

December 5, 2016

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December 06, 2016
**Commission on
State Mandates**

Ms. Heather Halsey
Executive Director
Commission on State Mandates
980 9th Street Suite 300
Sacramento, CA 95814

LATE FILING

Response to Commission Draft Proposed Statement of Decision
SEAACA, Animal Adoption IRC 14-9811-I-03

Dear Ms. Halsey,

Please accept our response to the Commission Staff Draft Proposed Statement of Decision. SEAACA requests clarification on the following issues.

ISSUE – Calculation of Care and Maintenance Costs.

SEAACA questions the CSM statement that “the Claimant did not comply with the “Actual Cost” method of computing Care and Maintenance costs and that the he Calculation of Care and Maintenance Costs stating that it did not comply with the “Acutal Cost “ method of computing. The Claimant elected to use the “Actual Cost Method”.

We used the Actual Expenditures of the SHELTER OPERATIONS division and divided it by the average daily census as required, to determine a cost per animal per day. (See pages 11-13 of IRC and Attachment 4 of Claimant’s December 17th Response to SCO).

The State Claiming Instructions define “A direct cost is a cost that can be identified specifically with a particular program or activity.” We believe that is what costs are detailed in the Kennel and Shelter Accounting Units and which were used to determine a cost per animal per day as detailed in the instructions. (see ICR, Attachment 4)

SCO states that some of the costs in the cost pool were direct for other programs such as “Holding Period” and “Lost and Found Lists”. . We request a more detail analysis by COSM staff to determine appropriate cost.

Actual Salary and Benefits were included for:

- Animal Care Techs, & Senior/Lead Animal Care Techs: Animal Attendants = Direct
- Office Supervisor: Shelter supervisor = Indirect
- Clerks/Cashiers/Dispatchers : Clerical/ front counter duties = indirect

Actual expenditures of the department services and supplies were included for:

- Shelter Supplies
- Uniforms and Accessories- Employee boots and uniforms

- Shelter maintenance- Shelter
- Utilities: Electricity, Gas, Telephone, Water

As instructions specified, we added direct and indirect costs required to operate the shelter, then divided by the total annual census. The resulting cost per day using the SCO's calculated total annual census count was about double what the State allowed in its audit. It is possible that the SCO incorrectly calculated costs and denied SEAACA of actual costs incurred to comply with the mandate.

Prompt and Necessary Veterinary Care:

Local agencies are supposedly eligible for reimbursement of the following: "Necessary and Prompt Veterinary care" for stray and abandoned animals that die or are ultimately euthanized during the holding period specified. This includes:

1. An initial physical exam to determine if the animal is treatable/adoptable
2. A wellness vaccine
3. Veterinary care to stabilize and relieve the suffering of adoptable animal
4. Veterinary care to remedy any applicable disease, injury, or hereditary condition that adversely affects the health of treatable animals.

During the audit, the SCO allowed SEAACA to conduct a time study to determine time spent on items 1 and 2. Items 3 and 4 they said could not be claimed in this manner because treatments were not uniform and repetitive activities 1 and 2 were. SCO and CSM positions are that only actual documentation of these costs would be acceptable to prove costs for items 3 and 4.

In FY 2008-09, SEAACA cared for approximately 24,000 animals. Of this number, we found that over 17,000 were stray and ultimately euthanized. Claimants are only given 120 calendar days from release of claiming instructions, or 86 business days (680 hours) to prepare a claim for submission to the State. That would mean that if an agency dedicated two full time people for an entire year to research the veterinary records of each animal in order to be able to claim for their costs under the "actual cost" method specified, they would not be able to file for the claim on time due the number records.

As CSM is aware, the cost of preparing claims for State Reimbursement is not reimbursable but must be borne exclusively by the claimant.

SEAACA used the same method allowed for calculating "Care and Maintenance Costs"; to compute the Veterinary costs as there was no other viable alternative. This method is allowed under State Claiming Instructions to calculate a Unit Cost for Materials and Supplies where a unit cost for each item is calculated then multiplied by the number of reimbursable units. (see State Controller Local Agencies Mandated Cost Manual, Page 8 and 9 or IRC pages 144-145)

Commission staff objected to the claimant application of the "Actual Cost Method" to calculate eligible Prompt and Necessary Veterinary Costs, but what is being required is impossible to comply with. Based on our review of all the claims audited by the State, it appears NO agency was successfully able to claim for these costs or was reimbursed for these supposedly eligible activities.

Making rules that are impossible to comply with in order to obtain reimbursement violates the intent of the law and local agencies Constitutional right to obtain reimbursement for State Mandated programs.

- 1) The purpose of OMA A-87 (see page 3 of Federal Guidelines or Attachment 3, in Claimant's December 17 Response to SCO, page 48) "A. Purpose and Scope, The principles are designed to provide that Federal awards bear their fair share of costs recognized under these principles...State Claiming instructions allow the distribution of costs of a reasonable allocation basis. (see State Controller Local Agencies Mandated Cost Manual, Page 8 and 9 or IRC pages 144-145)
- 2) The State Claiming instructions and OMB A-87 address these issues and the guidelines direct how these types of situations should be handled.

The claimant's method was in compliance with these guidelines by using an Actual Cost approach to determine a fair allotment of the "Fair Share" of eligible costs based on a cost per unit. CSM and SCO must determine a reasonable method of allowing agencies to claim their "fair share" of eligible costs. If no reasonable method is available, the State is not acting in good faith to the Constitutional requirements.

SCO faced with a similar dilemma when calculating costs relied on a similar mathematical approach to computing costs. Page 8 of the Hayward SCO Response states: "The Commission suggests in its DPD that the SCO should evaluate each animal's intake information to determine the actual increased holding period of each animal." "In order to compute the actual increased holding period days for every animal on an individual bases, we would need to know on what day of the week the animal was impounded. In order to find this information, someone would have to manually open each animal records and check...This task would be impractical and most likely would not produce results materially different from using an average calculation...The use of a mathematical average assumes some outliers. But in this case, it provides the most reasonable and cost-effective way to analyze large quantities of animal data. In fact, we believe that the large size of the animal population makes the use of an average value more accurate and decreases the probability of error."

We agree with the SCO that use of mathematical formulas and averages is the only reasonable and fair approach to calculating some of the eligible reimbursable costs related to this mandate due to the large quantity of animal data. We request that the approach used by the claiming for calculating costs of activities 3 and 4 for Veterinary costs that the SCO and CSM suggest another alternate feasible method of fairly compensating local agencies for these reimbursable, State Mandated activities.

ISSUE – Exclusion of animals that were "ultimately euthanized" prior to the end of the mandated holding period

We question but understand the Commission believes that the Purifoy decision must be applied retroactively, however, we would like to request a more clear explanation as to why eligible care and

maintenance and prompt and necessary veterinary care for eligible animals that were euthanized prior to the expiration of the holding period are excluded from reimbursement.

It is our understanding that:

- 1) It is local agencies Constitutional right to obtain reimbursement for State Mandated programs. (Article XIII B, Section 6 of the California Constitution)
- 2) The law in the State of California provides for the reimbursement of costs incurred by local agencies and school districts for costs mandated by the State. Costs mandated by the State means any increased cost...incurred as a result of statutes which mandate a new program or a higher level of service. (2002 General Claiming Instructions)
- 3) The local agency made a good faith effort to comply with the State Mandated program – specifically to provide additional days of care and maintenance as required by the Hayden Bill – (the Animal Adoption program) and to deny them those costs incurred is in direct contraction of Government Code Sections 17500 through 17617 which provide for the reimbursement of costs incurred by local agencies for costs mandated by the State.

SCO acknowledges that “...many animal shelters were operating under the assumption that they could count Saturday as a business day to calculate the holding period of the animal.” If the legislature passed a law that was unclear and required legal action and many years later clean up legislation (AB 222) to clarify the requirements of what constitute a “business day”, then local agencies should not be punished for the deficiencies in legislative language incorrect interpretations which were universally shared and should be reimbursed for all costs that they incurred in good faith.

- 4) Commission staff agrees that the plain language of “The Parameters and Guidelines provide that local agencies are eligible to receive reimbursement for care and maintenance and prompt and necessary veterinary costs for those animals “that die during the increased holding period or are ultimately euthanized”.

The Commission Draft Decision states on page 13 of its Draft Proposed Decision that the word “Die” can include both death by natural causes and death by euthanasia.” Therefore the word die can include euthanasia, and thus local agencies should be eligible to receive reimbursement for care and maintenance and prompt and necessary veterinary cost for those animals that die (including death by euthanasia) or are ultimately euthanized.

SCO acknowledges that there was no clear definition of “Ultimately Euthanized” and there is no support in the SCO interpretation that this means “after the holding period”. Webster Dictionary’s definition of “Ultimately” is = “in the end” or “eventually”.

Since the plain language of the mandate documents state that care and maintenance is reimbursable for stray, ultimately euthanized animals. It does not state “Ultimately euthanized after completion of the entire holding period” as the SCO has interpreted.

Local agencies would not have had to provide even an extra day of service had it not been for the State Mandate requirements, so isn't proof of actual cost incurred not enough to obtain the reimbursement due to them?

Commission staff analysis on page 45 of the Draft Proposed Decision discuss their logic of allowing costs of providing for the care and maintenance of stray/euthanized animals that were euthanized prior to the entire holding period due to the change in the condition of the animal.

There was no discussion of animals that die during the increased holding period in the Test Claim Statement of Decision.

Not allowing partial credit or reimbursement for days of service provided in agency's attempt to comply with the mandate denies them of actual costs incurred while endeavoring to comply with the State Mandate is in violation of Constitutional right to obtain reimbursement for mandates imposed by the State.

Even if the agency provided one extra day of service, payment must be remitted to the local agency

Commission staff recommendation implies that strict and perfect compliance is necessary in order to obtain reimbursement. We believe that this was not the intent of Government Code Sections 17500 through 17617 which provides for the reimbursement of costs incurred by local agencies for costs mandated by the State. If the agency made a good faith effort to comply with the mandate, incurred costs to comply, and can demonstrate that actual costs were incurred, that should be enough.

ISSUE – Exclusion of animals that were “ultimately euthanized” after the expiration of the mandated holding period

Commission Draft Decision states “Staff finds that the Controller’s exclusion of animals that died after the increased holding period is consistent with Parameter and Guidelines and is correct as a matter of law. The Parameters and Guidelines do not authorize reimbursement for animals that continue to be held by the local agency for adoption longer than the holding period and die thereafter.”

We request clarification. Agencies are not asking to be reimbursed for the additional days of holding they provided beyond the mandated period, only the two days required of them by law. Denying local agencies payment for the two extra holding days of eligible costs contradicts the intent of Government Code Sections 17500 through 17617 which provide for the reimbursement of costs incurred by local agencies for costs mandated by the State.

ISSUE – Commission Analysis of Indirect Costs (Finding 6).

None of the items brought up in our IRC pertaining to alleged incorrect SCO calculation of our ICRPs were allowed or even discussed for consideration in the Commission Draft Decision, though we have provided evidence that those costs were deemed Eligible Indirect Costs by the Federal OMB as well as the State Indirect Cost Guidelines. We attempted to have these issues address by the SCO during the course of the audit (see attached detailed correspondences) but only had partial success.

Commission states that they do not have to review the correctness or detailed issues and concerns raised by the local agency related to the correctness of the SCO's ICRP calculations. The Commission Draft Decision states "Moreover, the Controller's audit decisions and recalculations of indirect costs, so long as it is correct as a matter of law, is entitled to deference: When reviewing the exercise of discretion, the scope of review is limited out of deference to the agency's authority and presumed expertise." "In general...the inquiry is limited to whether the decision was arbitrary, capricious or entirely lacking in evidentiary support..."

We respectfully question this statement. "Government Cost section 17551 (d) requires the Commission to hear and decide a claim that the Controller has incorrectly reduced payments to the local agency or school district." Incorrect calculations lead to incorrect and reduced payments to local agencies. In addition, The Commission bears the highest level of responsibility to local agencies since they are the only recourse to obtaining a fair and complete review of their complaint against the SCO. Commission's Draft Decision states on page 4, "The Commission is vested with exclusive authority to adjudicate disputes ..." in these State Mandate areas.

By the Commission "deferring to the SCO" in their calculation of ICRP rate, it appears it is simply rubber stamping SCO actions and denying local agencies to a complete and fair review of their complaints that the SCO has incorrectly reduced their payments. Since much of the costs are determined by these detailed calculations, it appears the CSM is thereby granting SCO full impunity to self-regulate and denies local agencies a true review for correctness of their payments. These disallowances reduce our claim materially and we feel the CSM analysis did not delve into the details deeply enough and deny our agency the actual costs incurred as is required under the Government Code.

We would appreciate responses addressing each issue raised including:

Why were costs determined to be eligible under Federal OMB-A87 ICRP guidelines (such as Uniforms and Office Equipment) not included by the SCO in the calculation of their ICRP / Overhead rates?

Why Clerical Staff was omitted from the SCO ICRP rate even though it is an allowable cost under Federal OMB-A87 guideline and the their own instructions on proper filing an ICRP?

Why almost half of all the Lead Animal Control Technician cost were omitted from inclusion of "Direct costs" of Care and Maintenance or in the "Indirect costs" when all their time (as shown in their job descriptions was all dedicated in some way to the care and maintenance of animals)?

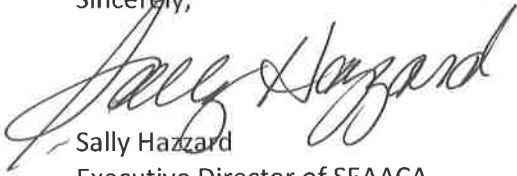
SCO's calculation of an Agency Wide ICRP rate, rather than a rate for each division, is supported by CSM. We have no issue with use of an Agency wide rate, however we do have an issue with how the SCO computed that rate. These issues were raised during the course of the audit and we have attached some of the email correspondences between claimant and SCO to illustrate these discussions and the lack of resolution.

Many of the eligible indirect costs from the other divisions (such as Animal Control, Veterinary) were not included in the SCO's calculation. For example, no administrative or support staff were included into their calculation of the rate. Also, many costs that are deemed eligible by Federal and State guidelines were not included. These issues were raised during the course of the audit, but were not fully responded to. We request that these omissions be reviewed by the Commission and corrected to

ensure the correctness of the calculations so that claimant is reimbursed fulling for its actual costs incurred.

We would be happy to meet with staff to address each issue raised.

Sincerely,

A handwritten signature in cursive script that reads "Sally Hazzard". The signature is written in black ink and is positioned above the printed name and title.

Sally Hazzard
Executive Director of SEAACA

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 6, 2016, I served the:

Claimant Late Comments on the Draft Proposed Decision

Animal Adoption, 14-9811-I-03

Civil Code Sections 1834 and 1846; Food and Agriculture Code sections 31108, 31752, 31752.5, 31753, 32001, and 32003;

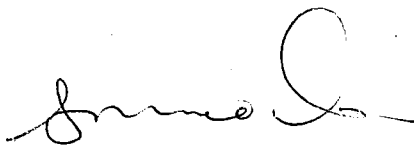
Statutes 1998, Chapter 752 and Statutes 2004, Chapter 313

Fiscal Years: 2001-2002, 2002-2003, 2006-2007, 2007-2008, and 2008-2009

South East Area Animal Control Authority (SEAACA), 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 6, 2016 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: 9/27/16

Claim Number: 14-9811-I-03

Matter: Animal Adoption

Claimant: Southeast Area Animal Control Authority

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Socorro Aquino, *State Controller's Office*

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

Phone: (916) 322-7522

SAquino@sco.ca.gov

Lacey Baysinger, *State Controller's Office*

Division of Accounting and Reporting, 3301 C Street, Suite 700, Sacramento, CA 95816

Phone: (916) 324-0254

lbaysinger@sco.ca.gov

Danielle Brandon, Budget Analyst, *Department of Finance*

915 L Street, Sacramento, CA 95814

Phone: (916) 445-3274

danielle.brandon@dof.ca.gov

Allan Burdick,

7525 Myrtle Vista Avenue, Sacramento, CA 95831

Phone: (916) 203-3608

allanburdick@gmail.com

Gwendolyn Carlos, *State Controller's Office*

Division of Accounting and Reporting, 3301 C Street, Suite 700, Sacramento, CA 95816

Phone: (916) 323-0706

gcarlos@sco.ca.gov

Annette Chinn, *Cost Recovery Systems, Inc.*

Claimant Representative

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

Phone: (916) 939-7901

achinnrcs@aol.com

Marieta Delfin, *State Controller's Office*

Division of Accounting and Reporting, 3301 C Street, Suite 700, Sacramento, CA 95816

Phone: (916) 322-4320

mdelfin@sco.ca.gov

Donna Ferebee, *Department of Finance*

915 L Street, Suite 1280, Sacramento, CA 95814

Phone: (916) 445-3274

donna.ferebee@dof.ca.gov

Susan Geanacou, *Department of Finance*

915 L Street, Suite 1280, Sacramento, CA 95814

Phone: (916) 445-3274

susan.geanacou@dof.ca.gov

Dillon Gibbons, *Legislative Representative, California Special Districts Association*

1112 I Street Bridge, Suite 200, Sacramento, CA 95814

Phone: (916) 442-7887

dillong@csda.net

Mary Halterman, *Principal Program Budget Analyst, Department of Finance*

Local Government Unit, 915 L Street, Sacramento, CA 95814

Phone: (916) 445-3274

Mary.Halterman@dof.ca.gov

Sally Hazzard, *Executive Director, South East Area Animal Control Authority*

9777 Seaaca Street, Downey, CA 90241

Phone: (562) 806-3301

sally.hazzard@seaaca.org

Justyn Howard, *Program Budget Manager, Department of Finance*

915 L Street, Sacramento, CA 95814

Phone: (916) 445-1546

justyn.howard@dof.ca.gov

Edward Jewik, *County of Los Angeles*

Auditor-Controller's Office, 500 W. Temple Street, Room 603, Los Angeles, CA 90012

Phone: (213) 974-8564

ejewik@auditor.lacounty.gov

Jill Kanemasu, *State Controller's Office*

Division of Accounting and Reporting, 3301 C Street, Suite 700, Sacramento, CA 95816

Phone: (916) 322-9891

jkanemasu@sco.ca.gov

Anne Kato, *State Controller's Office*

Division of Accounting and Reporting, 3301 C Street, Suite 700, Sacramento, CA 95816

Phone: (916) 324-5919

akato@sco.ca.gov

Jay Lal, *State Controller's Office (B-08)*

Division of Accounting & Reporting, 3301 C Street, Suite 700, Sacramento, CA 95816

Phone: (916) 324-0256

JLal@sco.ca.gov

Paul Lukacs, *Senior Commission Counsel, Commission on State Mandates*

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

Phone: (916) 323-3562
paul.lukacs@csm.ca.gov

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

Christian Osmena, *Department of Finance*
915 L Street, Sacramento, CA 95814
Phone: (916) 445-0328
christian.osmena@dof.ca.gov

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

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

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

Carla Shelton, *Commission on State Mandates*
980 9th Street, Suite 300, Sacramento, CA 95814
Phone: (916) 327-6490
carla.shelton@csm.ca.gov

Jim Spano, Chief, Mandated Cost Audits Bureau, *State Controller's Office*
Division of Audits, 3301 C Street, Suite 700, Sacramento, CA 95816
Phone: (916) 323-5849
jspano@sco.ca.gov

Dennis Speciale, *State Controller's Office*
Division of Accounting and Reporting, 3301 C Street, Suite 700, Sacramento, CA 95816
Phone: (916) 324-0254
DSpeciale@sco.ca.gov