



BETTY T. YEE
California State Controller

January 4, 2016

The Honorable Juan Raigoza, Auditor-Controller
San Mateo County
555 County Center, 4th Floor
Redwood City, CA 94063

Dear Mr. Raigoza:

The State Controller's Office performed a desk review of costs claimed by San Mateo County for the legislatively mandated Peace Officers Procedural Bill of Rights Program (Chapter 465, Statutes of 1976; Chapters 775, 1173, 1174, and 1178, Statutes of 1978; Chapter 405, Statutes of 1979; Chapter 1367, Statutes of 1980; Chapter 994, Statutes of 1982; Chapter 964, Statutes of 1983; Chapter 1165, Statutes of 1989; and Chapter 675, Statutes of 1990) for the period of July 1, 2008, through June 30, 2013. We conducted our review under the authority of Government Code sections 12410, 17558.5, and 17561. Our review was limited to ensuring that the county properly reported the number of full-time sworn peace officers.

The county claimed \$164,856 for the mandated program. Our review found that \$70,962 is allowable and \$93,894 is unallowable. The costs are unallowable because the county overstated the number of sworn peace officers reported to the Department of Justice, as described in the attached Summary of Program Costs and the Review Results. The State made no payments to the county. The State will pay \$70,962, contingent upon available appropriations.

We informed Harshil Kanakia, Management Analyst III, of the review finding via email on March 26, 2015. On May 13, 2015, we received a letter from you stating that the county disagrees with the review finding (Attachment 3). This letter includes the county's response.

If you disagree with the review finding, you may file an Incorrect Reduction Claim (IRC) with the Commission on State Mandates (Commission). The IRC must be filed within three years following the date of this report. You may obtain IRC information at the Commission's website at www.csm.ca.gov/docs/IRCForm.pdf.

If you have any questions, please contact Jim L. Spano, Chief, Mandated Cost Audits Bureau, by telephone at (916) 323-5849.

Sincerely,

Original signed by

JEFFREY V. BROWNFIELD, CPA
Chief, Division of Audits

The Honorable Juan Raigoza,
Auditor-Controller

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January 4, 2016

JVB/lr

Attachments

RE: S15-MCC-9016

cc: Harshil Kanakia, Management Analyst III
Controller's Office, San Mateo County
Evelyn Suess, Principal Program Budget Analyst
Mandates Unit, California Department of Finance
Jay Lal, Manager
Division of Accounting and Reporting
State Controller's Office

**Attachment 1—
Summary of Program Costs
July 1, 2008, through June 30, 2013**

Cost Elements	Actual Costs Claimed	Allowable per Review	Review Adjustment ¹
<u>July 1, 2008, through June 30, 2009</u>			
Unit cost per full-time sworn peace officer	\$ 40.50	\$ 40.50	\$ 40.50
Number of full-time sworn peace officers	999	435	(564)
Total program costs	<u>\$ 40,460</u>	17,618	<u>\$ (22,842)</u>
Less amount paid by the State		-	
Allowable costs claimed in excess of (less than) amount paid		<u>\$ 17,618</u>	
<u>July 1, 2009, through June 30, 2010</u>			
Unit cost per full-time sworn peace officer	\$ 40.69	\$ 40.69	\$ 40.69
Number of full-time sworn peace officers	824	304	(520)
Total program costs	<u>\$ 33,529</u>	12,370	<u>\$ (21,159)</u>
Less amount paid by the State		-	
Allowable costs claimed in excess of (less than) amount paid		<u>\$ 12,370</u>	
<u>July 1, 2010, through June 30, 2011</u>			
Unit cost per full-time sworn peace officer	\$ 41.64	\$ 41.64	\$ 41.64
Number of full-time sworn peace officers	599	320	(279)
Total program costs	<u>\$ 24,942</u>	13,324	<u>\$ (11,618)</u>
Less amount paid by the State		-	
Allowable costs claimed in excess of (less than) amount paid		<u>\$ 13,324</u>	
<u>July 1, 2011, through June 30, 2012</u>			
Unit cost per full-time sworn peace officer	\$ 43.04	\$ 43.04	\$ 43.04
Number of full-time sworn peace officers	748	322	(426)
Total program costs	<u>\$ 32,194</u>	13,859	<u>\$ (18,335)</u>
Less amount paid by the State		-	
Allowable costs claimed in excess of (less than) amount paid		<u>\$ 13,859</u>	

Attachment 1 (continued)

Cost Elements	Actual Costs Claimed	Allowable per Review	Review Adjustment ¹
<u>July 1, 2012, through June 30, 2013</u>			
Unit cost per full-time sworn peace officer	\$ 43.92	\$ 43.92	\$ 43.92
Number of full-time sworn peace officers	768	314	(454)
Total program costs	<u>\$ 33,731</u>	13,791	<u>\$ (19,940)</u>
Less amount paid by the State		-	
Allowable costs claimed in excess of (less than) amount paid		<u>\$ 13,791</u>	
<u>Summary: July 1, 2008, through June 30, 2013</u>			
Total program costs	<u>\$ 164,856</u>	\$ 70,962	<u>\$ (93,894)</u>
Less amount paid by the State		-	
Allowable costs claimed in excess of (less than) amount paid		<u>\$ 70,962</u>	

¹ See Attachment 2, Review Results

Attachment 2— Review Results July 1, 2008, through June 30, 2013

BACKGROUND—

Chapter 465, Statutes of 1976; Chapters 775, 1173, 1174, and 1178, Statutes of 1978; Chapter 405, Statutes of 1979; Chapter 1367, Statutes of 1980; Chapter 994, Statutes of 1982; Chapter 964, Statutes of 1983; Chapter 1165, Statutes of 1989; and Chapter 675, Statutes of 1990 added and amended Government Code sections 3300 through 3310. This legislation, known as the Peace Officers Procedural Bill of Rights (POBOR) was enacted to ensure stable employer-employee relations and effective law enforcement services.

This legislation provides procedural protections to peace officers employed by local agencies when a peace officer is subject to an interrogation by the employer, is facing punitive action, or receives an adverse comment in his or her personnel file. The protections required apply to peace officers classified as permanent employees, peace officers who serve at the pleasure of the agency and are terminable without cause (“at will” employees), and peace officers on probation who have not reached permanent status.

On November 30, 1999, the Commission on State Mandates (Commission) determined that this legislation imposed a State mandate reimbursable under Government Code section 17561 and adopted the Statement of Decision. The Commission determined that the Peace Officers Procedural Bill of Rights law constitutes a partially reimbursable State-mandated program within the meaning of the California Constitution, Article XII B, section 6, and Government Code section 17514. The Commission further defined that activities covered by due process are not reimbursable.

The program’s parameters and guidelines establish the State mandate and define the reimbursement criteria. The Commission adopted the parameters and guidelines on July 27, 2000, and corrected them on August 17, 2000. The parameters and guidelines categorize reimbursable activities into the following four components: Administrative Activities, Administrative Appeal, Interrogations, and Adverse Comments. In compliance with Government Code section 17558, the State Controller’s Office (SCO) issues claiming instructions to assist local agencies, school districts, and community college districts in claiming mandated program reimbursable costs.

On March 28, 2008, the parameters and guidelines were amended to provide claimants an opportunity to claim reimbursement for the activities by using either the reasonable reimbursement methodology (RRM) or by filing an actual cost claim. The RRM allows each eligible claimant to be reimbursed at a rate of \$37.25 per full-time sworn peace officer employed by the agency and reported to the Department of Justice (DOJ) for all direct and indirect costs of performing the activities.

The rate per full-time sworn peace officer is adjusted each year by the Implicit Price Deflator referenced in Government Code section 17523.

**FINDING—
Overstated number of
full-time sworn peace
officers**

The county overstated the number of full-time sworn peace officers on its mandated cost claims for fiscal year (FY) 2008-09 through FY 2012-13. For the fiscal years in the review period, the county claimed \$164,856. We found that \$70,962 is allowable and \$93,894 is unallowable.

For FY 2008-09 through FY 2012-13, San Mateo County claimed reimbursement using the Commission-adopted RRM. In reviewing the POBOR mandated cost claims, we found that the number of full-time sworn peace officers claimed by the county for each fiscal year was overstated.

The parameters and guidelines (section V. Claim Preparation and Submission, subsection A. 2. Formula) state:

Reimbursement is determined by multiplying the rate per full time sworn peace officer for the appropriate fiscal year by the number of full time sworn peace officers employed by the agency and reported to the Department of Justice.

Each October 31, the county reports to the DOJ the number of full-time law enforcement employees, both officers and civilians. Law enforcement officers are defined as individuals who ordinarily carry a firearm and a badge, have full arrest powers, and are paid from governmental funds set aside specifically to pay sworn law enforcement officers.

Reimbursement for POBOR activities is limited to sworn peace officers and does not include civilians. Civilian employees are not trained as peace officers. They do not carry guns, nor do they have arrest powers.

The following table summarizes the adjustment calculations for the review period:

	Fiscal Year					Total
	2008-09	2009-10	2010-11	2011-12	2012-13	
No. of full-time sworn officers claimed	999	824	599	748	768	
No. of full-time sworn officers reported to the DOJ	435	304	320	322	314	
Difference	(564)	(520)	(279)	(426)	(454)	
Unit cost per full-time sworn officer	\$ 40.50	\$ 40.69	\$ 41.64	\$ 43.04	\$ 43.92	
Review adjustment	<u>\$(22,842)</u>	<u>\$(21,159)</u>	<u>\$(11,618)</u>	<u>\$(18,335)</u>	<u>\$(19,940)</u>	<u>\$(93,894)</u>

On May 13, 2015, Juan Raigoza, Controller, responded by letter (Attachment 3), disagreeing with the draft review finding emailed to the county March 26, 2015. Within the letter, the county contends that the POBOR parameters and guidelines are fundamentally flawed and that the SCO is misinterpreting the parameters and guidelines.

The county believes that the POBOR parameters and guidelines are flawed because the parameters and guidelines state that reimbursement is for every full-time peace officer employed by the agency, but then indicates reimbursement is limited to only those sworn officers reported to the DOJ (which excludes sworn officers outside of the sheriff's department). Further, the county believes that it is inappropriate for the SCO to allow reimbursement for only those sworn officers identified on the DOJ web site.

The finding and recommendation identified in our March 26, 2015 email remains unchanged. The mandate allows the county to claim costs using either the actual costs methodology or the Commission-adopted RRM. The county claimed costs using the RRM. The RRM was based on statewide cost data for FY 2004-05, from actual claims filed by local agencies that factored in a variation of reimbursable costs among local agencies. The RRM was developed in a manner that estimated total allowable costs of all sworn peace officer (inclusive of sworn peace officers that are not identified on the DOJ website) divided by the number of sworn peace officers that are identified on the DOJ website. Therefore, the RRM does reimburse counties for costs of sworn peace officers that are not identified on the DOJ website.

Recommendation

We recommend that, if the county continues to claim reimbursement using the RRM, it ensure that the number of full-time sworn peace officers reported on its mandated cost claim is the same number as reported to the DOJ.

In addition, we recommend that the county submit a request to amend the parameters and guidelines to include clarifying language for any sections it believes to be flawed.

**Attachment 3—
County’s Response to
Draft Review Finding**



COUNTY OF SAN MATEO
OFFICE OF THE CONTROLLER

Juan Raigoza
Controller

Shirley Tourel
Assistant Controller

555 County Center, 4th Floor
Redwood City, CA 94063
650-363-4777
<http://controller.smcgov.org>

May 13, 2015

Lisa Kurokawa
State Controller's Office
Division of Audits | Mandated Cost Bureau
Post Office Box 942850
Sacramento, CA 94250-5874

Dear Lisa Kurokawa:

The County of San Mateo believes that the State Controller's Office position on the Peace Officer Bill of Rights (POBOR) cost claim adjustment is unfair and unjust. The County's objection can be summarized in three points:

1. The Amended Parameters and Guidelines (Ps & Gs) dated July 31, 2009, Section V - Claim Preparation and Submission, Sub-Section 2. Formula states:

The reasonable reimbursement methodology shall allow each eligible claimant to be reimbursed at the rate of \$37.25 per full-time sworn peace officer employed by the agency for all direct and indirect costs of performing the activities, as described in Section IV, Reimbursable Activities.

It is the County's position that the primary input of this formula—the number of full-time sworn peace officers employed by the County—must be based on the total number of such peace officers employed by any department of the County (i.e., the Sheriff's Office, Probation Department, District Attorney's Office, etc.). This understanding stems in part from the reference in the Ps & Gs to multiple code citations describing various kinds of peace officers.

2. Despite the clear intent of the Ps & Gs to include all full-time sworn peace officers employed by an agency, the Reasonable Reimbursement Methodology (RRM) was developed using the Sheriff's Office actual costs and a more limited number of sworn peace officers—those reported to the Department of Justice (DOJ). After checking with the Federal Bureau of Investigation Criminal Justice Information Services (FBI CJIS) Division and County departments (District Attorney, Sheriff's office, Probation), the County of San Mateo has confirmed that the number reported by the County to the DOJ reflects only the Sheriff's Department's sworn personnel. In other words, the DOJ figure understates that total number of sworn peace officers employed by the County.

Lisa Kurokawa
State Controller's Office
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3. To the extent the SCO's position is based on the second paragraph of sub-section 2 of Section V of the Ps & Gs, that provision contains language that is inconsistent with the overall framework established for the RRM. The second paragraph of sub-section 2 states:

Reimbursement is determined by multiplying the rate per full time sworn peace officer for the appropriate fiscal year by the number of full time sworn peace officers employed by the agency and reported to the Department of Justice.

This paragraph contradicts the first paragraph of the sub-section by limiting the eligible claimant pool to only full-time sworn peace officers employed by the agency and reported to the DOJ. As described above, such intent is not reflected anywhere else in the Ps & Gs. The County believes a better reading of the entirety of sub-section 2 is that all full-time, sworn peace officers employed by the agency, regardless of whether such are reported to the DOJ, must be included in the RRM calculation. Any inconsistencies introduced by the second paragraph of sub-section 2 should be addressed and corrected prior to incorrect reduction of the County's claim based solely on the State Controller's Office position.

Based on the above reasons, the County of San Mateo disagrees with the State Controller's Office position and proposal to reduce the County's POBOR cost reimbursement claims filed between FY 2008-09 and FY 2012-13 by \$93,894.

Sincerely,



Juan Raigoza
Auditor-Controller
County of San Mateo