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**Commission on
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BETTY T. YEE
California State Controller

August 10, 2015

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

Mr. Keith Petersen
SixTen & Associates
P.O. Box 340430
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Re: Controller's Comments on Draft Proposed Decision
Collective Bargaining and Collective Bargaining Agreement Disclosure, 05-4425-I-09
Statutes 1975, Chapter 961; Statutes 1991, Chapter 1213
Fiscal Years 1999-2000 through 2001-02
San Mateo Community College District, Claimant

Dear Ms. Halsey and Mr. Petersen:

This letter constitutes this office's response to the Draft Proposed Decision (DPD) in this matter. Although we agree with the conclusion that the audit was conducted in a timely manner, we disagree with the conclusions reversing the reductions based on lack of supporting documentation. Although not explicitly stated, the DPD essentially comes to the conclusion that the Controller's Office has no authority to audit the records of San Mateo, contrary to the explicit language of Government Code¹ section 17561(d)(2)(A)(i). We believe such a position is untenable given the Controller's constitutional and statutory duty to ensure the legality and propriety of all disbursements made from the State Treasury.

The DPD states that "the initial burden of providing evidence for a claim for reimbursement lies with the claimant"², but in its analysis only cites to the fact that the district properly submitted a claim, implying that the claim is self-proving³. However, the tables accompanying the claim are required by the parameters and guidelines and therefore merely a part of the claim, not supporting evidence. Since the claim is already a part of the record

¹ All further references shall be to the Government Code unless otherwise indicated.

² DPD at page 17, last ¶.

³ DPD at page 25, 1st ¶.

the unstated conclusion that the claim itself constitutes supporting evidence would render the requirement that in pursuing an IRC, the claimant's bear the initial burden of providing evidence to support their claim, moot. This would be akin to a taxpayer asserting that the IRS must accept their return as proof of all it contained, and then asserting that the burden was now on the IRS to disprove the return. Such an approach is contrary to the standard process for claims filed with a governmental entity. Not only does the DPD conclude that the claim is a self-proving document, but it apparently ultimately concludes that the Controller may not look at the records of the claimant⁴, contrary to the provisions of Section 17561(d)(2)(A)(i). The DPD essentially concludes that the SCO may only look at documents identified in the parameters and guidelines. Since no specific documents were identified in the parameters and guidelines (other than the workload tables) they conclude that the Controller is limited to a review of the claim itself. We believe that this erroneous conclusion is reached because the DPD failed to fully consider the relevant constitutional and statutory provisions, conflated the claim filing provisions with the auditing provisions, and applied an overly expansive interpretation of the decision in the *Clovis*⁵ case. In doing so the DPD impermissibly restricted the authority of the Controller to audit, and thus incorrectly concluded that the audit finding reductions were invalid.

The DPD correctly notes that in construing the parameters and guidelines, they must be read "in accordance with the broader constitutional and statutory scheme."⁶ But in applying this rule, the DPD gives short shrift to a clear and unambiguous statutory provision, subdivision 17561(d)(2)(A)(i). That subdivision provides that the "Controller may audit [the] [r]ecords of any local agency or school district to verify the actual amount of the mandated costs." That provision does not merely permit the Controller to audit the claim, as erroneously asserted by the DPD⁷; it provides the Controller with the authority to audit the records of the claimant. Black's Law Dictionary defines an audit as "a formal examination of an individual's or organization's accounting records⁸ ..." That statutory provision does not stand alone, but also must be read in context with the constitutional provision governing the Controller. Article XVI, Section 7, of the California Constitution provides that "[m]oney may be drawn from the Treasury only through an appropriation made by law and upon a Controller's duly drawn warrant." In reviewing this section the Attorney General has concluded that "the State Controller has the constitutional authority to audit claims filed against the Treasury⁹." The Attorney General also found that the duly drawn warrant requirement "signifies correctness, propriety, validity, and that which is legally required¹⁰. The Legislature has enacted statutes to ensure that obligation is carried out, including Sections 925.6, 12410, and Subdivision 17561(d)(2)(A)(i). It would be

⁴ "Claimants need only comply with the parameters and guidelines and '[s]upply workload data requested'." DPD at page 24, end of 2nd ¶.

⁵ *Clovis Unified School District v. John Chiang* (2010) 188 Cal.App.4th 794.

⁶ DPD at page 17, 2nd ¶.

⁷ DPD at page 16, first ¶ of Sec. IV.

⁸ Black's Law Dictionary, Eighth Edition, 2004.

⁹ 71 Ops.Cal.Atty.Gen. 275, 279.

¹⁰ *Ibid.*

anomalous to conclude that the Constitution and the Legislature intended this narrow subset of claims to be immune from the review of the Controller, given her authority to audit all other disbursements from the State Treasury.

Although the parameters and guidelines may not state specific documentation that the claimant must maintain, this does not alter the clear language of Section 17561(d)(2)(A)(i). An administrative agency has no authority to enact a regulation that conflicts with, or impliedly repeals a statutory provision. In fact, the parameters and guidelines sections cited, all deal with the requirements to file a claim, not the scope of the subsequent audit. The claimant is still required to provide some documentation, other than the claim itself, to support the validity of the claimed costs. As noted in the Controller's response to the IRC, the claimant provided no supporting documentation to validate the costs claimed which were disallowed. The claimant asserts that credit card statements were rejected; however they weren't rejected because of the type of document they were, but because they did not demonstrate that the charges incurred were related to the mandate. The analysis in the DPD also focuses on language in Section 17564, noting that "'claims for direct and indirect costs filed pursuant to Section 17561 shall be filed *in the manner prescribed in the parameters and guidelines*¹¹.'" (Underline emphasis added, italics emphasis in original.) Shortly thereafter the DPD asserts that in filing a claim "[c]laimants need only comply with the parameters and guidelines and supply workload data requested¹² ..." At this point it is clear that the claim filing process addressed in Section 17564 has been conflated with the auditing process under Subdivision 17561(d)(2)(A)(i). These two provisions address distinctly separate steps in the mandates process, and the DPD doesn't explain how, or why, Section 17564 and the parameters and guidelines can alter the audit authority found in Subdivision 17561(d)(2)(A)(i). It is clear that it can't, and the Controller retains the authority to audit the records of the claimant, and require the production of documentation that demonstrates the validity of the costs claimed.

It appears that the DPD reaches its conclusions in part due to an overly expansive reading of the *Clovis* case. Ultimately, the only relevant holding in the case was that the Contemporaneous Source Document Rule (CSDR) was an underground regulation, and to the extent that an audit relied on the rule, it was invalid¹³. As noted in the Controller's response to the IRC, the costs were disallowed because the claimant failed to provide any supporting documentation for those costs, not that the claimants failed to provide certain preferred types of documents. The *Clovis* court did note with concern that under the CSDR, some documents were relegated to the second tier status of "corroborating documents" and could not, on their own, prove the validity of costs¹⁴. However, the audit did not so discriminate between types of documents, and the auditors only rejected the credit card statements because of their lack of probative value. Even more important than

¹¹ DPD at page 23, last ¶

¹² DPD at page 24, 2nd ¶.

¹³ *Clovis*, 188 Cal.App.4th 794, 807.

¹⁴ *Id* at 804.

what was found by the court, was what wasn't found. The court did not find that the audit provision of Subdivision 17561(d)(2)(A)(i) was unconstitutional, invalid or unenforceable. Nor did the court find that supporting documentation wasn't required. Since the audit did not rely on the CSDR in making its findings, it is not invalidated by the *Clovis* case, and since the claimant failed to provide any supporting documentation the disallowances made in the audit finding should be upheld.

This leaves the disputed reductions based on discrepancies in the Productive Hourly Rate (PHR). The SCO concluded that \$6,168 was unallowable because the PHR claimed was incorrect. The DPD reinstated these costs asserting the Controller's finding was wholly unsupported by evidence. Although the reference to the 120 hours deducted for estimated break time does confuse the issues, this reduction is ultimately based on the use of an unsupported salary for the identified employees. Except for a couple of adjustments which were so small no documents were copied, these adjustments are supported by documents in the record. These documents can be found in Tabs 15 & 16 of the Controller's Response to the claimant's IRC, dated October 7, 2014. The only pages prepared by the Controller are the first page of each tab, which is a summary of the PHRs sampled. The remaining pages are copies of documents submitted with the original claim or the claimant's payroll records. For example, for the fiscal year 2001-02, employee V. Clinton was claimed at a PHR of \$62.83 (1st and 2nd pages, Tab 16), based on annual earnings of \$109,953 and 1750 hours. However, when the auditors looked at the payroll records for V. Clinton (6th page, Tab 16) they found that her annual earnings were actually \$39,938, which when divided by 1750 hours, results in a PHR of \$22.82. For those employees for whom records are not included, the Controller would concur with the reversal of the adjustments made by the audit.

Because the constitutional and statutory authority of the Controller to audit the records of the claimant is undisputed, and the claimant failed to provide any documentation supporting the disallowed claimed costs, the Commission should uphold the findings of the Controller, except for those limited adjustments noted directly above.

Sincerely,



SHAWN D. SILVA
Senior Staff Counsel

SDS

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 August 11, 2015, I served the:

SCO Comments

Incorrect Reduction Claim

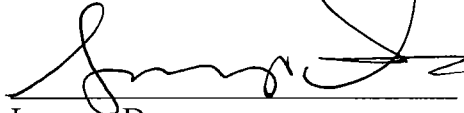
Collective Bargaining and Collective Bargaining Agreement Disclosure, 05-4425-I-09

Statutes 1975, Chapter 961; Statutes 1991, Chapter 1213

San Mateo County 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 August 11, 2015 at Sacramento, California.



Lorenzo Duran

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COMMISSION ON STATE MANDATES

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Last Updated: 8/6/15

Claim Number: 05-4425-I-09

Matter: Collective Bargaining

Claimant: San Mateo County Community College District

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