22/2011 10:51:04 A.M. Pacific Standard Time
From: jspano@sco.ca.gov
To: Nancy.Patton@csm.ca.gov, Kbpsixten@aol.com
CC: ssilva@sco.ca.gov, svanee@sco.ca.gov

Nancy, Keith,

Attached is the updated listing of outstanding Health Fee Elimination Program Incorrect Reduction Claims (IRCs), detailed by audit issues, as discussed with Keith Petersen and representatives of the Commission and SCO after the October 27, 2011, Commission hearing. The IRCs are in chronological order according to the filing date.

At the same meeting, Commission staff asked what we believe constitutes the initiation of an audit pursuant to Government Code section 17558.5. We consider the event that initiates an audit pursuant to Government Code section 17558.5 to be the date of the initial contact by the SCO to the auditee (generally a telephone contact) to inform them and put them on notice of the SCO's intention to perform the audit. In addition, we consider this same date as the event that commences the two-year period to complete an audit pursuant to Government Code section 17558.5.

I believe the next step is to coordinate a meeting or telephone conference call to discuss the prioritization of outstanding Health Fee Elimination Programs IRCs based on the updated listing.

Jim L. Spano, CPA

Bureau Chief
State Controller's Office
Division of Audits / Mandated Cost Audits Bureau
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Monday, November 24, 2014 AOL: Kbpsixten

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 December 1, 2014, I served the:

Claimant Comments

Collective Bargaining and Collective Bargaining Agreement Disclosure

09-4425-I-17 and 10-4425-I-18

Government Code Sections 3540-3549.9

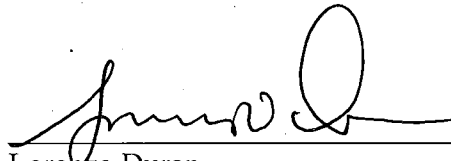
Statutes 1975, Chapter 961; Statutes 1991, Chapter 1213

Fiscal Years 2002-2003 through 2005-2006

Sierra Joint Community College District, Claimant

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

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on December 1, 2014 at Sacramento, California.



Lorenzo Duran
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814
(916) 323-3562

COMMISSION ON STATE MANDATES

Mailing List

Last Updated: 11/19/14

Claim Number: 09-4425-I-17 and 10-4425-I-18

Matter: Collective Bargaining and Collective Bargaining Agreement Disclosure

Claimant: Sierra Joint Community College District

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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