



December 7, 2018

Ms. Annette Chinn  
Cost Recovery Systems, Inc.  
705-2 East Bidwell Street, #294  
Folsom, CA 95630

Ms. Jill Kanemasu  
Division of Accounting and Reporting  
State Controller's Office  
3301 C Street, Suite 700  
Sacramento, CA 95816

*And Parties, Interested Parties, and Interested Persons (See Mailing List)*

Re: **Decision**

*Interagency Child Abuse and Neglect Investigation Reports (ICAN)*, 17-0022-I-01  
Penal Code Sections 11165.9, 11166, 11166.2, 11166.9<sup>1</sup>, 11168 (formerly 11161.7),  
11169, 11170, and 11174.34 (formerly 11166.9) as added or amended by Statutes 1977,  
Chapter 958; Statutes 1980, Chapter 1071; Statutes 1981, Chapter 435; Statutes 1982,  
Chapters 162 and 905; Statutes 1984, Chapters 1423 and 1613; Statutes 1985, Chapter  
1598; Statutes 1986, Chapters 1289 and 1496; Statutes 1987, Chapters 82, 531, and 1459;  
Statutes 1988, Chapters 269, 1497, and 1580; Statutes 1989, Chapter 153; Statutes 1990,  
Chapters 650, 1330, 1363, 1603; Statutes 1992, Chapters 163, 459, and 1338; Statutes  
1993, Chapters 219 and 510; Statutes 1996, Chapters 1080 and 1081; Statutes 1997,  
Chapters 842, 843, and 844; Statutes 1999, Chapters 475 and 1012; and Statutes 2000,  
Chapter 916; California Code of Regulations, Title 11, Section 903 (Register 98, Number  
29); "Child Abuse Investigation Report" Form SS 8583 (Rev. 3/91)  
Fiscal Years: 1999-2000, 2000-2001, 2001-2002, 2002-2003, 2003-2004, 2004-2005,  
2005-2006, 2006-2007, 2007-2008, 2008-2009, 2009-2010, 2010-2011, 2011-2012, and  
2012-2013  
City of Palmdale, Claimant

Dear Ms. Chinn and Ms. Kanemasu:

On November 30, 2018, the Commission on State Mandates adopted the Decision on the above-entitled matter.

Sincerely,

Heather Halsey  
Executive Director

<sup>1</sup> Renumbered as Penal Code section 11174.34 (Stats. 2004, ch. 842 (SB 1313)).

BEFORE THE  
COMMISSION ON STATE MANDATES  
STATE OF CALIFORNIA

**IN RE INCORRECT REDUCTION CLAIM**

Penal Code Sections 11165.9, 11166, 11166.2, 11166.9<sup>1</sup>, 11168 (formerly 11161.7), 11169, 11170, and 11174.34 (formerly 11166.9) as added or amended by Statutes 1977, Chapter 958; Statutes 1980, Chapter 1071; Statutes 1981, Chapter 435; Statutes 1982, Chapters 162 and 905; Statutes 1984, Chapters 1423 and 1613; Statutes 1985, Chapter 1598; Statutes 1986, Chapters 1289 and 1496; Statutes 1987, Chapters 82, 531, and 1459; Statutes 1988, Chapters 269, 1497, and 1580; Statutes 1989, Chapter 153; Statutes 1990, Chapters 650, 1330, 1363, and 1603; Statutes 1992, Chapters 163, 459, and 1338; Statutes 1993, Chapters 219 and 510; Statutes 1996, Chapters 1080 and 1081; Statutes 1997, Chapters 842, 843, and 844; Statutes 1999, Chapters 475 and 1012; and Statutes 2000, Chapter 916

California Code of Regulations, Title 11, Section 903 (Register 98, Number 29)

“Child Abuse Investigation Report” Form SS 8583 (Rev. 3/91)

Fiscal Years 1999-2000 through 2012-2013

Filed on November 7, 2017

City of Palmdale, Claimant

Case No.: 17-0022-I-01

*Interagency Child Abuse and Neglect Investigation Reports (ICAN)*

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

*(Adopted November 30, 2018)*

*(Served December 7, 2018)*

**DECISION**

The Commission on State Mandates (Commission) heard and decided this Incorrect Reduction Claim (IRC) during a regularly scheduled hearing on November 30, 2018. Annette Chinn appeared on behalf of the City of Palmdale (claimant). Masha Vorobyova appeared on behalf of the State Controller’s Office (Controller).

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<sup>1</sup> Renumbered at Penal Code section 11174.34 (Stats. 2004, ch. 842 (SB 1313)).

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 sections 17500 et seq., and related case law.

The Commission adopted the Proposed Decision to deny the IRC by a vote of 4-0, as follows:

<b>Member</b>	<b>Vote</b>
Lee Adams, County Supervisor	Yes
Ken Alex, Director of the Office of Planning and Research	Yes
Mark Hariri, Representative of the State Treasurer, Vice Chairperson	Yes
Sarah Olsen, Public Member	Absent
Carmen Ramirez, City Council Member	Absent
Yvette Stowers, Representative of the State Controller	Yes
Jacqueline Wong-Hernandez, Representative of the Director of the Department of Finance, Chairperson	Absent

**Summary of the Findings**

This IRC addresses reductions made by the State Controller’s Office (Controller) to reimbursement claims filed by the City of Palmdale (claimant) for costs incurred during fiscal years 1999-2000 through 2012-2013 (audit period) for the *Interagency Child Abuse and Neglect Investigation Reports (ICAN)* program. The claimant disputes reductions totaling \$2,552,314 for the audit period.

The Commission denies this IRC, finding that reductions related to the claimant’s time study, and disallowance of indirect costs, as claimed, for all fiscal years were correct as a matter of law and not arbitrary, capricious, or entirely lacking in evidentiary support.

Specifically, the Controller adjusted the results of the claimant’s time study for the investigation and reporting to the Department of Justice (DOJ) mandate component, based on excluding one investigation from the sample that included unallowable activities after the case was determined to be substantiated, and rejecting an additional thirty minutes of report writing time that the claimant alleged in its amended claims to be omitted from the allowed time. In addition, the Controller disallowed all indirect costs claimed, based on the claimant’s failure to comply with the Parameters and Guidelines and claiming instructions. The Commission finds these reductions to be correct as a matter of law, and not arbitrary, capricious, or entirely lacking in evidentiary support.

The claimant also asserted a number of preliminary investigative activities that should be subject to reimbursement, and argued they were not, but should have been, accounted for in the time study. These activities, however, were neither specifically claimed nor specifically disallowed. Therefore, they are not the subject of a reduction and the Commission does not have jurisdiction over these issues.

## COMMISSION FINDINGS

### I. Chronology

12/06/2007	The Commission adopted the Test Claim Decision.
12/16/2013	The Commission adopted the Parameters and Guidelines.
04/28/2014	The Controller issued claiming instructions for the initial claiming period, fiscal years 1999-2000 through 2012-2013, to be filed by July 15, 2014. <sup>2</sup>
07/03/2014	The claimant filed its initial reimbursement claim. <sup>3</sup>
12/19/2014	The Controller notified the claimant of the audit. <sup>4</sup>
07/15/2015	The claimant filed amended claims for fiscal years 1999-2000 through 2012-2013. <sup>5</sup>
03/30/2016	The Controller issued the Draft Audit Report. <sup>6</sup>
04/11/2016	The claimant filed comments on the Draft Audit Report. <sup>7</sup>
05/19/2016	The Controller issued the Final Audit Report. <sup>8</sup>
11/07/2017	The claimant filed the IRC. <sup>9</sup>
02/22/2018	The Controller filed comments on the IRC. <sup>10</sup>
05/07/2018	The claimant filed late rebuttal comments. <sup>11</sup>
07/23/2018	Commission staff issued the Draft Proposed Decision. <sup>12</sup>
07/27/2018	The claimant requested an extension of time to file comments on the Draft Proposed Decision.
07/31/2018	The claimant was granted an extension until August 24, 2018 to file comments on the Draft Proposed Decision.

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<sup>2</sup> Exhibit A, IRC, page 229 [Controller's Claiming Instructions, Cover Letter].

<sup>3</sup> Exhibit B, Controller's Comments on the IRC, page 30.

<sup>4</sup> Exhibit B, Controller's Comments on the IRC, page 6.

<sup>5</sup> Exhibit A, IRC, pages 299-380 [Claim Documentation, Amended Claim Forms].

<sup>6</sup> Exhibit A, IRC, page 265 [Controller's Final Audit Report, page 4].

<sup>7</sup> Exhibit A, IRC, page 292 [Claimant's Comments on the Draft Audit Report].

<sup>8</sup> Exhibit A, IRC, page 259 [Controller's Final Audit Report, Cover Letter].

<sup>9</sup> Exhibit A, IRC, page 1.

<sup>10</sup> Exhibit B, Controller's Comments on the IRC, page 1.

<sup>11</sup> Exhibit C, Claimant's Late Rebuttal Comments, page 1.

<sup>12</sup> Exhibit D, Draft Proposed Decision.

- 08/08/2018            The Controller filed comments on the Draft Proposed Decision.<sup>13</sup>
- 08/24/2018            The claimant filed comments on the Draft Proposed Decision.<sup>14</sup>
- 08/31/2018            The Controller filed late comments on the Draft Proposed Decision.<sup>15</sup>
- 09/07/2018            The claimant requested an extension to respond to the Controller’s late comments and a postponement of the September 28, 2018 hearing, which was approved.
- 09/27/2018            The claimant filed a response to the Controller’s late comments.<sup>16</sup>

**II. Background**

**A. The *Interagency Child Abuse and Neglect Investigation Reports (ICAN)* Program**

The *Interagency Child Abuse and Neglect Investigation Reports (ICAN)* program addresses statutory amendments to California’s mandatory child abuse reporting laws. A child abuse reporting law was first added to the Penal Code in 1963, and initially required medical professionals to report suspected child abuse to local law enforcement or child welfare authorities. The law was regularly expanded to include more professions required to report suspected child abuse (now termed “mandated reporters”), and in 1980, California reenacted and amended the law, entitling it the “Child Abuse and Neglect Reporting Act,” or CANRA.

As part of this program, the DOJ maintains a Child Abuse Centralized Index, which, since 1965, maintains reports of child abuse statewide. A number of changes to the law have occurred, particularly with a reenactment in 1980, and substantive amendments in 1997 and 2000. The act, as amended, provides for reporting of suspected child abuse or neglect by certain individuals, identified by their profession as having frequent contact with children. The act provides rules and procedures for local agencies, including law enforcement, receiving such reports. The act provides for cross-reporting among law enforcement and other child protective agencies, and to licensing agencies and district attorneys’ offices. The act requires reporting to DOJ when a report of suspected child abuse is “not unfounded.” The act requires an active investigation before a report can be forwarded to DOJ. As of January 1, 2012, the act no longer requires law enforcement agencies to report to DOJ, and now requires reporting only of “substantiated” reports by other agencies.<sup>17</sup> The act imposes additional cross-reporting and recordkeeping duties in the event of a child’s death from abuse or neglect. The act requires agencies and DOJ to keep records of investigations for a minimum of 10 years, and to notify suspected child abusers that they have been listed in the Child Abuse Central Index. The act also imposes certain due process

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<sup>13</sup> Exhibit E, Controller’s Comments on the Draft Proposed Decision.

<sup>14</sup> Exhibit F, Claimant’s Comments on the Draft Proposed Decision.

<sup>15</sup> Exhibit G, Controller’s Late Comments on the Draft Proposed Decision.

<sup>16</sup> Exhibit H, Claimant’s Response to the Controller’s Late Comments on the Draft Proposed Decision.

<sup>17</sup> See Exhibit A, IRC, page 240 [Parameters and Guidelines, p. 8 (citing amendment to Penal Code section 11169(b), enacted by Statutes 2011, chapter 468)].

protections owed to persons listed in the index, and provides certain other situations in which a person would be notified of his or her listing in the index.

On December 19, 2007, the Commission approved the Test Claim for cities and counties (specifically city and county police or sheriff's departments, county welfare departments, county probation departments designated by the county to receive mandated reports, district attorneys' offices, and county licensing agencies) to perform the following categories of reimbursable activities:

- Distribute the child abuse reporting form adopted by the Department of Justice (currently known as the "Suspected Child Abuse Report" Form SS 8572) to mandated reporters;
- Receive reports from mandated reporters of suspected child abuse; refer those reports to the correct agency when the recipient agency lacks jurisdiction; cross-report to other local agencies with concurrent jurisdiction and to the district attorneys' offices; report to licensing agencies; and make additional reports in the case of a child's death from abuse or neglect;
- Investigate reports of suspected child abuse to determine whether to report to the Department of Justice (DOJ);
- Notify suspected abusers of listing in the Child Abuse Central Index;
- Retain records, as specified; and
- Provide due process procedures to those individuals reported to the DOJ's Child Abuse Central Index.<sup>18</sup>

The Parameters and Guidelines were adopted on December 6, 2013, with a period of reimbursement beginning fiscal year 1999-2000.<sup>19</sup>

At issue in this IRC is the scope of the investigative activities of suspected child abuse performed by the claimant's law enforcement agency necessary to determine whether to report to DOJ and to complete the report.

As discussed at length in the Parameters and Guidelines and Test Claim Decisions, "reimbursement is not required for the full course of investigative activities performed by law enforcement agencies [when they receive a report of suspected child abuse], but only the investigative activities necessary to determine whether a report of suspected child abuse is unfounded, inconclusive, or substantiated, for purposes of preparing and submitting the Form SS 8583 to DOJ."<sup>20</sup> From July 1, 1999, through December 31, 2011, child abuse reports determined by law enforcement agencies to be substantiated or inconclusive shall be reported to DOJ.

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<sup>18</sup> Exhibit I, Statement of Decision and Parameters and Guidelines, *Interagency Child Abuse and Neglect Investigation Reports*, 00-TC-22, pages 41-47.

<sup>19</sup> Exhibit A, IRC, page 233 [Parameters and Guidelines, page 1].

<sup>20</sup> Exhibit I, Statement of Decision and Parameters and Guidelines, *Interagency Child Abuse and Neglect Investigation Reports*, 00-TC-22, page 28. See also, Exhibit I, Test Claim Statement of Decision, *Interagency Child Abuse and Neglect Investigation Reports*, 00-TC-22, page 31.

Unfounded reports shall not be filed with DOJ.<sup>21</sup> Thus, the Commission found that the mandate only requires enough information to determine whether to file a Form SS 8583 with DOJ, or subsequent designated form, and enough information to render the Form SS 8583 a “retainable report,” under California Code of Regulations, title 11, section 903.<sup>22</sup> As indicated above, beginning January 1, 2012, local law enforcement agencies are no longer mandated to report to DOJ.<sup>23</sup>

The Decision adopting the Parameters and Guidelines also reasoned that the underlying Act, CANRA, was not a mandate focused on criminal investigation and prosecution, but was focused on the protection of children and early intervention in abusive or neglectful situations, and that the investigation mandate specifically arises in the context of early reporting requirements.<sup>24</sup> As such, the Decision concluded that investigative activities in connection with the criminal investigation and prosecution of abuse or neglect are not within the scope of the mandate.

Accordingly, the Parameters and Guidelines define and specify the scope of the investigation activities necessary to satisfy the DOJ reporting requirement to include:

- Review of the initial Suspected Child Abuse Report (SCAR) Form adopted by DOJ;
- Conducting initial interviews with parents, victims, suspects, or witnesses, where applicable; and
- Making a report of the findings of those interviews, which may be reviewed by a supervisor.<sup>25</sup>

The Parameters and Guidelines also make clear that reimbursement is not required for:

- Investigative activities conducted by a mandated reporter to complete the SCAR;
- In the event that the mandated reporter completing the SCAR is employed by the same agency investigating the report, reimbursement is not required if the investigation required to complete the SCAR is also sufficient to satisfy the DOJ reporting requirement; and
- Investigative activities undertaken subsequent to the determination whether the report is substantiated, inconclusive, or unfounded for purposes of preparing the report for DOJ

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<sup>21</sup> See Exhibit A, IRC, page 241 [Parameters and Guidelines, p. 9 (citing Penal Code section 11169(a))].

<sup>22</sup> Exhibit I, Statement of Decision and Parameters and Guidelines, *Interagency Child Abuse and Neglect Investigation Reports*, 00-TC-22, page 29.

<sup>23</sup> Exhibit A, IRC, page 240 [Parameters and Guidelines, p. 8 (citing amendment to Penal Code section 11169(b), enacted by Statutes 2011, chapter 468)].

<sup>24</sup> Exhibit I, Statement of Decision and Parameters and Guidelines, *Interagency Child Abuse and Neglect Investigation Reports*, 00-TC-22, pages 34-35. See also, Exhibit I, Test Claim Decision, *Interagency Child Abuse and Neglect Investigation Reports*, 00-TC-22, page 31.

<sup>25</sup> Exhibit A, IRC, pages 240-241 [Parameters and Guidelines, pages. 8-9].

(Form 8583), including the collection of physical evidence, the referral to a child abuse investigator, and the conduct of follow-up interviews.

Section IV. of the Parameters and Guidelines requires reimbursement for those costs actually incurred to implement the mandated activities, which must be traceable and supported by contemporaneous source documents that show the validity of such costs, when they were incurred, and their relationship to the reimbursable activities.<sup>26</sup> As noted, in this case the Controller allowed the use of a time study for the initial claiming period due to the likely unavailability of documentation, so the contemporaneous source document rule is not in issue in this IRC.

Section V. defines direct costs to include contract services costs, which must be claimed as follows:

#### Contracted Services

Report the name of the contractor and services performed to implement the reimbursable activities. 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 services that were performed during the period covered by the reimbursement claim. If the contract services are also used for purposes other than the reimbursable activities, only the pro-rata portion of the services used to implement the reimbursable activities can be claimed. Submit contract consultant and attorney invoices with the claim and a description of the contract scope of services.<sup>27</sup>

And Section V. provides with regard to indirect cost claiming:

Indirect costs are costs that are incurred for a common or joint purpose, benefiting more than one program, and are not directly assignable to a particular department or program without efforts disproportionate to the result achieved. Indirect costs may include both: (1) overhead costs of the unit performing the mandate; and (2) the costs of the central government services distributed to the other departments based on a systematic and rational basis through a cost allocation plan.

Compensation for indirect costs is eligible for reimbursement utilizing the procedure provided in 2 CFR Part 225 (Office of Management and Budget (OMB) Circular A-87). Claimants have the option of using *10% of direct labor*, excluding fringe benefits, *or preparing an Indirect Cost Rate Proposal (ICRP)* if the indirect cost rate claimed exceeds 10%.

If the claimant chooses to prepare an ICRP, both the direct costs (as defined and described in 2 CFR Part 225, Appendix A and B (OMB Circular A-87 Attachments A and B) and the indirect costs shall exclude capital expenditures and unallowable costs (as defined and described in 2 CFR Part 225, Appendix A and B (OMB Circular A-87 Attachments A and B)). However, unallowable costs

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<sup>26</sup> Exhibit A, IRC, page 235 [Parameters and Guidelines, pages 3].

<sup>27</sup> Exhibit A, IRC, pages 246-247 [Parameters and Guidelines, pages 14-15].



must be included in the direct costs if they represent activities to which indirect costs are properly allocable. The distribution base may be: (1) total direct costs (excluding capital expenditures and other distorting items, such as pass-through funds, major subcontracts, etc.); (2) direct salaries and wages; or (3) another base which results in an equitable distribution.<sup>28</sup>

## **B. The Controller's Audit and Summary of the Issues**

The reimbursement claims for fiscal years 1999-2000 through 2012-2013 totaled \$5,600,497. The Controller found that \$2,961,652 was allowable, and \$2,638,845 was unallowable.<sup>29</sup> The following two findings are in dispute:

### **1. Finding 2, Unallowable Contract Costs for Investigation and Reporting to DOJ**

In Finding 2, the Controller found that the claimant reported in its reimbursement claims \$4,956,296 under the "Reporting to the California Department of Justice" component,<sup>30</sup> which, as discussed above, includes the activities to "Complete an investigation for purposes of preparing the report;" and "Forward reports to the Department of Justice."<sup>31</sup>

The claimant contracts with the County of Los Angeles Sheriff's Department to perform all law enforcement activities, including investigating cases of suspected child abuse.<sup>32</sup> The claimant purchases various staff positions (Deputy and Sergeant) each fiscal year and pays the Los Angeles County Sheriff's Department contract rates for the purchased positions. None of the claimant's staff members performed any of the reimbursable activities under the ICAN program.<sup>33</sup>

Thus, costs were claimed to complete an investigation for purposes of preparing the report to DOJ by multiplying the number of SCAR investigations performed, by the *estimated* time increment to complete the investigation, by the respective Los Angeles County Sheriff's Department contract hourly rates.<sup>34</sup> The estimated time, as originally claimed, was based on two time studies conducted by the Los Angeles County Sheriff's Department, Palmdale Station,

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<sup>28</sup> Exhibit A, IRC, page 247 [Parameters and Guidelines, p. 15 (emphasis added)].

<sup>29</sup> Exhibit A, IRC, pages 265; 277-284 [Controller's Final Audit Report, pp. 4; 16-22]. The claimant does not dispute the reduction of \$86,531 under the Cross-Reporting Between Departments component, or the finding that the number of investigations conducted during the audit period was overstated. The Controller identifies the remaining disputed reduction as \$1,132,337. [See Exhibit B, Controller's Comments on the IRC, page 15].

<sup>30</sup> Exhibit A, IRC, page 276 [Controller's Final Audit Report, p. 15]; Exhibit B, Controller's Comments on the IRC, page 16.

<sup>31</sup> Exhibit I, Statement of Decision and Parameters and Guidelines, *Interagency Child Abuse and Neglect Investigation Reports*, 00-TC-22, pages 87-90.

<sup>32</sup> Exhibit A, IRC, page 277 [Final Audit Report, p. 16].

<sup>33</sup> Exhibit A, IRC, page 277 [Final Audit Report, p. 16]; Exhibit B, Controller's Comments on the IRC, page 16.

<sup>34</sup> Exhibit A, IRC, page 277 [Final Audit Report, p. 16].

before the Parameters and Guidelines were adopted on December 6, 2013; the first one conducted between September 2010 and June 2011, provided to the Controller in October 2011, and the second one conducted between September 4, 2013 and September 30, 2013, which recorded the amount of time needed to perform each SCAR investigation.<sup>35</sup> The time studies recorded time for the following four main activities:

1. Initial response to begin documentation of case and to contact County Welfare.
2. Complete an investigation to determine whether a report is unfounded, substantiated, or inconclusive.
3. Prepare a written report for every case investigated of known or suspected child abuse.
4. Review and approval of report.<sup>36</sup>

The first time study showed an average time increment of 3.93 hours per SCAR investigation, and the second time study indicated 3.27 hours per SCAR investigation, based on 14 SCAR investigations.<sup>37</sup> The claimant analyzed the results of both time studies and determined that 3.67 hours per SCAR investigation were needed to perform the claimed activities under this cost component.<sup>38</sup>

On July 3, 2014, the claimant filed initial reimbursement claims covering fiscal years 1999-2000 through 2012-2013.<sup>39</sup> The Controller began the audit on December 19, 2014.<sup>40</sup>

The Controller states that “[d]uring audit fieldwork, we reviewed both time studies performed by the city.”<sup>41</sup> The Controller rejected the first time study because it was not performed contemporaneously, was performed by the deputies who did not complete the actual investigation activities claimed, used a sample of cases that were not representative of the total population of SCAR investigations, thus, was not appropriate to support actual costs.<sup>42</sup> The second time study was performed contemporaneously by the same deputies who performed the reimbursable activities, and the Controller accepted that time study, which resulted in an average

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<sup>35</sup> See Exhibit B, Controller’s Comments on the IRC, pages 156-163.

<sup>36</sup> Exhibit A, IRC, page 284-285 [Final Audit Report, pp. 23-24]; See also Exhibit F, Claimant’s Comments on the Draft Proposed Decision, pages 4 and 7, confirming the four stated activities included in the time study.

<sup>37</sup> Exhibit B, Controller’s Comments on the IRC, pages 16, 169.

<sup>38</sup> Exhibit A, IRC, page 278 [Controller’s Final Audit Report, p. 17].

<sup>39</sup> Exhibit B, Controller’s Comments on the IRC, page 30.

<sup>40</sup> Exhibit B, Controller’s Comments on the IRC, page 6 (Declaration of Lisa Kurokawa, Division Chief, Division of Audits).

<sup>41</sup> Exhibit A, IRC, page 284 [Controller’s Final Audit Report, page 23]; Exhibit B, Controller’s Comments on the IRC, page 16.

<sup>42</sup> Exhibit A, IRC, pages 278, 284 [Controller’s Final Audit Report, pages 17, 23].

time increment of 3.27 hours.<sup>43</sup> However, the Controller found that the second time study included one investigation “with unallowable hours that accounted for activities following the determination of a substantiated status of child abuse.”<sup>44</sup> The Controller discussed the case with a detective, and “[i]t appeared that ineligible activities performed after SVU was contacted were included in the time, which lead to the decision to remove the case from the average time calculation.”<sup>45</sup> Therefore, the Controller accepted the second time study results, “less the one case that included the unallowable time,” which then brought the average time increment to 2.65 hours per SCAR investigation, and used that figure for further analysis.<sup>46</sup>

To verify the 2.65-hour time increment, the Controller conducted a time survey over the phone with Deputies Porter and Deschamps, the deputies who performed the mandate, on July 8, 2015 and July 20, 2015, respectively.<sup>47</sup> Those surveys sought to capture estimates of the time spent to review incoming child abuse reports, and review associated information on the home, prior calls, and prior criminal history.<sup>48</sup> In addition, those surveys asked deputies to estimate the amount of time spent conducting interviews with victims, parents and witnesses, and writing reports for both an unfounded case (15-20 minutes, according to Deputy Megan Deschamps), and a substantiated or inconclusive case (45-50 minutes).<sup>49</sup> Deputy Porter estimated 20 minutes to write the report for an unfounded case and 40 minutes for a substantiated or inconclusive case.<sup>50</sup>

The time survey resulted in overall times ranging from 2.29 hours to 2.71 hours per SCAR investigation.<sup>51</sup> Thus, the 2.65-hour time increment (the claimant’s second time study less the unallowable investigation) fell within that range and was allowed by the Controller.

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<sup>43</sup> Exhibit B, Controller’s Comments on the IRC, page 161; See also Exhibit G, Controller’s Late Comments on the Draft Proposed Decision, page 20 [email from the Controller’s auditor Brejnak to Annette Chinn, which states the following: “The 2<sup>nd</sup> time study was performed contemporaneously and included a proper sample of investigations, however, it did not follow SCO time study guidelines as well. Therefore, further review and employee interviews were needed to verify the time within the time study.”]

<sup>44</sup> Exhibit A, IRC, page 284 [Controller’s Final Audit Report, p. 23].

<sup>45</sup> Exhibit C, Claimant’s Late Rebuttal Comments, page 38 [August 19, 2015 email between the claimant’s representative and the Controller’s audit staff].

<sup>46</sup> Exhibit A, IRC, page 284 [Controller’s Final Audit Report, p. 23]; Exhibit B, Controller’s Comments on the IRC, page 16.

<sup>47</sup> Exhibit A, IRC, page 284 [Controller’s Final Audit Report, page 23]; Exhibit B, Controller’s Comments on the IRC, pages 174-179 [Time Survey Questionnaire].

<sup>48</sup> Exhibit B, Controller’s Comments on the IRC, pages 174-179 [Time Survey Questionnaire].

<sup>49</sup> Exhibit B, Controller’s Comments on the IRC, page 176 [Time Survey Questionnaire, Deschamps].

<sup>50</sup> Exhibit B, Controller’s Comments on the IRC, page 179 [Time Survey Questionnaire, Porter].

<sup>51</sup> Exhibit B, Controller’s Comments on the IRC, page 173 [Analysis of Time Survey].

The claimant objected to the exclusion of the single investigation, but also asserted that the average time resulting from the second time study should be increased to add report writing time and some preliminary investigative time, such as checking records for prior reports of abuse or neglect and making phone calls to schedule interviews with witnesses or suspects.<sup>52</sup> The claimant filed amended reimbursement claims, dated July 15, 2015, which sought reimbursement based on an average time increment of 3.66 hours per SCAR investigation.<sup>53</sup> That figure not only included the investigation that the Controller intended to exclude from the sample, but also included an additional thirty minutes of report writing time for 11 of the 14 investigations in which the claimant asserted that report writing had been omitted from the time study.<sup>54</sup> The claimant stated the 30 minute figure was “a conservative amount of time...”<sup>55</sup> and that “an additional 30 mins – 1 hrs on average was spent on this activity based on our first time study & staff interviews.”<sup>56</sup> The claimant also relied on the Controller’s time surveys, which stated 15-20 minutes to prepare a report for an unfounded case, and 45-50 minutes to prepare a report for a substantiated or inconclusive case. The claimant found that the average was closer to 35-37 minutes, and then claimed 30 minutes on the amended claims.<sup>57</sup> It is not apparent from the record, however, that the claimant’s amended time increment of 3.66 hours included the other preliminary investigative time, such as checking records for prior reports of abuse or neglect and making phone calls to schedule interviews with witnesses or suspects.

On March 30, 2016, the Draft Audit Report was issued and maintained the 2.65-hour average time increment.<sup>58</sup> The claimant responded to the Draft Audit Report on April 11, 2016.<sup>59</sup> The claimant argued that although the first time study was not contemporaneous, it contained reliable information from “CAD logs and case files,” and when the second time study was conducted “[b]oth time studies yielded similar results.”<sup>60</sup> The claimant further stated: “however, the second time study did not detail each activity separately and we believe it did not include report writing time which should have added an additional hour per case for a total of 3.67 hours to complete the investigation as mandated and write the report.”<sup>61</sup> The claimant further stated:

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<sup>52</sup> Exhibit C, Claimant’s Late Rebuttal Comments, page 37 [email discussion between the claimant’s representatives and the Controller’s audit staff].

<sup>53</sup> Exhibit A, IRC, pages 299-380 [Amended Claim Documentation]; Exhibit B, Controller’s Comments on the IRC, page 169.

<sup>54</sup> Exhibit B, Controller’s Comments on the IRC, page 169.

<sup>55</sup> Exhibit B, Controller’s Comments on the IRC, page 166 [August 17, 2015 email between claimant’s representative and the Controller’s audit staff].

<sup>56</sup> Exhibit C, Claimant’s Late Rebuttal Comments, page 25 [August 6, 2015 email between claimant’s representative and the Controller’s audit staff].

<sup>57</sup> Exhibit C, Claimant’s Late Rebuttal Comments, pages 18; 21.

<sup>58</sup> Exhibit A, IRC, page 265 [Final Audit Report, page 4].

<sup>59</sup> Exhibit A, IRC, page 265 [Final Audit Report, page 4].

<sup>60</sup> Exhibit A, IRC, pages 292-293 [Claimant Response to the Draft Audit Report].

<sup>61</sup> Exhibit A, IRC, page 293 [Claimant Response to the Draft Audit Report].

“The City offered to conduct another time study to support their time requested, however the SCO declined to consider this option stating that they believed that the difference in time was due to a disagreement regarding allowable activities, which would not be remedied by conducting another time study.”<sup>62</sup> The claimant went on to cite its disagreement with the scope of activities included in the time study, including reviewing call history and suspect background checks prior to conducting interviews; calling to schedule interviews, especially where a home location requires significant travel time; and inspecting the home of the alleged victim for signs of neglect.<sup>63</sup>

The Final Audit Report, dated May 19, 2016, identifies reductions based on the claimant’s amended reimbursement claims filed July 2015,<sup>64</sup> and indicates that the Controller believed the time study captured all allowable activities, and therefore the Controller rejected the additional report writing time proposed, excluded the unallowable investigation, and maintained the estimated time of 2.65 hours per SCAR investigation in the calculation of costs to conduct an investigation for purposes of preparing a report for DOJ.<sup>65</sup> Of the direct costs claimed, the Controller found that \$2,913,118 is allowable and \$2,043,178 is unallowable. The Controller states that “[t]he portion of the finding relating to the average time increment disputed totals \$1,132,337.”<sup>66</sup>

With respect to the additional preliminary activities asserted by the claimant (but not clearly identified in the amended claims) the Final Audit Report states as follows:

We agree that the deputies perform many additional activities necessary to complete their investigations. However, not all activities within the investigation process are allowable for reimbursement, even when they appear reasonably necessary. We believe that the preliminary investigation activities described above in items 1 and 2 go beyond the scope of the reimbursable component and therefore are unallowable.<sup>67</sup>

## 2. Finding 3, Unallowable Indirect Costs

In Finding 3, the Controller’s audit found that the City claimed unallowable indirect costs, totaling \$509,136. The Controller found that the indirect costs are unallowable because the claimant “inappropriately applied its indirect cost rate to contract service costs.”<sup>68</sup> The Parameters and Guidelines, the Controller explained, allow claimants to either use a 10 percent flat rate, measured against direct salaries and benefits of a local agency’s employees, or prepare

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<sup>62</sup> Exhibit A, IRC, pages 293-294 [Claimant Response to the Draft Audit Report].

<sup>63</sup> Exhibit A, IRC, pages 293-294 [Claimant Response to the Draft Audit Report].

<sup>64</sup> Exhibit A, IRC, pages 259, 266-270 [Final Audit Report, pp. 5-9].

<sup>65</sup> Exhibit A, IRC, pages 284-286 [Final Audit Report, pp. 23-25].

<sup>66</sup> Exhibit B, Controller’s Comments on the IRC, page 15.

<sup>67</sup> Exhibit A, IRC, page 285 [Controller’s Final Audit Report, p. 24].

<sup>68</sup> Exhibit A, IRC, pages 286-287 [Controller’s Final Audit Report, pp. 25-26].

an Indirect Cost Rate Proposal.<sup>69</sup> The claimant here elected to use the 10 percent flat rate, but had no direct salaries and benefits costs because the mandated activities were conducted under contract with the Los Angeles County Sheriff's Department.<sup>70</sup> In other words, none of the claimant's employees were involved in the mandate, and therefore the claimant had no direct salary costs.<sup>71</sup>

To support this conclusion the Controller relies on the language of the Parameters and Guidelines defining indirect costs as "costs that are incurred for a common or joint purpose, benefitting more than one program, and are not directly assignable to a particular department or program without efforts disproportionate to the result achieved."<sup>72</sup> The Parameters and Guidelines also state: "Indirect costs may include both: (1) overhead costs of the unit performing the mandate; and (2) the costs of the central government services distributed to other departments based on a systematic and rational basis through a cost allocation plan."<sup>73</sup> And finally, the Parameters and Guidelines also limit the use of the 10 percent flat rate, or default rate, to "10% of direct labor, excluding fringe benefits."<sup>74</sup> There is no mention of applying the 10 percent rate to contract costs, or any other direct costs.

The claimant disputed the disallowance of indirect costs, and argued that despite the mandate being performed under contract with the County, the claimant still incurred additional overhead costs both within the contract and outside the contract.<sup>75</sup>

The Controller's finding was unchanged.<sup>76</sup> The Controller notes in its Final Audit Report that the claimant "incorrectly elected to use the option of claiming 10% of direct labor, excluding fringe benefits, to determine the amount of indirect costs...[h]owever, as stated above, the 10% indirect cost rate is to be applied to the amount of direct labor costs [and claimant] did not incur any payroll or direct labor costs."<sup>77</sup> The Controller therefore concludes that, as claimed, the indirect costs are unallowable.<sup>78</sup>

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<sup>69</sup> Exhibit A, IRC, page 279 [Final Audit Report, p. 18].

<sup>70</sup> Exhibit A, IRC, page 279 [Final Audit Report, p. 18].

<sup>71</sup> Exhibit A, IRC, page 287 [Final Audit Report, p. 26].

<sup>72</sup> Exhibit A, IRC, page 287 [Final Audit Report, p. 26 (quoting Parameters and Guidelines, section V.B.)].

<sup>73</sup> Exhibit A, IRC, page 287 [Final Audit Report, p. 26 (quoting Parameters and Guidelines, section V.B.)].

<sup>74</sup> Exhibit A, IRC, page 288 [Final Audit Report, p. 27 (quoting Parameters and Guidelines, section V.B.)].

<sup>75</sup> Exhibit A, IRC, page 288-289 [Final Audit Report, pp. 27-28].

<sup>76</sup> Exhibit A, IRC, page 289 [Final Audit Report, p. 28].

<sup>77</sup> Exhibit A, IRC, page 290 [Final Audit Report, p. 29].

<sup>78</sup> Exhibit A, IRC, page 290 [Final Audit Report, p. 29].

### III. Positions of the Parties

#### A. City of Palmdale

The total amount claimed for fiscal years 1999-2000 through 2012-2013 is \$5,600,497.<sup>79</sup> The total amount reduced was \$2,638,845.<sup>80</sup> The claimant requests reinstatement of \$2,552,314.<sup>81</sup>

The claimant alleges two incorrect reductions within the audit: first, the claimant believes that the Controller's interpretation of the scope of reimbursable activities involved in investigating a report of suspected child abuse or neglect was "excessively restrictive," resulting in adjustments to the average time increment derived from the time study that reduced reimbursement for investigating child abuse and neglect; and second, the claimant asserts that the Controller incorrectly denied indirect costs claimed.

##### 1. Adjustments to the Time Study (Audit Finding 2)

With respect to the scope of investigation-related activities, the claimant asserts that the Controller incorrectly excluded a number of minor tasks or activities the claimant included in its time study. The claimant's response to the Draft Audit Report asserted that "the second time study did not detail each activity separately and we believe it did not include report writing time which should have added an additional hour per case for a total of 3.67 hours to complete the investigation as mandated and write the report."<sup>82</sup> The claimant further stated that it offered to conduct a third time study, which the Controller declined, because, the claimant asserts, "they [the Controller's audit staff] believed that the difference in time was due to a disagreement regarding allowing activities, which would not be remedied by conducting another time study."<sup>83</sup> The claimant further stated that "the SCO and the City disagree on the eligibility of certain activities the Deputy performs in the course of their preliminary investigation to determine if the case is Founded, Unfounded, or Inconclusive as mandated."<sup>84</sup> Specifically, the claimant requested 15 minutes per case to "review prior call history," and sometimes speak to other child welfare agencies before going to conduct interviews; 40 minutes to make phone calls to schedule interviews; and 6 minutes to inspect the home of the alleged victim.<sup>85</sup>

In its IRC narrative, the claimant identifies five investigative steps, including preliminary investigative activities, that it maintains are reimbursable and should be included in the average time study increments:

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<sup>79</sup> Exhibit A, IRC, page 259 [Controller's Final Audit Report Cover Letter].

<sup>80</sup> Exhibit A, IRC, page 259 [Controller's Final Audit Report Cover Letter].

<sup>81</sup> Exhibit A, IRC, page 1. Based on the findings that are not disputed, the Controller maintains that the actual dollar amount in dispute is \$1,132,337 in direct costs and \$509,136 in indirect costs. (Exhibit B, Controller's Comments on the IRC, pp. 15; 22.)

<sup>82</sup> Exhibit A, IRC, page 281 [Final Audit Report, p. 20].

<sup>83</sup> Exhibit A, IRC, page 282 [Final Audit Report, p. 21].

<sup>84</sup> Exhibit A, IRC, page 282 [Final Audit Report, p. 21].

<sup>85</sup> Exhibit A, IRC, pages 282-283 [Final Audit Report, pp. 21-22].

- 1) Review preliminary documents and materials to determine if interviews are necessary. This may include checking to see if a report was already written (duplication), call CPS or reporting agency to obtain more details of the case, checking prior history, and other considerations.  
(SCO is only allowing time to review the SCAR)
- 2) Identify involved parties
- 3) Schedule and set up interviews via phone and/or email when needed
- 4) Travel to meet with parties involved in the investigation
- 5) Inspection of home (in instances related to allegations of neglect) to determine living conditions – food, running water, safe living conditions, etc.<sup>86</sup>

The claimant further argues, in its late rebuttal comments, that the total average time for investigations resulting from the time study does not accurately reflect all the required activities. The claimant asserts that report writing was not fairly reflected in the Controller’s calculation of allowable time, and that longer, outlier investigative cases should not be excluded from the time study.<sup>87</sup> Further, the claimant asserts that its investigation time study was derived primarily from officers’ on-scene time, which, according to the claimant, “is in fact a conservative estimate of actual time spent to conduct an investigation because this time wouldn’t have any additional follow up activities that may have been required such as in the instances when not all the parties were present at the time of the officer’s arrival.”<sup>88</sup> The claimant asserts that “[i]t is common that the deputy must attempt to contact other parties after the initial call for service.”<sup>89</sup>

In response to the Draft Proposed Decision, the claimant filed additional copies of its time study documentation, with additional notations, and new declarations from the claimant representative and from the detective who compiled the time study documentation.<sup>90</sup> Detective Reddy’s declaration states that she is the employee who compiled the time study information, she was never interviewed by the Controller’s audit staff, and therefore the Controller’s conclusions that report writing time was already included in the time study and that the single outlier investigation included unallowable activities and should be struck from the time study, are not

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<sup>86</sup> Exhibit A, IRC, page 3 [As noted, the Controller agrees that inspecting the home is a reimbursable activity, but maintains that this activity is included in the time study. (Exhibit A, IRC, page 285 (Final Audit Report, p. 24))].

<sup>87</sup> Exhibit C, Claimant’s Late Rebuttal Comments, pages 1-2.

<sup>88</sup> Exhibit C, Claimant’s Late Rebuttal Comments, page 2.

<sup>89</sup> Exhibit C, Claimant’s Late Rebuttal Comments, page 2.

<sup>90</sup> Exhibit F, Claimant’s Comments on the Draft Proposed Decision, pages 5-7 [Declaration of Detective Vanessa Reddy and Time Study documents]; 19-20 [Declaration of Annette Chinn, claimant representative].



supported by the record.<sup>91</sup> The declaration of Detective Reddy, in particular, explains the reason why report writing was not included in the time study:

I tracked the actual time for these activities during the month of September, 2013 but inadvertently did not include time for report writing for all of the cases. This was because I was not clear on the exact parameters and the cases that I did not include report writing time for were for unfounded cases of child abuse. These cases typically end with the numbers “419” at the end of the report number. All of these unfounded cases also had a written internal report prepared, however, because those reports were not sent to the District Attorney’s Office I did not input report writing time on the logs.

It is my believe [sic] that to fairly represent actual time spent on this report writing activity, 15-20 minutes of time should be added to those cases (see attached log with an asterisk) which did not include time for report writing.

I also wanted to note that I was never interviewed by anyone from the State Controller’s Office about this time log or any other issues pertaining to this Child Abuse program or this audit.<sup>92</sup>

Thus, the claimant requests that the time increment for the investigation activities be increased to reflect report writing for unfounded cases, the time reflected by the single outlier investigation, and the preliminary investigative activities.

On September 27, 2018, the claimant filed a response to the Controller’s late comments on the Draft Proposed Decision.<sup>93</sup> The claimant continues to assert in its response that the time increment for the investigation activities needs to be increased to reflect report writing for unfounded cases. However, the claimant is no longer disputing the Controller’s exclusion from the claimant’s time study of a single investigation that included unallowable activities occurring subsequent to the determination whether the case was substantiated, inconclusive, or unfounded. The claimant states the following:

Due to the length of time that has transpired since the original preparation of the time logs (2013) and the difficulty in remembering exact details of specific cases, the City has decided not to pursue this issue.<sup>94</sup>

The claimant also concurs with the conclusion in the Draft Proposed Decision that the Commission does not have jurisdiction to determine whether certain preliminary

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<sup>91</sup> Exhibit F, Claimant’s Comments on the Draft Proposed Decision, pages 5-7 [Declaration of Detective Vanessa Reddy and Time Study documents]; 19-20 [Declaration of Annette Chinn, claimant representative].

<sup>92</sup> Exhibit F, Claimant’s Comments on the Draft Proposed Decision, page 4 [Declaration of Detective Vanessa Reddy].

<sup>93</sup> Exhibit H, Claimant’s Response to the Controller’s Late Comments on the Draft Proposed Decision.

<sup>94</sup> Exhibit H, Claimant’s Response to the Controller’s Late Comments on the Draft Proposed Decision, page 3.

investigative activities should be reimbursable since the Controller did not reduce any costs for preliminary investigative activities.<sup>95</sup>

## 2. Reduction of Indirect Costs (Audit Finding 3)

With respect to the disallowance of indirect costs, the claimant argues that the Controller incorrectly disallowed “the default 10% Indirect Cost Rate Proposal or overhead costs to the City’s claim for reimbursement allowed by the claiming instructions.”<sup>96</sup> The Controller determined that because the claimant implemented the mandate by contracting with the Los Angeles County Sheriff’s Office, the claimant was not claiming direct labor costs, and could not claim indirect costs related to those activities and costs.<sup>97</sup> Further, the Controller opined that “there is already adequate overhead included in the contracted county billed hourly rates...”<sup>98</sup>

The claimant disagrees with the Controller’s conclusion, and asserts that it did claim direct salaries and benefits, and should be entitled to indirect costs.<sup>99</sup> In addition, the claimant argues that it had additional overhead costs both within its contract with the County and outside of the contract. In this respect the claimant characterized administrative and clerical support staff as “overhead,” and states that “[e]ach fiscal year, the City purchased additional supplemental overhead positions through the contract, including Station Clerks, Administrative and Motor Sergeants (in addition to the Sergeants who were already built into the standard billing rates).”<sup>100</sup> The claimant further states “[i]n some years the cities may be able to afford more direct staff and more overhead items and other years they cannot.”<sup>101</sup> The claimant asserts that this may affect response times and service quality for the community.<sup>102</sup> The claimant states, without citing specific support, that “[w]hen the actual overhead rates were calculated, they were found to range between 6%-13%.”<sup>103</sup> The claimant therefore concludes that the 10 percent “default rates is [*sic*] a reasonable approximation of actual overhead costs incurred by the city.”<sup>104</sup>

With respect to “overhead incurred outside of the contract,” the claimant states as follows:

In addition to the County billed overhead, the City also contributed additional funds to support the law enforcement services contract. For example, there are

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<sup>95</sup> Exhibit H, Claimant’s Response to the Controller’s Late Comments on the Draft Proposed Decision, page 3.

<sup>96</sup> Exhibit A, IRC, page 4.

<sup>97</sup> Exhibit A, IRC, page 4.

<sup>98</sup> Exhibit A, IRC, page 4.

<sup>99</sup> Exhibit A, IRC, page 288 [Final Audit Report, p. 27]; Exhibit H, Claimant’s Response to the Controller’s Late Comments on the Draft Proposed Decision, pages 1-2.

<sup>100</sup> Exhibit A, IRC, page 288 [Final Audit Report, p. 27].

<sup>101</sup> Exhibit A, IRC, page 288 [Final Audit Report, p. 27].

<sup>102</sup> Exhibit A, IRC, page 288 [Final Audit Report, p. 27].

<sup>103</sup> Exhibit A, IRC, page 288 [Final Audit Report, p. 27].

<sup>104</sup> Exhibit A, IRC, page 288 [Final Audit Report, p. 27].

City wide overhead costs documented in their FY 13-14 Cost Allocation Plan (\$1,001,171) including administrative time from the City Attorney, City Manager's Office, Finance, Human Resources, and the Public Safety Department.

Then there are additional city costs incurred to contract the Palmdale Sheriff's Station in 2004 including the donation of 11 acres of land estimated (estimated value of \$1.3 million) as well as for city provided infrastructure improvements of (approximately \$1.01 million).

All these are valid examples of additional overhead costs not captured by the LA Sheriff's Deputy billing rate and denied for reimbursement in the SCO audit. The city provided many examples and documents supporting that it is actually incurring overhead costs over and above that which was included in the Deputy's standard billing rate. These types of city wide overhead items are eligible for reimbursement under the instruction and OMB A-87 and should be allowed for inclusion in our claims. (See attached examples).<sup>105</sup>

In its late rebuttal comments, the claimant acknowledges that "most overhead was already included in the Deputies['] hourly rates billed, however the record shows that there were additional overhead charges not included in those billed hourly rates."<sup>106</sup> The claimant argues that "State Mandate statutes require the reimbursement of actual costs incurred to comply with the mandated program and the city believes it has shown that additional overhead costs were incurred and therefore were incorrectly reduced by the SCO."<sup>107</sup>

In response to the Draft Proposed Decision, the claimant provides additional documentation for fiscal years 2006-2007 through 2012-2013, which claimant asserts support its claim for indirect costs. The proposed indirect cost rates for those years range from 5.4 to 11.3 percent, while rates for the same years submitted in earlier documentation ranged from 11.9 to 15.4 percent.<sup>108</sup> The claimant continues to assert that "[b]ased on claiming instructions and Federal guidelines, I believe these overhead costs are eligible for inclusion in the ICRP and are actual ICRP costs which the City is entitled to."<sup>109</sup>

## **B. State Controller's Office**

The Controller urges the Commission to deny this IRC. The Controller states that of the claimant's total reimbursement claims for \$5,600,497 for fiscal years 1999-2000 through 2012-2013, \$2,638,845 "is unallowable because the city overstated the number of suspected child abuse reports (SCARs) investigated, overstated time increments for each fiscal year, and claimed

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<sup>105</sup> Exhibit A, IRC, page 289 [Final Audit Report, p. 28].

<sup>106</sup> Exhibit C, Claimant's Late Rebuttal Comments, page 3.

<sup>107</sup> Exhibit C, Claimant's Late Rebuttal Comments, page 3.

<sup>108</sup> See Exhibit F, Claimant's Comments on the Draft Proposed Decision, pages 49-70; Exhibit A, IRC, pages 110-131.

<sup>109</sup> Exhibit F, Claimant's Comments on the Draft Proposed Decision, page 19 [Declaration of Annette Chinn, claimant representative]; See also, Exhibit H, Claimant's Response to the Controller's Late Comments on the Draft Proposed Decision, pages 1-2.

ineligible indirect costs.”<sup>110</sup> The Controller goes on: “The city does not dispute the portion of the audit findings related to the overstated SCAR investigations claimed for the audit period, nor the misstated \$1,013 in costs claimed within the Forward Reports to DOJ component activity in FY 2001-02.”<sup>111</sup> The remaining disputed reductions for the overstated time increments and ineligible indirect costs, according to the Controller, is limited to \$1,132,337.<sup>112</sup>

The Parameters and Guidelines provide reimbursement to complete an investigation to determine whether a report of suspected child abuse or neglect is unfounded, substantiated, or inconclusive, for purposes of preparing and submitting a required form to DOJ.<sup>113</sup> The Controller acknowledges that “[t]his activity includes reviewing the initial SCAR (Form SS 8572), conducting initial interviews with involved parties, and making a report of the findings of those interviews.”<sup>114</sup> The Controller states that the Commission’s Decision on the Parameters and Guidelines “clarified multiple times...that reimbursement is limited to the activities noted.”<sup>115</sup> Further, the Controller notes that the claimant contracts with the Los Angeles County Sheriff’s Department to perform the law enforcement-related activities of the mandate, including investigations of suspected child abuse. Accordingly, the Controller determined that essentially all salaries and benefits claimed for the audit period should more properly be classified as contract costs.<sup>116</sup>

The Controller explains that the claimant’s contract costs were claimed based on two time studies, the first of which the Controller found “inappropriate to support actual costs, as the study was not performed contemporaneously, was performed by staff who did not complete the actual investigation activities claimed, used time estimates, and used a sample of cases that were not representative of the total population of SCAR investigations.”<sup>117</sup> The second time study the Controller determined was appropriate, “with the exception of the one investigation that included activities occurring after the SCAR was determined to be a substantiated case of child abuse.”<sup>118</sup> The Controller therefore accepted and applied the second time study, with that case excised from the results. The Controller further verified the reasonableness of its results by conducting interviews and a time survey.<sup>119</sup>

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<sup>110</sup> Exhibit B, Controller’s Late Comments on the IRC, page 8.

<sup>111</sup> Exhibit B, Controller’s Late Comments on the IRC, page 15.

<sup>112</sup> Exhibit B, Controller’s Late Comments on the IRC, page 15.

<sup>113</sup> Exhibit I, Statement of Decision and Parameters and Guidelines, *Interagency Child Abuse and Neglect Investigation Reports*, 00-TC-22, pages 25-34.

<sup>114</sup> Exhibit B, Controller’s Comments on the IRC, page 16.

<sup>115</sup> Exhibit B, Controller’s Comments on the IRC, page 16.

<sup>116</sup> Exhibit B, Controller’s Comments on the IRC, page 16.

<sup>117</sup> Exhibit B, Controller’s Comments on the IRC, page 16.

<sup>118</sup> Exhibit B, Controller’s Comments on the IRC, page 16.

<sup>119</sup> Exhibit B, Controller’s Comments on the IRC, page 16.

The claimant, during audit fieldwork, and in this IRC, has sought to augment the results of the time study, and increase the average time increment resulting from the time study, alleging that report writing time, and three preliminary investigative activities, should have been included. The Controller maintains that report writing time and time to inspect the home and living conditions of the alleged victim are included in the results of the time study, and the other activities raised are beyond the scope of the mandate.<sup>120</sup>

With respect to the disallowance of indirect costs, the Controller maintains that the claimant inappropriately applied the 10 percent indirect cost rate to contract service costs.<sup>121</sup> The Controller explains that because the claimant did not incur any direct labor costs for mandated activities, indirect costs are inappropriate; rather, any overhead or indirect costs were included within the contract rates.<sup>122</sup> The Controller also posits that the fact that overhead costs were built into the contract rate was confirmed by the Los Angeles County Sheriff's Department's Contract Law Enforcement Bureau.<sup>123</sup> The Controller further notes that the Parameters and Guidelines allow claimants the option of claiming indirect costs based on 10 percent of direct labor, excluding benefits, or, preparing an indirect cost rate proposal if the 10 percent rate does not seem sufficient.<sup>124</sup> Here, the claimant chose to use the 10 percent rate, but had no direct labor costs.<sup>125</sup> The Controller states that the claimant created "sample Indirect Cost Rate Proposals" for fiscal years 2006-2007 through 2012-2013, but those sample ICRPs were submitted to demonstrate that the 10 percent flat rate was reasonable, and in fact conservative; the claimant only seeks "restoration of the 10% rate and not the indirect cost rates based on the proposed ICRPs."<sup>126</sup>

In comments on the Draft Proposed Decision filed August 8, 2018, the Controller stated that it agrees with the proposed findings to deny the IRC.<sup>127</sup> The Controller filed additional comments on the Draft Proposed Decision and supporting documentation, which were filed late on August 31, 2018, to rebut the claimant's assertion that Detective Reddy, the officer who compiled the second time study, was never interviewed by anyone from the State Controller's Office about the time log or any other issues pertaining to the audit.<sup>128</sup>

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<sup>120</sup> Exhibit A, IRC, page 285 [Controller's Final Audit Report, p. 24].

<sup>121</sup> Exhibit B, Controller's Comments on the IRC, page 22.

<sup>122</sup> Exhibit B, Controller's Comments on the IRC, page 22.

<sup>123</sup> Exhibit B, Controller's Comments on the IRC, page 24.

<sup>124</sup> Exhibit B, Controller's Comments on the IRC, page 24.

<sup>125</sup> Exhibit B, Controller's Comments on the IRC, page 24.

<sup>126</sup> Exhibit B, Controller's Comments on the IRC, page 24.

<sup>127</sup> Exhibit E, Controller's Comments on the Draft Proposed Decision.

<sup>128</sup> Exhibit G, Controller's Late Comments on the Draft Proposed Decision.

#### IV. Discussion

Government Code section 17561(d) authorizes the Controller to audit the claims filed by local agencies and school districts and to reduce any claim for reimbursement of state-mandated costs if the Controller determines that the claim is excessive or unreasonable.

Government Code 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. If the Commission determines that a reimbursement claim has been incorrectly reduced, section 1185.9 of the Commission's regulations requires the Commission to send the decision to the Controller and request that the costs in the claim be reinstated.

The Commission must review questions of law, including interpretation of the parameters and guidelines, de novo, without consideration of legal conclusions made by the Controller in the context of an audit. The Commission is vested with exclusive authority to adjudicate disputes over the existence of state-mandated programs within the meaning of article XIII B, section 6 of the California Constitution.<sup>129</sup> The Commission must also interpret the Government Code and implementing regulations in accordance with the broader constitutional and statutory scheme. In making its decisions, the Commission must strictly construe article XIII B, section 6 and not apply it as an "equitable remedy to cure the perceived unfairness resulting from political decisions on funding priorities."<sup>130</sup>

With regard to the Controller's audit decisions, the Commission must determine whether they were arbitrary, capricious, or entirely lacking in evidentiary support. This standard is similar to the standard used by the courts when reviewing an alleged abuse of discretion of a state agency.<sup>131</sup> Under this standard, the courts have found that:

When reviewing the exercise of discretion, "[t]he scope of review is limited, out of deference to the agency's authority and presumed expertise: 'The court may not reweigh the evidence or substitute its judgement for that of the agency. [Citation.]'" ... "In general ... the inquiry is limited to whether the decision was arbitrary, capricious, or entirely lacking in evidentiary support..." [Citations.] When making that inquiry, the " "court must ensure that an agency has adequately considered all relevant factors, and has demonstrated a rational connection between those factors, the choice made, and the purposes of the enabling statute." [Citation.]' "<sup>132</sup>

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<sup>129</sup> *Kinlaw v. State of California* (1991) 54 Cal.3d 326, 331-334; Government Code sections 17551, 17552.

<sup>130</sup> *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1264, 1281, citing *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1817.

<sup>131</sup> *Johnson v. Sonoma County Agricultural Preservation and Open Space Dist.* (2002) 100 Cal.App.4th 973, 983-984. See also *American Bd. of Cosmetic Surgery, Inc. v. Medical Bd. of California* (2008) 162 Cal.App.4th 534, 547.

<sup>132</sup> *American Bd. of Cosmetic Surgery, Inc. v. Medical Bd. of California* (2008) 162 Cal.App.4th 534, 547-548.

The Commission must review the Controller's audit in light of the fact that the initial burden of providing evidence for a claim of reimbursement lies with the claimant.<sup>133</sup> In addition, sections 1185.1(f)(3) and 1185.2(d) and (e) of the Commission's regulations require that any assertions of fact by the parties to an IRC must be supported by documentary evidence. The Commission's ultimate findings of fact must be supported by substantial evidence in the record.<sup>134</sup>

**A. The Claimant Timely Filed this IRC Within Three Years from the Date Claimant First Received from the Controller a Final State Audit Report, Letter, or Other Written Notice of Adjustment to a Reimbursement Claim, Which Complies with Government Code Section 17558.5(c).**

Government Code section 17561 provides that the state shall reimburse local government for all costs mandated by the state. However, the Controller is authorized by section 17561 to audit those claims to verify the amount of mandated costs, and reduce any claim that the Controller determines is excessive or unreasonable. Government Code section 17551 in turn provides that the Commission shall hear and decide upon a claim by a local agency or school district that the Controller has incorrectly reduced payments pursuant to section 17561. California Code of Regulations, title 2, section 1185.1 provides for the period of limitation in which an IRC must be timely filed:

All incorrect reduction claims shall be filed with the Commission no later than three years following the date a claimant first receives from the Office of State Controller a final state audit report, letter, or other written notice of adjustment to a reimbursement claim, which complies with Government Code section 17558.5(c) by specifying the claim components adjusted, the amounts adjusted, interest charges on claims adjusted to reduce the overall reimbursement to the claimant, and the reason for the adjustment. The filing shall be returned to the claimant for lack of jurisdiction if this requirement is not met.<sup>135</sup>

Here, the Final Audit Report is dated May 19, 2016.<sup>136</sup> The IRC was filed with the Commission on November 7, 2017.<sup>137</sup> Less than three years having elapsed between the issuance of the audit report and the filing of the IRC, this IRC was filed within the period prescribed in Code of Regulations, title 2, section 1185.1.

**B. The Commission Does Not Have Jurisdiction to Determine Whether Other Preliminary Investigative Activities Were Accounted for in the Time Study Because There Has Been No Reduction Relating to Preliminary Investigative Activities.**

The claimant's IRC argues that additional time should be added to the 2.65 hours per SCAR investigation that the Controller found to be allowable based on the second time study, to

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<sup>133</sup> *Gilbert v. City of Sunnyvale* (2005) 130 Cal.App.4th 1264, 1274-1275.

<sup>134</sup> Government Code section 17559(b), which provides that a claimant or the state may commence a proceeding in accordance with the provisions of section 1094.5

<sup>135</sup> California Code of Regulations, title 2, section 1185.1(c) (Register 2016, No. 38).

<sup>136</sup> Exhibit A, IRC, page 259 [Controller's Final Audit Report].

<sup>137</sup> Exhibit A, IRC, page 1.

account for preliminary investigative activities, such as making calls to schedule interviews and reviewing prior case history.<sup>138</sup> The revised time study documentation supporting the amended claims, however, does not specifically identify additional time for preliminary investigative activities.<sup>139</sup> In addition, the evidence in the record does not show that at any point these preliminary activities were ever specifically claimed, or specifically disallowed, either in the original time study and reimbursement claims, or in the amended reimbursement claims filed July 15, 2015.

As indicated in the Final Audit Report, the only reductions taken by the Controller pertain to the exclusion of the one investigation that went beyond the scope of the mandate, and the rejection of the additional report writing time claimed. Accordingly, while the claimant and the Controller have opined on the scope of reimbursement with respect to preliminary investigative activities,<sup>140</sup> there has been no reduction relating to preliminary investigative activities.

Pursuant to Government Code section 17551(d), the Commission only has jurisdiction over *reductions* taken in the context of an audit. Therefore, the Commission does not have jurisdiction to consider these issues in the context of an IRC.<sup>141</sup>

**C. The Controller's Reduction of Costs Based on the Exclusion of One Investigation from the Claimant's Time Study that Included Activities Beyond the Scope of the Mandate Is Correct as a Matter of Law, and Not Arbitrary, Capricious, or Entirely Lacking in Evidentiary Support.**

As noted above, the initial claiming period for this mandated program includes fiscal years 1999-2000 through 2012-2013, and initial claims, in accordance with the claiming instructions, were required to be filed no later than July 15, 2014.<sup>142</sup> The Controller did not expect the claimant to have sufficient contemporaneous source documentation extending back to the beginning of the audit period, and therefore permitted the claimant to perform a time study.<sup>143</sup> The claimant performed two time studies, and submitted its initial reimbursement claim on or about

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<sup>138</sup> Exhibit A, IRC, pages 3 and 285 [Final Audit Report, p. 24].

<sup>139</sup> Exhibit C, Claimant's Late Rebuttal Comments, page 15.

<sup>140</sup> See Exhibit A, IRC, pages 285-286 [Final Audit Report, pp. 24-25].

<sup>141</sup> The claimant now agrees with this legal conclusion. (Exhibit H, Claimant's Response to the Controller's Late Comments on the Draft Proposed Decision, page 3.)

<sup>142</sup> Exhibit A, IRC, page 229 [initial claiming instructions].

<sup>143</sup> Any attempt to enforce the contemporaneous source document rule retroactively would raise due process implications. (*Clovis Unified School Dist. v. Chiang* (2010) 188 Cal.App.4th 794, 803-807; *Department of Health Services v. Fontes* (1985) 169 Cal.App.3d 301, 304-305; *Tapia v. Superior Court* (1991) 53 Cal.3d 282; 287-292; *Murphy v. City of Alameda* (1993) 11 Cal.App.4th 906, 911-912.)



July 3, 2014, based on an average time increment calculated from both time studies of 3.67 hours.<sup>144</sup>

As indicated in the Background, the first of two time studies was not contemporaneous with the performance of the activities, and was therefore rejected, but the Controller accepted the claimant's second time study, except that it excluded an investigation "with unallowable hours that accounted for activities following the determination of a substantiated status of child abuse."<sup>145</sup> The Controller recalculated without the unallowable investigation, and found an average time increment of 2.65 hours per SCAR investigation.<sup>146</sup> The Controller thus reduced reimbursement based on excluding from the claimant's time study a single investigation that included unallowable activities occurring subsequent to the determination whether the case was substantiated, inconclusive, or unfounded. That investigation was referred to the Los Angeles County Sheriff's Department Special Victims Unit, and according to interviews with the deputies performing the mandate, including Detective Reddy, the investigation included further activities after that referral to DOJ was made.<sup>147</sup> That investigation also required substantially more time than the others sampled in the time study (660 minutes, as compared to approximately 159 minutes, on average, throughout the remaining sample).<sup>148</sup> The Controller concluded "[t]he average time per case, using the second time study results (less the unallowable hours of one case), totaled 2.65 hours."<sup>149</sup> To verify this time increment, the Controller conducted a time survey with the deputies, which resulted in a range of 2.29 to 2.71 hours per SCAR investigation. Since the 2.65 hours resulting from the time study (less the unallowable hours of one case) fell within that range, the Controller determined that the time study result was reasonable, and accepted the 2.65-hour average time increment.<sup>150</sup>

The claimant argues that even though that investigation was an outlier in terms of the time spent by deputies performing the mandate, it should be included in the time study sample because it reflects the fact that some cases require more time and resources than others:<sup>151</sup>

[T]he longest case in [the claimant's] 2013 [time study] should not have been removed from computation of the average time per case. These types of more

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<sup>144</sup> Exhibit B, Controller's Comments on the IRC, page 30; Exhibit A, IRC, page 278 [Final Audit Report, p. 17].

<sup>145</sup> Exhibit A, IRC, page 284 [Controller's Final Audit Report, p. 23].

<sup>146</sup> Exhibit B, Controller's Comments on the IRC, page 171 [Analysis of Time Study #2]. See also, Exhibit C, Claimant's Late Rebuttal Comments, page 26 [August 4, 2015 Email from Douglas Brejnak to Annette Chinn].

<sup>147</sup> Exhibit A, IRC, page 284 [Controller's Final Audit Report, page 23]; Exhibit C, Claimant's Late Rebuttal Comments, page 38 [email discussion between the claimant's representatives and the Controller's audit staff].

<sup>148</sup> Exhibit B, Controller's Comments on the IRC, page 171.

<sup>149</sup> Exhibit A, IRC, page 284 [Controller's Final Audit Report, p. 23].

<sup>150</sup> Exhibit A, IRC, page 284 [Controller's Final Audit Report, p. 23].

<sup>151</sup> Exhibit C, Claimant's Late Rebuttal Comments, page 34.

involved cases do occur and their lengthier investigation time should also be factored into the average time per case. The time logs accurately reflect actual time spent by station Deputies on the preliminary investigative process to determine if the case was founded, unfounded, or inconclusive and to prepare the written report.<sup>152</sup>

The claimant continues to stress, in its comments on the Draft Proposed Decision, that this investigation should not have been removed from the time study, and that the Controller “would not have been able to make this determination *without interviewing the employee who actually worked on that investigation...*”<sup>153</sup>

The Controller disputes that it did not interview the relevant employees.<sup>154</sup> In its additional comments on the Draft Proposed Decision, which were filed late, the Controller states that it conducted meetings during the initial week of fieldwork, between April 7 and 9, 2015, at the Palmdale Station. The Controller states that Detective Vanessa Reddy “participated in that meeting and answered questions asked of her by the SCO auditor concerning the time study and general SCAR program activities;” and that the “SCO auditor summarized the meetings, including the Detective’s statements, in working papers (Tab 3).”<sup>155</sup> The working papers state, in relevant part, the following:

The second time study was completed by the sheriff’s deputy assigned to investigate SCARs (8572). The time study was completely contemporaneously during September 2013. The deputy recorded her time for each case that was opened during the month, regardless if the case was substantiated, unfounded, or inconclusive. The deputy (Vanessa Reddy) is no longer working the SCAR cases but was available to come by the station to discuss her time study.

Unlike the 1<sup>st</sup> time study, the deputy did not separate the time into different categories. Only a total for each case was recorded within this time study. The time study documented which activities were performed but not the time splits. This time study was not used within the city’s claim. During discussions with Vanessa Reddy, she stated the entire time of her work on the case was included within the time study. For substantiated cases, this would include time after the Special Victims Unit was contacted which may include ineligible activities.<sup>156</sup>

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<sup>152</sup> Exhibit C, Claimant’s Late Rebuttal Comments, page 2.

<sup>153</sup> Exhibit F, Claimant’s Comments on the Draft Proposed Decision, page 20 [Declaration of Annette Chinn].

<sup>154</sup> Exhibit G, Controller’s Late Comments on the Draft Proposed Decision, pages 8-17.

<sup>155</sup> Exhibit G, Controller’s Late Comments on the Draft Proposed Decision, page 8.

<sup>156</sup> Exhibit G, Controller’s Late Comments on the Draft Proposed Decision, page 11 (Emphasis in original); see also page 18 [“We interviewed staff who prepared the time study and found that one case within the study included time outside of allowable activities.”].

The Commission finds that the reduction of costs based on the exclusion of one investigation from claimant's time study is correct as a matter of law, and not arbitrary, capricious, or entirely lacking in evidentiary support.

The scope of the reimbursable activity relating to investigations of suspected child abuse or neglect looms large in the Commission's consideration and analysis of the Parameters and Guidelines, and it remains an issue in this IRC. The Commission's Decision adopting the Parameters and Guidelines reasoned that the requirement to investigate reports of suspected child abuse or neglect derives from the reporting requirement to DOJ; it is not a reimbursable state mandate to investigate reports of child abuse or neglect for purposes of prosecuting crimes.<sup>157</sup> Accordingly, the Parameters and Guidelines place the "Complete an Investigation" activity under the heading, "Reporting to the Department of Justice."<sup>158</sup>

The Decision also analyzed at length the idea that the express goal of CANRA is to protect children from abuse or neglect, not to investigate and prosecute criminal child abuse, sexual assault, neglect, or other crimes.<sup>159</sup> And since the other agencies with similar reporting responsibilities under CANRA do not have law enforcement or criminal prosecution authority, the Parameters and Guidelines limited reimbursement for this mandate to an investigation similar in scope to one conducted by another child welfare agency, and which is conducted for purposes of reporting to DOJ when suspected child abuse is substantiated or inconclusive.<sup>160</sup> The Commission made that determination, in part, because at some point an investigation of suspected child abuse conducted by a law enforcement agency turns from an investigation to determine whether a report is substantiated, inconclusive, or unfounded, to an investigation for purposes of criminal prosecution:

Therefore, because in-person interviews and writing a report of the findings are the last step taken by law enforcement before determining whether to proceed with a criminal investigation or close the investigation, and the last step that county welfare departments take before determining whether to forward the report to DOJ and possibly refer the matter to law enforcement, that degree of investigative effort must be the last step that is necessary to comply with the mandate. All further investigative activities are not reimbursable under the mandate, because, in a very practical sense, once evidence is being gathered for criminal prosecution, the determination that a report is "not unfounded" has been

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<sup>157</sup> Exhibit I, Statement of Decision and Parameters and Guidelines, *Interagency Child Abuse and Neglect Investigation Reports*, 00-TC-22, page 25.

<sup>158</sup> Exhibit A, IRC, pages 240-241 [Parameters and Guidelines, pp. 8-9].

<sup>159</sup> Exhibit I, Statement of Decision on Parameters and Guidelines, *Interagency Child Abuse and Neglect Investigation Reports*, 00-TC-22, page 34.

<sup>160</sup> Exhibit I, Statement of Decision on Parameters and Guidelines, *Interagency Child Abuse and Neglect Investigation Reports*, 00-TC-22, pages 28-38.

made, and the investigative mandate approved in the test claim statement of decision has been satisfied.<sup>161</sup>

The Parameters and Guidelines also include an express disclaimer that reimbursement is not required for: “Investigative activities undertaken *subsequent to the determination* whether a report of suspected child abuse is substantiated, inconclusive, or unfounded...including the collection of physical evidence, the referral to a child abuse investigator, and the conduct of follow-up interviews.”<sup>162</sup>

Here, the Controller determined that one of the 14 investigations sampled for the time study included activities that were “subsequent to the determination” that the report of child abuse was not unfounded. In other words, referral to SVU detectives suggested that the case in question was at minimum not unfounded, and therefore a report to DOJ was required. The evidence in the record shows that this determination was based on conversations with the deputies at the Palmdale station.<sup>163</sup> Following those discussions, the Controller determined correctly as a matter of law that any further investigation subsequent to that determination is beyond the scope of the mandate, and in accordance with the Parameters and Guidelines. Therefore, the Controller excluded that investigation from the sample used for the time study, and recalculated the average time increment based on the other 13 investigations sampled. Then, as noted above, the Controller verified the reasonableness of the time study results after removing that case from the sample, by conducting a time survey, and the 2.65-hour average time increment fell squarely within the results of the time survey.<sup>164</sup>

The claimant’s argument that the 660 minute case should have been included in the sample because “[t]hese types of more involved cases do occur and their lengthier investigation time should also be factored into the average time per case,”<sup>165</sup> ignores the fact that the case was not excluded because of its length, but because the Controller found that the case exceeded the scope of the mandate, based on discussions with the officers performing the mandate.

The claimant’s most recent comments no longer dispute this conclusion.<sup>166</sup>

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<sup>161</sup> Exhibit I, Statement of Decision on Parameters and Guidelines, *Interagency Child Abuse and Neglect Investigation Reports*, 00-TC-22, page 38.

<sup>162</sup> Exhibit A, IRC, pages 240-241 [Parameters and Guidelines, pp. 8-9].

<sup>163</sup> Exhibit C, Claimant’s Late Rebuttal Comments, page 38 [ The Controller’s audit staff states in an email to the claimant representative that “we discussed the 660 minute case with Detective Reddy.” The Controller states “[i]t appeared that ineligible activities performed after SVU was contacted were included in the time, which lead to the decision to remove the case from the average time calculation.”]; Exhibit G, Controller’s Late Comments on the Draft Proposed Decision, page 11.

<sup>164</sup> Exhibit A, IRC, page 284 [Final Audit Report, p. 23].

<sup>165</sup> Exhibit C, Claimant’s Late Rebuttal Comments, page 2.

<sup>166</sup> Exhibit H, Claimant’s Response to the Controller’s Late Comments on the Draft Proposed Decision, page 3.

Accordingly, the Controller's exclusion of one sample investigation that included unallowable activities from the time study is correct as a matter of law, and not arbitrary, capricious, or entirely lacking in evidentiary support.

**D. The Controller's Rejection of Claimant's Proposal to Add More Time to Capture Report Writing Time for Unfounded Cases Claimed To Be Omitted from the Allowed Time, Is Not Arbitrary, Capricious, or Entirely Lacking in Evidentiary Support.**

As indicated in the Background, the claimant filed amended reimbursement claims on or about July 15, 2015, based on a 3.66-hour average time increment per investigation.<sup>167</sup> The 3.66 hours included not only the investigation that the Controller had determined to remove, but also an additional thirty minutes of report writing time for 11 of the 14 investigations in which the claimant asserted that report writing had been omitted from the second time study.<sup>168</sup> During the audit, the claimant's representative stated in an email to Controller staff: "I added a conservative amount of time (30 minutes) for every case [in] the time study that didn't indicate that report writing was included in the time."<sup>169</sup>

The Controller rejected the additional time for report writing, and in the Final Audit Report maintained its original finding that a 2.65-hour average time increment per SCAR investigation was allowable from the claimant's time study. The Controller states that preparing a written report "for every case" is included in that average time. Report writing for every case investigated was one of the four activities clearly and expressly identified in the time study documentation to support the reimbursement claims, and "was in fact recorded by the deputies in a number of investigations within the time study."<sup>170</sup> The Final Audit Report states the following:

The second time study recorded time spent performing four activities. It did not separately identify the time for each activity. The time study noted total hours per case and listed which activities were performed for each case. For each investigation included in the time study, the deputies would mark which of the following four activities were performed:

1. Initial response to begin documentation of case and to contact County Welfare.
2. Complete an investigation to determine whether a report is unfounded, substantiated, or inconclusive.

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<sup>167</sup> Exhibit A, IRC, pages 299-380 [Amended Claim Documentation]; Exhibit B, Controller's Comments on the IRC, page 169.

<sup>168</sup> Exhibit B, Controller's Comments on the IRC, page 169.

<sup>169</sup> Exhibit B, Controller's Comments on the IRC, page 166 [August 17, 2015 Email from claimant representative Annette Chinn to Controller's audit staff Douglas Brejnak].

<sup>170</sup> Exhibit A, IRC, page 285 [Final Audit Report, page 24 (emphasis added)].

3. Prepare a written report for every case investigated of known or suspected child abuse.
4. Review and approval of report.<sup>171</sup>

The time study summary documentation also states: “NOTE that this year ALL activities – ranging from investigation, report writing and review and approval were included in ONE time entry.”<sup>172</sup> The Controller also maintains that the time *survey* it conducted to check the reasonableness of the claimant’s time study captured report writing time: specifically, the time survey asked deputies to estimate the amount of time required to write a report for an unfounded investigation, and the amount of time to write a report for a substantiated or inconclusive investigation.<sup>173</sup> Thus, the Controller did not add 30 minutes for report writing to the average time increment per SCAR investigation because the time was already reflected in the time allowed.

The parties do not dispute that report writing is a reimbursable component of the investigation. The dispute, however, is whether the Controller’s audit decision to reject the claimant’s proposal to add thirty minutes to the average time increment for report writing is arbitrary, capricious, or entirely lacking in evidentiary support. Under this standard, and when reviewing the audit findings of the Controller, the Commission is required to defer to the Controller’s authority and presumed expertise.<sup>174</sup> The Commission may not reweigh the evidence or substitute its judgement for that of the Controller. The Commission’s review is limited to ensuring that the Controller has adequately considered all relevant factors, and has demonstrated a rational connection between those factors, and the choices made.<sup>175</sup>

The facts and documentation regarding this issue, and the various arguments raised at different times during the audit and within the IRC are complex, and at times inconsistent. Based on the evidence in the record, however, the Commission finds that the Controller’s rejection of the claimant’s proposal to add more time to complete an investigation to capture report writing time claimed to be omitted from the allowed time is not arbitrary, capricious, or entirely lacking in evidentiary support.

The record shows that the claimant’s second time study, conducted in September 2013, was based on four activities, which expressly included report writing for every case investigated as

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<sup>171</sup> Exhibit A, IRC, page 284-285 [Final Audit Report, pages 23-24]; See also Exhibit F, Claimant’s Comments on the Draft Proposed Decision, pages 4 and 7, confirming the four stated activities included in the time study.

<sup>172</sup> Exhibit C, Claimant’s Late Rebuttal Comments, page 15.

<sup>173</sup> Exhibit A, IRC, page 284 [Final Audit Report, p. 23]; Exhibit B, Controller’s Comments on the IRC, pages 174-179 [Time Survey Questionnaire].

<sup>174</sup> See generally, *Chevron, U.S.A., Inc. v. Natural Resources Defense Council, Inc.* (1984) 467 U.S. 837.

<sup>175</sup> *American Bd. of Cosmetic Surgery, Inc. v. Medical Bd. of California* (2008) 162 Cal.App.4th 534, 547-548.

activity “3.”<sup>176</sup> When the claimant filed its amended claims, and informed the auditor via email of the additional 30 minutes of report writing time it sought, the claimant was relying primarily on the *absence* of report writing time being documented in the TIME LOG for the second time study:

The difference from the original time is that I didn’t exclude the largest case in the 2012-13 time study and I added a conservative amount of time (30 minutes) *for every case [in] the time study that didn’t indicate that report writing was included in the time.*<sup>177</sup>

The attached document to which the email refers is the TIME LOG document provided to the Controller during the audit, which is the same as the document provided by the claimant in its late rebuttal comments, with the additional handwritten caption: “2013 TIME STUDY.”<sup>178</sup> And the same document was provided again in response to the Draft Proposed Decision, this time without the handwritten caption, but with asterisks indicating the cases in which report writing was not recorded.<sup>179</sup> Each version of this document contains the same 14 handwritten entries with dates, case numbers, and total investigative time, and notations of the four activities included in the time study, with activity “3” reflecting report writing for every case investigated of known or suspected child abuse.<sup>180</sup> Eleven of the 14 entries in the time log identify only activities 1, 2, and 4, but do not list activity 3.<sup>181</sup> The claimant suggests that the absence of activity “3” in several entries means that report writing was not reflected in the total time.<sup>182</sup> Another document, this one typed, and labeled “Analysis of Time Study #2” contains the same entries, and the same notations under “Activities Performed.”<sup>183</sup> On a cover page preceding these documents the following assertions appear:

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<sup>176</sup> Exhibit F, Claimant’s Comments on the Draft Proposed Decision, page 7.

<sup>177</sup> Exhibit B, Controller’s Comments on the IRC, page 166 [August 17, 2015 Email from Annette Chinn to Douglas Brejnak (emphasis added)]. See also, Exhibit C, Claimant’s Late Rebuttal Comments, page 1, where it states that the claimant “amended their claim to correct the fact that they did not claim for the costs of preparing ALL child abuse reports due to a misunderstanding of the instructions.”

<sup>178</sup> Exhibit B, Controller’s Comments on the IRC, page 162 [TIME LOG]; Exhibit C, Claimant’s Late Rebuttal Comments, page 12 [2013 TIME STUDY].

<sup>179</sup> Exhibit F, Claimant’s Comments on the Draft Proposed Decision, page 6.

<sup>180</sup> Exhibit C, Claimant’s Late Rebuttal Comments, page 12.

<sup>181</sup> Exhibit C, Claimant’s Late Rebuttal Comments, page 12.

<sup>182</sup> Exhibit C, Claimant’s Late Rebuttal Comments, page 14.

<sup>183</sup> Exhibit C, Claimant’s Late Rebuttal Comments, page 14. This second document may have been prepared by the Controller, but it is unclear from the record. The same document appears in Exhibit B, Controller’s Comments on the IRC, page 171, and in that instance it is labeled “SCO Analysis of Time Study #2.”

SHOWS THAT THE 2013 TIME STUDY THE STATE USED TO DEVELOP THEIR AVERAGE TIMES (2.65 HRS/CASE) DID NOT INCLUDE/ACCOUNT FOR REPORT WRITING FOR ABOUT 80% OF THE CASES.

BECAUSE REPORT WRITING TIME WAS NOT FACTORED IN PROPERLY, TOTAL ALLOWABLE TIME DETERMINED BY THE SCO FOR THIS COMPONENT WAS UNDERSTATED.

LATER SCO TIME SURVEY QUESTIONNAIRE [sic] RESULTS ALSO SHOW THAT REPORT WRITING TIME WAS UNDERSTATED. BASED ON THE QUESTIONNAIRE, [sic] AVERAGE TIME PER CASE SHOULD HAVE BEEN 36 MINUTES PER INVESTIGATION<sup>184</sup>

The claimant also relies on the Controller's time survey which contains separate estimates of the time needed to prepare a report for an unfounded investigation (15-20 minutes) and a substantiated or inconclusive investigation (45-50 minutes).<sup>185</sup> A handwritten comment next to those entries incorrectly states "avg = 37 mins."<sup>186</sup> On the basis of these documents, the claimant requested an additional 30 minutes of report writing time be added to the average time increment per investigation, on the theory that for 11 of the 14 investigations sampled, report writing (activity #3) is not reflected in the handwritten time logs.

The Draft Proposed Decision, however, found that the Controller's finding that the time for report writing was already included in the time study was not arbitrary, capricious, or without evidentiary support, and that the claimant had not provided substantial evidence in the record to rebut that determination. The Draft Proposed Decision found that the claimant's assertions and documentation were all hearsay evidence, which *shall not be sufficient in itself* to support a finding unless it would be admissible over objection in civil actions.<sup>187</sup>

The claimant filed comments on the Draft Proposed Decision, and declarations, including a declaration signed under penalty of perjury from Detective Vanessa Reddy, which explains that report writing was indeed inadvertently omitted from the time study for investigations that were determined to be unfounded, due to a misunderstanding of the instructions for the time study,

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<sup>184</sup> Exhibit C, Claimant's Late Rebuttal Comments, page 11.

<sup>185</sup> Exhibit C, Claimant's Late Rebuttal Comments, page 18.

<sup>186</sup> Exhibit C, Claimant's Late Rebuttal Comments, page 18 [A simple average of the two ranges (15-20 minutes and 45-50 minutes) does not yield an average of 37 minutes; the "average" of these estimates would fall between 30 and 35 minutes. In addition, the time study showed that unfounded investigations were much more common (10 of 14 investigations initially sampled), and therefore augmenting the time study results on the basis of a simple average between longer, more complex reports, and shorter, unfounded reports would skew the allowable time increment. Finally, the evidence in the record shows that only unfounded investigations were omitted from the time study, so there is no need to calculate an average time that includes the time survey estimate for substantiated or inconclusive cases.].

<sup>187</sup> Exhibit D, Draft Proposed Decision; California Code of Regulations, title 2, section 1187.5(a).



and that 15-20 minutes of time should be added for those cases based on her belief.<sup>188</sup> Detective Reddy's declaration states the following:

The time log parameters provided to me by my commanding Sergeant identified four eligible activities and are listed on the attached blank Time Log (Item 2)

- 1- Initial response to begin documentation of case and contacting county [sic] the county welfare department to forward to other agencies if the cases did not occur in the city.
- 2- Complete an investigation to determine whether a report of suspected child abuse or severe [sic] neglect is unfounded, substantiated, or inconclusive, as defined in Penal Code section 12165.12 for purposes of preparing and submitting the state "Child Abuse Investigation Report" form SS 8583, or subsequent designated form to the DOJ.
- 3- Prepare a written report for every case investigated of known or suspected child abuse or severe neglect.
- 4- Review and approve report.

I tracked the actual time for these activities during the month of September, 2013 but inadvertently did not include time for report writing for all of the cases. This was because I was not clear on the exact parameters and the cases that I did not include report writing time for were for unfounded cases of child abuse. These cases typically end with the numbers "419" at the end of the report number. All of these unfounded cases also had a written internal report prepared, however, because those reports were not sent to the District Attorney's Office I did not input report writing time on the logs.

It is my believe [sic] that to fairly represent actual time spent on this report writing activity, 15-20 minutes of time should be added to those cases (see attached log with an asterisk) which did not include time for report writing.

I also wanted to note that I was never interviewed by anyone from the State Controller's Office about this time log or any other issues pertaining to this Child Abuse program or this audit.<sup>189</sup>

Following receipt of the claimant's comments, the Controller filed additional comments on the Draft Proposed Decision and evidence and documentation detailing a number of contacts between audit staff and Detective Reddy during audit fieldwork, to rebut the assertion that the Controller's Office never interviewed Detective Reddy about the time log or the audit.<sup>190</sup> In particular, the Controller's Office states the following:

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<sup>188</sup> Exhibit F, Claimant's Comments on the Draft Proposed Decision, pages 4; 6.

<sup>189</sup> Exhibit F, Claimant's Comments on the Draft Proposed Decision, page 4.

<sup>190</sup> See Exhibit G, Controller's Late Comments on the Draft Proposed Decision, pages 8-20.

Detective Reddy attended a meeting with the SCO auditor, Ms. Chinn, and Sergeant Paul Zarris of the LASD during the initial week of fieldwork between April 7, 2015, and April 9, 2015, at the LASD Palmdale Station. Detective Reddy participated in the meeting and answered questions asked of her by the SCO auditor concerning the time study and general SCAR program activities. The SCO auditor summarized the meetings, including the Detective's statements, in the working papers (Tab 3).

[¶]

. . . . Ms. Chinn's knowledge of this meeting is detailed in the email correspondence dated June 22, 2015, in which she states "You already talked to the Deputy who did the time studies before" (Tab 4). Detective Reddy is identified by the SCO auditor in a reply to Ms. Chinn's email on June 22, 2015, stating, "The interviews will be more in depth and with more emphasis on the time per activity than our previous conversation with Ms. Reddy." (Tab 4).

Furthermore, the SCO auditor provided the city with three status updates via email between August 17, 2015, and September 9, 2015 (Tab 5); held a Status Meeting with city staff on September 30, 2015 (Tab 6); and conducted the Exit Conference with city staff on March 7, 2016 (Tab 7). In all email correspondence and meetings with the city, the auditor referred to the time study issues discovered during the discussion with Detective Reddy. The city never disputed that the meeting with Detective Reddy had taken place, or that the 2013 time study had been discussed at that meeting. Nor did the city make any such statements in its response to the draft report findings or the subsequent IRC.<sup>191</sup>

The claimant's most recent comments state the following:

Thought [sic] the State Controller's Office has shown that Deputy Reddy's recollection of meeting with the SCO auditor was incorrect, we still believe that Deputy Reddy's declaration that she did not included [sic] report writing time for a number of cases is still accurate and valid. As a result, time allowed by the SCO was understated and should be corrected.<sup>192</sup>

The claimant also attached additional declarations in response to the Draft Proposed Decision and the Controller's Late Comments on the Draft Proposed Decision, which state that the claimant's representative, Annette Chinn, "misinterpreted the Statement of Decision and Parameters and Guidelines (Ps and Gs,) and originally gave my clients instructions to only track report writing for cases that resulted in a form SS 8583 report being sent to the Department of Justice."<sup>193</sup> The declaration further states: "The City of Palmdale was the first of my cities to be

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<sup>191</sup> See Exhibit G, Controller's Late Comments on the Draft Proposed Decision, page 8; see also pages 9-11 (Tab 3), 12-15 (Tab 4), 16-27 (Tab 5), 28-35 (Tab 6), 36-53 (Tab 7).

<sup>192</sup> Exhibit H, Claimant's Response to the Controller's Late Comments on the Draft Proposed Decision, pages 2-3.

<sup>193</sup> Exhibit H, Claimant's Response to the Controller's Late Comments on the Draft Proposed Decision, page 4.

audited and until then, I did not know that the Report Writing component was eligible for all cases investigated until after the State Controller's Office initiated its audit on December, 2014."<sup>194</sup>

As analyzed herein, the Commission finds that the Controller's rejection of the claimant's proposal to add more time to complete an investigation to capture report writing time claimed to be omitted is not arbitrary, capricious, or entirely lacking in evidentiary support.

First, there is no dispute that the time study permitted the deputies to log time to "prepare a written report for *every case investigated* of known or suspected child abuse or severe neglect."<sup>195</sup> (Emphasis added.) The claimant has shown with evidence in the record that report writing time for unfounded cases was inadvertently omitted from the time study based on a misunderstanding of the scope of the mandate, but the time study clearly called for this information, and there is no dispute that report writing time for all cases is reimbursable.

Second, although the claimant has shown with evidence in the record that report writing for unfounded cases was omitted from the time log, the claimant does not provide any evidence of the actual time to write those reports. The claimant relies on the "TIME LOG," and the computer-generated facsimile of the same, which only serve to show *an absence of report writing being documented* and do not indicate any times per activity. During the audit, the claimant filed amended claims that sought "a conservative amount of time" added to the allowable time increment for the inadvertently-omitted report writing.<sup>196</sup> As discussed above, this estimate was based in part on the Controller's 2015 time *survey* with two of the deputies performing the mandate, which *estimates* the time for report writing for unfounded cases between 15 and 20 minutes, and substantiated or inconclusive cases between 45 and 50 minutes.<sup>197</sup> But because report writing time was omitted from the time study *only for the unfounded cases*, based on the evidence in the record, the 45 to 50 minute estimate is inapplicable, and so the claimant now requests only 15-20 minutes, based on its Comments on the Draft Proposed Decision.<sup>198</sup>

However, the claimant's request is still based on an estimate, not actual time. As indicated above, the Controller used the time survey to verify the reasonableness of the claimant's time study to complete an investigation. The survey shows that the estimated hours to complete an investigation identified in the survey already captures the time for report writing for unfounded

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<sup>194</sup> Exhibit H, Claimant's Response to the Controller's Late Comments on the Draft Proposed Decision, page 5.

<sup>195</sup> Exhibit F, Claimant's Comments on the Draft Proposed Decision, page 7 [Blank Time Log (Time Study) Worksheet]. See also Exhibit A, IRC, page 285 [Final Audit Report, page 24].

<sup>196</sup> Exhibit B, Controller's Comments on the IRC, page 166 [August 17, 2015 Email from claimant representative Annette Chinn to Controller's audit staff Douglas Brejnak].

<sup>197</sup> Exhibit C, Claimant's Late Rebuttal Comments, pages 18 [Time Survey Questionnaire, with Deputy Deschamps' Responses], 21 [Time Survey Questionnaire, with Deputy Porter's Responses].

<sup>198</sup> Exhibit F, Claimant's Comments on Draft Proposed Decision, page 4 [Declaration of Detective Vanessa Reddy].

cases. In addition, the time survey, which includes report writing time, resulted in overall times ranging from 2.29 hours to 2.71 hours to complete an investigation for purposes of preparing a report for DOJ.<sup>199</sup> Thus, the 2.65-hour time increment allowed by the Controller falls near the top of that range, and includes time for report writing for all cases.

The claimant also relies on the first time study conducted in 2011 before the Parameters and Guidelines were adopted, which indicated an average of 1.28 hours for writing each report.<sup>200</sup> The first time study was rejected by the Controller, however, because it was not contemporaneous, was prepared by deputies that did not perform the mandate, and, thus, did not support actual costs incurred.<sup>201</sup> There is no argument or evidence in the record that the Controller's finding, that the first time study did not provide documentation of actual costs incurred, is arbitrary, capricious, or without evidentiary support.

Finally, the claimant asserts that it was not given the opportunity to conduct a third time study to capture report writing for unfounded cases.<sup>202</sup> The evidence in the record shows that the claimant offered to conduct another time study as early as August 19, 2015. However, that statement was made in the context of a dispute over "cross-reporting," which is not at issue in this IRC. The claimant stated:

Regarding your stance on cross reporting – it is true that the secretary actually transmits the info...but that info that is transmitted first it has to go through the Deputies and Sergeants review and authorization before they can call it in...The 10 minutes is also the minimal amount of time for the Sergeant to review an investigation and it has been logged on our first time study, as well as our interviews with the Sergeants. If this is not satisfactory, I'm sure they can do a quick time study for you in the next couple weeks to verify these 10 minutes per position.<sup>203</sup>

As indicated above, the Commission may not reweigh the evidence or substitute its judgment for that of the Controller. The Commission's review is limited to ensuring that the Controller has adequately considered all relevant factors, and has demonstrated a rational connection between those factors and the choices made.<sup>204</sup>

Based on this record, the Commission concludes that the Controller's rejection of the claimant's proposal to add more time to complete an investigation to capture report writing time claimed to be omitted is not arbitrary, capricious, or without evidentiary support.

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<sup>199</sup> Exhibit B, Controller's Comments on the IRC, page 173 [Analysis of Time Survey].

<sup>200</sup> Exhibit C, Claimant's Late Rebuttal Comments, page 2.

<sup>201</sup> Exhibit A, IRC, pages 278, 284 [Controller's Final Audit Report, pp 17, 23].

<sup>202</sup> Exhibit C, Claimant's Late Rebuttal Comments, page 2.

<sup>203</sup> Exhibit C, Claimant's Late Rebuttal Comments, page 37 [August 19, 2015 Email from Annette Chinn to Douglas Brejnak].

<sup>204</sup> *American Bd. of Cosmetic Surgery, Inc. v. Medical Bd. of California* (2008) 162 Cal.App.4th 534, 547-548.

**E. The Controller’s Reduction of Indirect Costs Is Correct as a Matter of Law, and Not Arbitrary, Capricious, or Entirely Lacking in Evidentiary Support.**

The final reduction at issue in this IRC relates to the disallowance of indirect costs during the audit period. The Parameters and Guidelines allow claimants to use either a 10 percent indirect cost rate based on direct labor costs, excluding benefits, or prepare an Indirect Cost Rate Proposal if indirect costs exceed the 10 percent rate.<sup>205</sup> In this case, the claimant claimed the 10 percent indirect cost rate for each fiscal year and applied it to *contract services costs* that were incorrectly claimed as direct labor costs.<sup>206</sup> The claimant did not incur any direct labor costs in any fiscal year of the audit period for the mandated activities. The claimant contracts with the Los Angeles County Sheriff’s Department to perform all law enforcement activities, including the reimbursable activities here.<sup>207</sup> Therefore, the Controller found that the claimant did not incur any direct labor costs for this program, and that the claimant’s methodology to classify and compute costs as indirect based on contract costs is not appropriate. The Controller also found that the claimant’s contracted rates *included* overhead costs, which would normally be characterized as indirect costs.<sup>208</sup> In other words, the Controller concluded that much of what would normally be claimed as indirect costs was already included in the contract.

The claimant replies that it is entitled to fair compensation of all direct and indirect actual costs related to the mandated program.<sup>209</sup> In addition, the claimant asserts that the hourly rates of the deputies do not include all overhead, such as additional administrative and support positions, and facility costs.<sup>210</sup> The claimant further explains:

In the Los Angeles County Sheriff Contract, most overhead charges are included in the cost of each Deputy in the contract rate. This overhead includes services such as dispatch, special unit services (homicide, sexual crimes, forensics, etc.), equipment, and other overhead positions such as a base level of administrative and clerical support.

In addition to this base amount of overhead built into the sworn staff rates, each city has the option of purchasing additional supplemental overhead positions to their contract if they require and can afford additional support (such as clerical) or administrative staff (dedicated Lieutenants, and extra Sergeants or Watch Deputies). Each fiscal year, the City purchased additional supplemental overhead positions through the contract. (See Appendix B)

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<sup>205</sup> See Exhibit A, IRC, page 247 [Parameters and Guidelines, p. 15].

<sup>206</sup> See, e.g., Exhibit A, IRC, pages 299 [Reimbursement Claim Form, Fiscal Year 2006-2007]; 111 [Claimant’s “Indirect Cost Rate Proposal,” showing 15.4% claimed indirect costs, but failing to show the nature or to otherwise describe the direct and indirect costs alleged].

<sup>207</sup> See Exhibit A, IRC, page 61 [Email from Karen Johnson, Finance Manager for the City of Palmdale, to Douglas Brejnak, Auditor, dated August 19, 2015].

<sup>208</sup> Exhibit B, Controller’s Comments on the IRC, page 22.

<sup>209</sup> Exhibit A, IRC, page 5.

<sup>210</sup> Exhibit A, IRC, page 5.

In some years the cities may be able to afford more direct staff and more overhead items and in other years they cannot. In the lean years, response times and customer service may decline due to limited fiscal resources. When the actual overhead rates were calculated, they were found to range between 12%-15%. (See Appendix B)<sup>211</sup>

The claimant further asserts that it incurred “approximately \$1 million in City Staff Costs related to the management and oversight of the Sheriff’s Contract/Public Safety program (or 5% of total Law Enforcement Contract with the County).”<sup>212</sup> And finally, the claimant asserts that the donation of 11 acres of land, and “infrastructure improvements associated with the construction of the Palmdale Sheriff’s Station in 2004” constitute reimbursable indirect costs outside the contract.<sup>213</sup>

The Draft Proposed Decision concluded that the Controller’s reduction of indirect costs was correct as a matter of law because the claimant did not comply with the Parameters and Guidelines, and there was no evidence in the record that the claimant developed an indirect cost rate proposal.<sup>214</sup> The Draft Proposed Decision also noted that the claimant was still asserting its indirect cost documentation supported the 10 percent default rate:

As support, the city created sample Indirect Cost Rate Proposals (ICRPs) for FY 2006-07 through FY 2012-13...The city provided its ICRPs to show additional overhead costs that it asserts should be reimbursable. However, the city is asking for the restoration of the 10% rate claimed and not the indirect cost rates based on the proposed ICRPs.<sup>215</sup>

In response to the Draft Proposed Decision, the claimant asserts that it provided sufficient documentation to the Controller to show that the indirect cost rates “were on average, similar to the default rate (10%) claimed.”<sup>216</sup> The claimant further states: “If the Commission feels that the default 10% rate cannot be used, we request that the City’s actual Indirect Cost rates, which we had available and presented to the SCO auditors during and after the audit, on more than one occasion for their review and approval, and that these actual overhead costs be allowed and reinstated.”<sup>217</sup> The claimant’s response also included additional copies, substantially similar to

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<sup>211</sup> Exhibit A, IRC, page 6.

<sup>212</sup> Exhibit A, IRC, page 6.

<sup>213</sup> Exhibit A, IRC, page 6.

<sup>214</sup> Exhibit D, Draft Proposed Decision, pages 42-43.

<sup>215</sup> Exhibit D, Draft Proposed Decision, page 42 [citing Exhibit B, Controller’s Comments on the IRC, p. 25].

<sup>216</sup> Exhibit F, Claimant’s Comments on the Draft Proposed Decision, page 9 [Declaration of Karen Johnston, Finance Manager/City Treasurer].

<sup>217</sup> Exhibit F, Claimant’s Comments on the Draft Proposed Decision, page 10 [Declaration of Karen Johnston, Finance Manager/City Treasurer].

those previously in the record,<sup>218</sup> of documents entitled “Indirect Cost Rate Proposal” for fiscal years 2006-2007 through 2012-2013. However, those documents are not explained in the narrative comments and do not include a description of what costs are listed as direct and indirect; nor is there any indirect cost documentation provided for the first six years of the audit period, fiscal years 1999-2000 through 2005-2006.<sup>219</sup>

Finally, in response to the Controller’s Late Comments on the Draft Proposed Decision, the claimant continues to stress that it “had already developed and presented indirect cost rate proposals for FY 2006-07 through FY 2012-13,” and that “[t]hese rates were computed for use in the preparation of other, prior State Mandate Reimbursement claims.” The claimant also asserts that its rates “were prepared in compliance with Federal OMB and CRF guidelines and reflected actual allowable cost pursuant to the Parameters and Guidelines.”<sup>220</sup> Accordingly, the claimant now requests “that actual overhead rates be allowed in our claims for State Reimbursement.”<sup>221</sup>

The Commission cannot reweigh the evidence and substitute its judgment for the Controller’s.<sup>222</sup> The Commission’s review is limited to ensuring that the Controller has adequately considered all relevant factors, and has demonstrated a rational connection between those factors, and the choices made.<sup>223</sup>

The Parameters and Guidelines state that when claiming indirect costs claimants have the option of using *10 percent of direct labor*, excluding fringe benefits, or preparing an *Indirect Cost Rate Proposal (ICRP)* if the indirect cost rate claimed *exceeds the 10 percent default rate*, as follows:

Indirect costs are costs that are incurred for a common or joint purpose, benefiting more than one program, and are not directly assignable to a particular department or program without efforts disproportionate to the result achieved. Indirect costs may include both: (1) overhead costs of the unit performing the mandate; and (2) the costs of the central government services distributed to the other departments based on a systematic and rational basis through a cost allocation plan.

Compensation for indirect costs is eligible for reimbursement utilizing the procedure provided in 2 CFR Part 225 (Office of Management and Budget (OMB) Circular A-87). Claimants have the option of using *10% of direct labor*,

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<sup>218</sup> See Exhibit F, Claimant’s Comments on the Draft Proposed Decision, pages 49-70; Exhibit A, IRC, pages 110-131.

<sup>219</sup> Exhibit F, Claimant’s Comments on the Draft Proposed Decision, pages 49-70.

<sup>220</sup> Exhibit H, Claimant’s Response to the Controller’s Late Comments on the Draft Proposed Decision, page 2.

<sup>221</sup> Exhibit H, Claimant’s Response to the Controller’s Late Comments on the Draft Proposed Decision, page 2.

<sup>222</sup> See generally, *Chevron, U.S.A., Inc. v. Natural Resources Defense Council, Inc.* (1984) 467 U.S. 837.

<sup>223</sup> *American Bd. of Cosmetic Surgery, Inc. v. Medical Bd. of California* (2008) 162 Cal.App.4th 534, 547-548.

excluding fringe benefits, *or preparing an Indirect Cost Rate Proposal (ICRP) if the indirect cost rate claimed exceeds 10%.*

If the claimant chooses to prepare an ICRP, both the direct costs (as defined and described in 2 CFR Part 225, Appendix A and B (OMB Circular A-87 Attachments A and B) and the indirect costs shall exclude capital expenditures and unallowable costs (as defined and described in 2 CFR Part 225, Appendix A and B (OMB Circular A-87 Attachments A and B). However, unallowable costs must be included in the direct costs if they represent activities to which indirect costs are properly allocable. The distribution base may be: (1) total direct costs (excluding capital expenditures and other distorting items, such as pass-through funds, major subcontracts, etc.); (2) direct salaries and wages; or (3) another base which results in an equitable distribution.<sup>224</sup>

The claimant here filed its initial reimbursement claims as direct salary costs for the deputies and sergeants conducting the mandate, and sought 10 percent of the direct costs as its indirect costs. At all times relevant to this IRC, the claimant, through its reimbursement claims,<sup>225</sup> amended claims,<sup>226</sup> assertions and objections throughout the audit period,<sup>227</sup> and allegations in filing the IRC,<sup>228</sup> has consistently sought indirect costs of *only* the 10 percent default rate applied to the claimant's contract costs. The Final Audit Report states (and the claimant concedes) that "[n]one of the city staff members performed any of the reimbursable activities under this program."<sup>229</sup> Nevertheless, the claimant continued throughout the audit and in this IRC to assert its belief that the 10 percent default rate was a reasonable and conservative estimate of its indirect costs.<sup>230</sup> Accordingly, as noted above, the Controller disallowed all claimed indirect costs.

The Government Code requires a claimant to file its reimbursement claims in accordance with the parameters and guidelines.<sup>231</sup> And the courts have determined that parameters and guidelines

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<sup>224</sup> Exhibit A, IRC, page 247 [Parameters and Guidelines, p. 15 (emphasis added)].

<sup>225</sup> See, e.g., Exhibit B, Controller's Comments on the IRC, page 30 [Original Reimbursement Claim, Fiscal Year 2012-2013, dated July 3, 2014].

<sup>226</sup> Exhibit A, IRC, pages 299-380 [Amended Claim Forms].

<sup>227</sup> See, e.g., Exhibit A, IRC, pages 60 [July 27, 2015 Email from Annette Chinn, Claimant Representative, to Douglas Brejnak, Auditor]; 297 [Claimant's Response to Draft Audit Report ("[W]e believe that we have already provided more than enough support to justify the inclusion of the default 10% rate allowed in the State instructions.")].

<sup>228</sup> Exhibit A, IRC, page 5 ["The city has attached the Cost Schedules for each year showing the Supplemental costs incurred through the contract as well as has prepared sample ICRPs to show that the default overhead rate of 10% is justified."].

<sup>229</sup> Exhibit A, IRC, page 271 [Final Audit Report, p. 10].

<sup>230</sup> Exhibit A, IRC, pages 287 [Final Audit Report, p. 26]; 297 [Claimant's Response to the Draft Audit Report ("We request the restoration of the additional 10% default overhead ICRP costs in the claims.")].

<sup>231</sup> Government Code section 17561(d)(1).



are regulatory in nature and binding on the parties.<sup>232</sup> In this case, the claimant has not complied with the Parameters and Guidelines in claiming its indirect costs; the 10 percent rate is allowed when the claimant uses its own employees to perform the mandated activities. This claimant contracts for all law enforcement services, including the mandated activities, and therefore the claimant has no direct salaries and benefits upon which to base its claim of indirect costs. The 10 percent default rate is not available to this claimant based on the plain language of the Parameters and Guidelines, irrespective of whatever documentation might be presented to justify it. Therefore, it is correct as a matter of law for the Controller to deny indirect costs, as claimed.

The remaining question then, is whether it was arbitrary and capricious for the Controller to reject the claimant's indirect cost documentation. The Commission finds that it was not. As noted above, in response to the Draft Proposed Decision, the claimant asserts that it provided sufficient documentation to the Controller to show that the indirect cost rates "were on average, similar to the default rate (10%) claimed."<sup>233</sup> The claimant further states: "If the Commission feels that the default 10% rate cannot be used, we request that the City's actual Indirect Cost rates, which we had available and presented to the SCO auditors during and after the audit, on more than one occasion for their review and approval, and that these actual overhead costs be allowed and reinstated."<sup>234</sup>

However, as noted above, the Commission's review is limited to ensuring that the Controller has adequately considered all relevant factors, and has demonstrated a rational connection between those factors, and the choices made.<sup>235</sup> Based on the evidence and documentation in the record, at no time prior to its comments on the Draft Proposed Decision has the claimant requested reimbursement on the basis of its sample Indirect Cost Rate Proposals. The Controller explains:

As support, the city created sample Indirect Cost Rate Proposals (ICRPs) for FY 2006-07 through FY 2012-13 (Exhibit F). The city did not provide ICRPs for FY 1999-00 through FY 2005-06. The city provided its ICRPs to show additional overhead costs that it asserts should be reimbursable. However, the city is asking for the restoration of the 10% rate claimed and not the indirect cost rates based on the proposed ICRPs.<sup>236</sup>

The sample ICRPs that the Controller refers to are each one to three pages, and include "City Wide Costs" without any evidence of an allocation basis for this mandated program; "Allowable Indirect Costs," which coincide with costs for additional sergeants and administrative support (which the Controller suggests are also contract costs, and therefore include some overhead); and

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<sup>232</sup> *California School Boards Association v. State of California* (2009) 171 Cal.App.4th 1183, 1201; *Clovis Unified School Dist. v. Chiang* (2010) 188 Cal.App.4th 794, 799.

<sup>233</sup> Exhibit F, Claimant's Comments on the Draft Proposed Decision, page 9 [Declaration of Karen Johnston, Finance Manager/City Treasurer].

<sup>234</sup> Exhibit F, Claimant's Comments on the Draft Proposed Decision, page 10 [Declaration of Karen Johnston, Finance Manager/City Treasurer].

<sup>235</sup> *American Bd. of Cosmetic Surgery, Inc. v. Medical Bd. of California* (2008) 162 Cal.App.4th 534, 547-548.

<sup>236</sup> Exhibit B, Controller's Comments on the IRC, page 25.

“Allocation of Land/Facility Costs,” listed as \$300,000, without any information of the origin of that amount.

Moreover, the documents included in the Claimant’s Comments on the Draft Proposed Decision, which appear to be substantially similar to those provided to the Controller in the context of the audit, do not explain the origin of the purported indirect cost rates calculated, do not identify a distribution base, as required under the Parameters and Guidelines, and are characterized by the Controller as “support” for the claimant requesting “the restoration of the 10% rate claimed.”<sup>237</sup> Both parties also characterize these documents as “*sample* Indirect Cost Rate Proposals.”<sup>238</sup>

The Controller also describes a number of other issues within the sample ICRPs,<sup>239</sup> including the assignment of direct and indirect costs; and the apparent duplication of costs inherent in using contract costs (which already contain overhead and support, i.e., indirect costs) as a direct cost basis for calculating indirect costs; and especially that the OMB regulations prohibit donations, including of real property, from being considered as indirect costs.<sup>240</sup> One of the costs that the claimant asserted as justification for indirect costs, and documented in its amended claims was the donation of land to build a Palmdale station for the Los Angeles County Sheriff’s Department.<sup>241</sup> This cost item has been omitted from the claimant’s more recent filings,<sup>242</sup> but as of the time of the audit the indirect cost documentation included this unallowable cost item.

Based on the evidence in the record, at no time during the audit, or in the early stages of this IRC, did the claimant seek reimbursement based on anything other than the 10 percent default rate, which was correctly denied consistent with the Parameters and Guidelines. Based on the claimant’s position and assertions at that time, as reflected in the record, and based on the many flaws and insufficiencies in the evidence, as identified by the Controller, and which have not been rebutted, it was not arbitrary and capricious for the Controller to deny all indirect costs, as claimed.

Accordingly, the Commission finds that the Controller’s reduction of indirect costs, as claimed, is correct as a matter of law, and not arbitrary, capricious, or entirely lacking in evidentiary support.

## **V. Conclusion**

Based on the forgoing analysis, the Commission denies this IRC.

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<sup>237</sup> See Exhibit F, Claimant’s Comments on the Draft Proposed Decision, pages 49-70; Exhibit B, Controller’s Comments on the IRC, page 25.

<sup>238</sup> See Exhibit A, IRC, page 109; Exhibit B, Controller’s Comments on the IRC, page 25.

<sup>239</sup> Exhibit B, Controller’s Comments on the IRC, pages 25-27.

<sup>240</sup> Exhibit B, Controller’s Comments on the IRC, page 26 [Citing 2 CFR Part 225].

<sup>241</sup> See Exhibit A, IRC, pages 6 [IRC Narrative]; 111 [Indirect Cost Documentation, Fiscal Year 2006-2007].

<sup>242</sup> Compare Exhibit A, IRC, page 111 [Indirect Cost Documentation, Fiscal Year 2006-2007]; with Exhibit F, Claimant’s Comments on the Draft Proposed Decision, page 50.



RE: **Decision**

*Interagency Child Abuse and Neglect Investigation Reports (ICAN)*, 17-0022-I-01  
Penal Code Sections 11165.9, 11166, 11166.2, 11166.9<sup>1</sup>, 11168 (formerly 11161.7),  
11169, 11170, and 11174.34 (formerly 11166.9) as added or amended by Statutes 1977,  
Chapter 958; Statutes 1980, Chapter 1071; Statutes 1981, Chapter 435; Statutes 1982,  
Chapters 162 and 905; Statutes 1984, Chapters 1423 and 1613; Statutes 1985, Chapter  
1598; Statutes 1986, Chapters 1289 and 1496; Statutes 1987, Chapters 82, 531, and 1459;  
Statutes 1988, Chapters 269, 1497, and 1580; Statutes 1989, Chapter 153; Statutes 1990,  
Chapters 650, 1330, 1363, 1603; Statutes 1992, Chapters 163, 459, and 1338; Statutes  
1993, Chapters 219 and 510; Statutes 1996, Chapters 1080 and 1081; Statutes 1997,  
Chapters 842, 843, and 844; Statutes 1999, Chapters 475 and 1012; and Statutes 2000,  
Chapter 916; California Code of Regulations, Title 11, Section 903 (Register 98, Number  
29); “Child Abuse Investigation Report” Form SS 8583 (Rev. 3/91)  
Fiscal Years: 1999-2000, 2000-2001, 2001-2002, 2002-2003, 2003-2004, 2004-2005,  
2005-2006, 2006-2007, 2007-2008, 2008-2009, 2009-2010, 2010-2011, 2011-2012, and  
2012-2013  
City of Palmdale, Claimant

On November 30, 2018, the foregoing Decision of the Commission on State Mandates was adopted on the above-entitled matter.

  
\_\_\_\_\_  
Heather Halsey, Executive Director

Dated: December 7, 2018

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<sup>1</sup> Renumbered as Penal Code section 11174.34 (Stats. 2004, ch. 842 (SB 1313)).

**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.

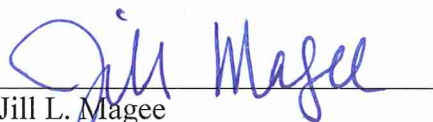
On December 7, 2018, I served the:

- **Decision adopted November 30, 2018**

*Interagency Child Abuse and Neglect Investigation Reports (ICAN)*, 17-0022-I-01  
Penal Code Sections 11165.9, 11166, 11166.2, 11166.9<sup>1</sup>, 11168 (formerly 11161.7),  
11169, 11170, and 11174.34 (formerly 11166.9) as added or amended by Statutes 1977,  
Chapter 958; Statutes 1980, Chapter 1071; Statutes 1981, Chapter 435; Statutes 1982,  
Chapters 162 and 905; Statutes 1984, Chapters 1423 and 1613; Statutes 1985, Chapter  
1598; Statutes 1986, Chapters 1289 and 1496; Statutes 1987, Chapters 82, 531, and 1459;  
Statutes 1988, Chapters 269, 1497, and 1580; Statutes 1989, Chapter 153; Statutes 1990,  
Chapters 650, 1330, 1363, and 1603; Statutes 1992, Chapters 163, 459, and 1338;  
Statutes 1993, Chapters 219 and 510; Statutes 1996, Chapters 1080 and 1081; Statutes  
1997, Chapters 842, 843, and 844; Statutes 1999, Chapters 475 and 1012; and Statutes  
2000, Chapter 916; California Code of Regulations, Title 11, Section 903 (Register 98,  
Number 29); "Child Abuse Investigation Report" Form SS 8583 (Rev. 3/91)  
*Interagency Child Abuse and Neglect Investigation Reports (ICAN)*  
Fiscal Years 1999-2000 through 2012-2013  
City of Palmdale, 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 7, 2018 at Sacramento, California.



Jill L. Magee  
Commission on State Mandates  
980 Ninth Street, Suite 300  
Sacramento, CA 95814  
(916) 323-3562

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<sup>1</sup> Renumbered at Penal Code section 11174.34 (Stats. 2004, ch. 842 (SB 1313)).

# COMMISSION ON STATE MANDATES

## Mailing List

**Last Updated:** 9/26/18

**Claim Number:** 17-0022-I-01

**Matter:** Interagency Child Abuse and Neglect Investigation Reports (ICAN)

**Claimant:** City of Palmdale

### 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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